ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2012
First Extraordinary Session, 2012
Fourth Extraordinary Session, 2011

Volume II
Chapters 110 - 206
Chapters 1 - 2
Chapter 1
# TABLE OF CONTENTS

## ACTS

Regular Session, 2012

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## GENERAL LAWS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Subject</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>110.</td>
<td>(*HB3174)</td>
<td>LIQUOR SAMPLING</td>
<td>1007</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Relating to Liquor and Beer Sampling Events.</td>
<td></td>
</tr>
<tr>
<td>111.</td>
<td>(HB4314)</td>
<td>MAGISTRATES</td>
<td>1018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Relating to the Appointment of Magistrates.</td>
<td></td>
</tr>
<tr>
<td>112.</td>
<td>(*SB507)</td>
<td>MENTAL HEALTH</td>
<td>1019</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Relating to Voluntary and Involuntary Hospitalization of Mentally Ill Persons.</td>
<td></td>
</tr>
<tr>
<td>113.</td>
<td>(*SB471)</td>
<td>MENTAL HYGIENE</td>
<td>1038</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Authorizing the Supreme Court to Establish Mental Hygiene Commissioners’ Compensation.</td>
<td></td>
</tr>
<tr>
<td>114.</td>
<td>(*HB4424)</td>
<td>Relating to Modified Mental Hygiene Procedures.</td>
<td>1042</td>
</tr>
<tr>
<td>115.</td>
<td>(SB603)</td>
<td>MILITARY PERSONNEL</td>
<td>1051</td>
</tr>
</tbody>
</table>

[III]
<table>
<thead>
<tr>
<th>Section</th>
<th>Bill Number</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>116.</td>
<td>(SB605)</td>
<td>Limiting Landowner’s Liability for Military, Law-enforcement or Homeland-defense Training Purposes</td>
<td>1053</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>117.</td>
<td>(*HB4015)</td>
<td>Creating the Herbert Henderson Office of Minority Affairs</td>
<td>1058</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>118.</td>
<td>(*HB4046)</td>
<td>Repealing Obsolete Code Provisions</td>
<td>1062</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>119.</td>
<td>(SB336)</td>
<td>Eliminating Mortgage Lender License Exemption Available to Bank Subsidiaries</td>
<td>1075</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>120.</td>
<td>(*SB551)</td>
<td>Providing Limitation Exception for Certain Mortgage Modification or Refinancing Loans</td>
<td>1078</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>121.</td>
<td>(HB4271)</td>
<td>Reporting Requirements for Residential Mortgage Lenders and Broker Licensees</td>
<td>1085</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>122.</td>
<td>(HB4103)</td>
<td>Consolidating of Government Services and Enforcement of Laws Pertaining to the Motor Carrier Industry</td>
<td>1087</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>123.</td>
<td>(*HB4338)</td>
<td>Raising the Maximum Value Amount Of an Abandoned Motor Vehicle</td>
<td>1091</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>124.</td>
<td>(SB428)</td>
<td>Relating to registration plates for governmental vehicles</td>
<td>1096</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

125. (SB30) Providing Additional Means to Notify the DMV of the Purchase of a Junked Vehicle. 1101

126. (*SB429) Relating to Motor Vehicle Registration Classifications. 1108

127. (SB544) Removing the Expiration Date for Certain Diesel-powered Motor Vehicle Idling Restrictions. 1113

128. (SB493) Exempting Certain Unmarked Law-enforcement Vehicles from Sun-screening Restrictions. 1117

MUNICIPALITIES

129. (*SB618) Relating to certain payments to governmental units. 1122

130. (HB4315) Permitting a New Class IV Town or Village to Select a Form of Government. 1136

131. (*HB4279) Permitting Municipalities to Stagger The Terms of Elected Officers. 1143

132. (*SB343) Providing Volunteer and Part-volunteer Fire Departments’ Grace Period to Meet Eligibility for Certain Funds Allocation. 1146

NATIONAL GUARD

133. (*HB4601) Authorizing the West Virginia National Guard to Participate in a Federal Asset Forfeiture or Sharing Program. 1148

[V]
TABLE OF CONTENTS

NURSING HOMES

134. (*HB4504) Relating to Development and Operation of a Nursing Home on the Grounds of a Nonprofit Community Health Care Organization ....................... 1150

135. (*SB435) Relating to Nursing Home Residents’ Personal Funds Conveyance upon Death ........................ 1152

PERSONAL PROPERTY

136. (*SB360) Creating Procedure for Deeming Personal Property Abandoned Following Real Property Transfer ........ 1154

PERSONAL SAFETY ORDERS

137. (*SB191) Relating to Personal Safety Orders ............... 1158

PROBATION AND PAROLE

138. (*SB418) Relating to Qualifications of Parole Board Members ...................... 1179

PROFESSIONS AND OCCUPATIONS

139. (HB4002) Relating to Annual Seminar Requirements for Professional Licensing Boards ..................... 1180

140. (*HB4001) Authorizing Boards to Establish Fees By Legislative Rule .................... 1183

141. (*HB4037) Relating to the Professional and Occupational Licensure and Registration of Former and Current Members of the Armed Forces of the United States ...................... 1185

[VI]
<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>142.</td>
<td>(SB214)</td>
<td>Clarifying Sunrise Review Requirement For Establishment, Revision or Expansion of Professional Scope of Practice. 1190</td>
</tr>
<tr>
<td>143.</td>
<td>(*SB535)</td>
<td>Expanding Certain Prescriptive Authority of Medications for Chronic Diseases. 1195</td>
</tr>
<tr>
<td>144.</td>
<td>(*HB4077)</td>
<td>Relating to Activities That May Be Performed by a Dental Hygienist Without a Prior Exam by a Dentist. 1215</td>
</tr>
<tr>
<td>145.</td>
<td>(*SB572)</td>
<td>Replacing “Advanced Nurse Practitioner” with “Advanced Practice Registered Nurse”. 1217</td>
</tr>
<tr>
<td>146.</td>
<td>(*SB379)</td>
<td>Authorizing Board of Examiners for Registered Professional Nurses Designate Certain Treatment and Recovery Programs for Licensees And Applicants. 1221</td>
</tr>
<tr>
<td>147.</td>
<td>(*HB4239)</td>
<td>Increasing the Membership of the West Virginia Board of Osteopathy. 1227</td>
</tr>
<tr>
<td>148.</td>
<td>(HB4097)</td>
<td>Creating a License to Practice Hair Styling. 1234</td>
</tr>
<tr>
<td>149.</td>
<td>(SB424)</td>
<td>Exempting Certain Barbers from Continuing Education Requirement. 1241</td>
</tr>
</tbody>
</table>

**PUBLIC CONSTRUCTION CONTRACTS**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>150.</td>
<td>(*SB36)</td>
<td>Relating to Disclosure Requirements for Certain Public Construction Contracts. 1243</td>
</tr>
<tr>
<td>151.</td>
<td>(*SB76)</td>
<td>Creating the Green Buildings Act. 1248</td>
</tr>
</tbody>
</table>

**PUBLIC EMPLOYEES**

<table>
<thead>
<tr>
<th>No.</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>152.</td>
<td>(SB469)</td>
<td>Relating Generally to Other Post-employment Benefits. 1250</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

## PUBLIC EMPLOYEES INSURANCE

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>153.</td>
<td>(SB365)</td>
<td>Increasing Membership of PEIA Finance Board</td>
</tr>
</tbody>
</table>

## PUBLIC SAFETY

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>154.</td>
<td>(*SB659)</td>
<td>Requiring Criminal Background Checks for Certain Employees Of State Service Providers</td>
</tr>
<tr>
<td>155.</td>
<td>(*SB387)</td>
<td>Requiring Training of Floodplain Managers</td>
</tr>
</tbody>
</table>

## PUBLIC SERVICE COMMISSION

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>156.</td>
<td>(*HB4530)</td>
<td>Authorizing the Public Service Commission to Consider and Issue a Financing Order to Certain Regulated Electric Utilities to Permit the Recovery of Expanded Net Energy Costs</td>
</tr>
</tbody>
</table>

## RAILROAD SCRAP METAL

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>157.</td>
<td>(*HB4345)</td>
<td>Prohibiting the Unauthorized Sale of Railroad Scrap Metal</td>
</tr>
</tbody>
</table>

## REAL PROPERTY

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>158.</td>
<td>(*SB118)</td>
<td>Terminating Residential Lease upon Tenant Death</td>
</tr>
</tbody>
</table>

## RETIREMENT

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>159.</td>
<td>(HB4654)</td>
<td>Relating to the Provision of Mailing Services by the CPRB to Certain Retiree Organizations</td>
</tr>
<tr>
<td>160.</td>
<td>(*HB4332)</td>
<td>Relating to Transfer of Service Credit From Public Employees Retirement System to Emergency Medical Services Retirement System</td>
</tr>
</tbody>
</table>
# Table of Contents

## Roads and Transportation

<table>
<thead>
<tr>
<th>Bill</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>161. (SB215)</td>
<td>Specifying Unobligated Moneys in Industrial Access Road Fund Revert To State Road Fund.</td>
<td>1312</td>
</tr>
<tr>
<td>162. (SB205)</td>
<td>Relating to Construction Zone Signage.</td>
<td>1313</td>
</tr>
<tr>
<td>163. (SB204)</td>
<td>Relating to Removal of Vehicles from the Highway in Emergency Situations.</td>
<td>1314</td>
</tr>
</tbody>
</table>

## School Personnel

<table>
<thead>
<tr>
<th>Bill</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>164. (HB4583)</td>
<td>Changing Certain Deadlines Associated With the Termination, Resignation and Transfer of School Personnel.</td>
<td>1316</td>
</tr>
<tr>
<td>165. (*HB4236)</td>
<td>Relating to Exclusions from the Definition of Professional Personnel for Evaluation Purposes.</td>
<td>1333</td>
</tr>
<tr>
<td>166. (*HB4101)</td>
<td>Authorizing Teacher-in-residence Programs For Certain Prospective Teachers in Lieu of Student Teaching.</td>
<td>1350</td>
</tr>
<tr>
<td>167. (*HB4122)</td>
<td>Relating to Alternative Programs for Teacher Education.</td>
<td>1365</td>
</tr>
<tr>
<td>168. (*SB221)</td>
<td>Creating the Jason Flatt Act of 2012.</td>
<td>1377</td>
</tr>
<tr>
<td>169. (*SB186)</td>
<td>Providing Salary Equity Supplement Payments to Teachers and Service Personnel.</td>
<td>1380</td>
</tr>
<tr>
<td>170. (HB4655)</td>
<td>Relating to school service personnel certification.</td>
<td>1396</td>
</tr>
</tbody>
</table>

## Scrap Metal

<table>
<thead>
<tr>
<th>Bill</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>171. (*SB528)</td>
<td>Relating to Scrap Metal Dealers and Scrap Metal.</td>
<td>1402</td>
</tr>
<tr>
<td>No.</td>
<td>Act Number</td>
<td>Description</td>
</tr>
<tr>
<td>-----</td>
<td>------------</td>
<td>-------------</td>
</tr>
<tr>
<td>172</td>
<td>(*HB4062)</td>
<td>Creating an In-home Direct Care Workforce Registry</td>
</tr>
<tr>
<td>173</td>
<td>(*SB382)</td>
<td>Relating to Sex Offender Registration</td>
</tr>
<tr>
<td>174</td>
<td>(*HB2740)</td>
<td>Making Covenants That Restrict the Installation or Use of Solar Energy Systems Unenforceable</td>
</tr>
<tr>
<td>175</td>
<td>(*SB362)</td>
<td>Authorizing Bond Issuance for Cacapon Resort State Park and Beech Fork State Park Capital Improvements</td>
</tr>
<tr>
<td>176</td>
<td>(*SB373)</td>
<td>Providing State Police Collect Fee For Advanced Training</td>
</tr>
<tr>
<td>177</td>
<td>(HB4626)</td>
<td>Increasing State Police Principal Supervisors to Nineteen</td>
</tr>
<tr>
<td>178</td>
<td>(*HB4281)</td>
<td>Increasing the Supplemental Pay of Members of the West Virginia State Police</td>
</tr>
<tr>
<td>179</td>
<td>(SB497)</td>
<td>Awarding Attorney Fees and Costs For Administrative Proceedings Under Wv Surface Coal Mining And Reclamation Act</td>
</tr>
<tr>
<td>180</td>
<td>(SB579)</td>
<td>Increasing the Special Reclamation Tax On Clean Coal Mined</td>
</tr>
</tbody>
</table>
# Table of Contents

## Survivor Benefits

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>181</td>
<td>(*HB4396)</td>
<td>West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.</td>
<td>1450</td>
</tr>
</tbody>
</table>

## Taxation

<table>
<thead>
<tr>
<th>Number</th>
<th>Bill Number</th>
<th>Description</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>182</td>
<td>(*HB4086)</td>
<td>Designating Certain Property as a Qualified Capital Addition to a Manufacturing Facility.</td>
<td>1454</td>
</tr>
<tr>
<td>183</td>
<td>(*HB4088)</td>
<td>Repealing the West Virginia Telecommunications Tax.</td>
<td>1459</td>
</tr>
<tr>
<td>184</td>
<td>(HB4087)</td>
<td>Continuing the discontinuance of the severance and business privilege tax on the privilege of severing timber.</td>
<td>1461</td>
</tr>
<tr>
<td>185</td>
<td>(*SB487)</td>
<td>Creating the Coalbed Methane Gas Distribution Fund.</td>
<td>1462</td>
</tr>
<tr>
<td>186</td>
<td>(*SB153)</td>
<td>Increasing tax credits for apprenticeship training in construction trades.</td>
<td>1470</td>
</tr>
<tr>
<td>187</td>
<td>(*SB555)</td>
<td>Providing Contractor Exception to Sales And Use Tax Exemption for Certain Nonprofit Youth Organizations.</td>
<td>1473</td>
</tr>
<tr>
<td>188</td>
<td>(SB430)</td>
<td>Conforming Code Provisions to Streamlined Sales and Use Tax Agreement.</td>
<td>1476</td>
</tr>
<tr>
<td>189</td>
<td>(SB209)</td>
<td>Updating Terms in the Personal Income Tax Act.</td>
<td>1513</td>
</tr>
<tr>
<td>190</td>
<td>(SB410)</td>
<td>Requiring Backup Withholding on Certain Gambling Winnings.</td>
<td>1515</td>
</tr>
<tr>
<td>191</td>
<td>(SB210)</td>
<td>Updating Terms in the Corporation Net Income Tax Act.</td>
<td>1517</td>
</tr>
<tr>
<td>Number</td>
<td>Bill Number</td>
<td>Title</td>
<td>Page</td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td>----------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>192.</td>
<td>(SB386)</td>
<td>Clarifying Entities Included in Water's-edge Group for Income Tax Purposes</td>
<td>1519</td>
</tr>
<tr>
<td>193.</td>
<td>(*SB211)</td>
<td>Creating Traffic Offenses for Texting or Using a Handheld Wireless Communication Device While Driving</td>
<td>1524</td>
</tr>
<tr>
<td>194.</td>
<td>(HB4542)</td>
<td>Relating to Unemployment Compensation Benefits</td>
<td>1529</td>
</tr>
<tr>
<td>195.</td>
<td>(HB4007)</td>
<td>Relating to Unemployment Benefits for Certain Spouses of Military Personnel</td>
<td>1534</td>
</tr>
<tr>
<td>196.</td>
<td>(HB4549)</td>
<td>Imposing a Monetary Penalty on Unemployment Compensation Recipients For Obtaining Benefits Through the Use Of Fraudulent Statements</td>
<td>1541</td>
</tr>
<tr>
<td>197.</td>
<td>(*SB661)</td>
<td>Authorizing Workforce WV Provide Data to Certain Governmental Entities</td>
<td>1543</td>
</tr>
<tr>
<td>198.</td>
<td>(HB4521)</td>
<td>Relating Generally to Amendments To the Uniform Commercial Code</td>
<td>1547</td>
</tr>
<tr>
<td>199.</td>
<td>(*HB4390)</td>
<td>Uniform Power of Attorney Act</td>
<td>1619</td>
</tr>
<tr>
<td>200.</td>
<td>(*HB4493)</td>
<td>Establishing Special Memorial Days for Certain Military Veterans</td>
<td>1675</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS ACT

201. (SB414) Expanding the Definition of “Medical Services Applicant” under the Volunteer For Nonprofit Youth Organizations Act. 1677

WATER QUALITY


WHOLESALE DRUG DISTRIBUTORS


LOCAL – BRAXTON COUNTY

204. (*HB4630) Modifying the Membership of the Braxton County Recreational Development Authority. 1701

LOCAL – HARRISON COUNTY

205. (HB4567) Permitting the Harrison County Commission to Levy a Special District Tax. 1711

LOCAL – PRINCE RAILROAD STATION AUTHORITY

206. (HB4415) Authorize a Prince Railroad Station Authority to Acquire and Maintain the Railroad Station Building. 1713

[XIII]
# Table of Contents

## Acts

First Extraordinary Session, 2012

### General Laws

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

### Appropriations

1. (SB1002) Making a Supplementary Appropriation From State Fund, General Revenue, To the Governor’s Office, Civil Contingent Fund. 1719

### Taxation

2. (HB101) Creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act. 1721
# TABLE OF CONTENTS

## ACTS

### Fourth Extraordinary Session, 2011

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MARCELLUS SHALE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>(HB401) Establishing the Natural Gas Horizontal Wells Control Act.</td>
<td>1736</td>
</tr>
</tbody>
</table>

[ XV ]
## MEMBERS OF THE HOUSE OF DELEGATES

### REGULAR AND EXTRAORDINARY SESSIONS, 2012

### OFFICERS

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

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First.</td>
<td>Ronnie D. Jones (D)</td>
<td>Weirton</td>
<td>80*</td>
</tr>
<tr>
<td>Second.</td>
<td>Randy Swartzmiller (D)</td>
<td>New Cumberland</td>
<td>75 - 80*</td>
</tr>
<tr>
<td>Third.</td>
<td>Roy Givens (D)</td>
<td>Wheeling</td>
<td>76* - 80*</td>
</tr>
<tr>
<td>Fourth.</td>
<td>Erika Storch (R)</td>
<td>Wheeling</td>
<td>80*</td>
</tr>
<tr>
<td>Fifth.</td>
<td>Michael T. Ferro (D)</td>
<td>McMechen</td>
<td>79* - 80*</td>
</tr>
<tr>
<td>Sixth.</td>
<td>Scott G. Varner (D)</td>
<td>Moundsville</td>
<td>71* - 80*</td>
</tr>
<tr>
<td>Seventh.</td>
<td>Dave Pettit (D)</td>
<td>Hundred</td>
<td>69* - 71*; 74* - 80*</td>
</tr>
<tr>
<td>Eighth.</td>
<td>William Roger Romine (R)</td>
<td>Sisterville</td>
<td>75* - 80*</td>
</tr>
<tr>
<td>Ninth.</td>
<td>Anna Border (R)</td>
<td>Davisville</td>
<td>App't 6/21/11, 80*</td>
</tr>
<tr>
<td>Tenth.</td>
<td>Tom Azinger (R)</td>
<td>Vienna</td>
<td>72* - 80*</td>
</tr>
<tr>
<td>Eleventh.</td>
<td>John Ellem (R)</td>
<td>Parkersburg</td>
<td>75* - 80*</td>
</tr>
<tr>
<td>Twelfth.</td>
<td>Daniel Poling (D)</td>
<td>Parkersburg</td>
<td>78* - 80*</td>
</tr>
<tr>
<td>Thirteenth.</td>
<td>Bob Ashley (R)</td>
<td>Spencer</td>
<td>67* - 73*; 75* - 80*</td>
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<td>Fourteenth.</td>
<td>Tom Azinger (R)</td>
<td>Mingo</td>
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<td>Kevin J. Craig (D)</td>
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<td>75* - 80*; App't 2/23/2001</td>
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<td>Sixteenth.</td>
<td>Kelli Sobonya (R)</td>
<td>Huntington</td>
<td>75* - 80*; Resigned 6/1981</td>
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<tr>
<td>Seventeenth.</td>
<td>Dale Stephens (D)</td>
<td>Huntington</td>
<td>75* - 77* - 80*</td>
</tr>
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<td>Eighteenth.</td>
<td>Doug Reynolds (D)</td>
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<td>78* - 80*</td>
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<tr>
<td>Nineteenth.</td>
<td>Richard Thompson (D)</td>
<td>Lavelette</td>
<td>65*</td>
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<td>Don C. Perdue (D)</td>
<td>Prichard</td>
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<td>Twenty-first.</td>
<td>Larry W. Barker (D)</td>
<td>Madison</td>
<td>77* - 80*</td>
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<td>Greg Butler (D)</td>
<td>Chapmanville</td>
<td>73* - 77*; 79* - 80*</td>
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<tr>
<td>Twenty-third.</td>
<td>Rupert Phillips, Jr. (D)</td>
<td>Lundale</td>
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<td>Ralph Rodighiero (D)</td>
<td>Logan</td>
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<td>Josh Stowers (D)</td>
<td>Alum Creek</td>
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<td><strong>Justin J. Marcum (D)</strong></td>
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<td>Harry Keith White (D)</td>
<td>Gilbert</td>
<td>App't 9/11/1992, 70*; 71* - 80*</td>
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<td>Marty Gearheart (R)</td>
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<td>Joe Ellington (R)</td>
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<td>Rick Snuffer (R)</td>
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<td>Twenty-first.</td>
<td>Linda Summer (R)</td>
<td>Beckley</td>
<td>76* - 80*</td>
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* *Appointed January 28, 2012, to fill the vacancy created by the resignation of the Honorable Timothy Emmis.  
**Appointed January 16, 2012, to fill the vacancy created by the resignation of the Honorable Steven Kominar.

[XVI]
MEMBERS OF THE HOUSE OF DELEGATES, Continued

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
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<tbody>
<tr>
<td>Twenty-eighth.</td>
<td>Thomas W. Campbell (D).</td>
<td>Lewisburg.</td>
<td>73° - 80°</td>
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<tr>
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<td>Ray Canterbury (R).</td>
<td>Ronceverte.</td>
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<td>David G. Perry (D).</td>
<td>Oakeill.</td>
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<td>John Pino (D).</td>
<td>Oak Hill.</td>
<td>67°; 71° - 78°; 80°</td>
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<td>Margaret Anne Staggers (D).</td>
<td>Fayetteville.</td>
<td>78° - 80°</td>
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<td>Thirtieth.</td>
<td>Bonnie Brown (D).</td>
<td>South Charleston.</td>
<td>66° - 68°; 70°; 75° - 80°</td>
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<td>Nancy Peoples Guthrie (D).</td>
<td>Charleston.</td>
<td>78° - 80°</td>
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<td>Barbara Hatfield (D).</td>
<td>South Charleston.</td>
<td>67° - 69°; 74° - 80°</td>
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<td>Mark Hunt (D).</td>
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<td>72° - 74°; 77° - 80°</td>
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<td>Eric Nelson (R).</td>
<td>Charleston.</td>
<td>80°</td>
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<td>Doug Skaff, Jr. (D).</td>
<td>South Charleston.</td>
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<td>Danny Wells (D).</td>
<td>Charleston.</td>
<td>77° - 80°</td>
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<td>Patrick Lane (R).</td>
<td>Cross Lanes.</td>
<td>77° - 80°</td>
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<td>Ron Walters (R).</td>
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<td>Brent Boggs (D).</td>
<td>Gassaway.</td>
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<td>Thirty-fifth.</td>
<td>Harold Sigler (R).</td>
<td>Summersville.</td>
<td>80°</td>
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<td>Joe Talbott (D).</td>
<td>Webster Springs.</td>
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<td>Denise L. Campbell (D).</td>
<td>Elkins.</td>
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<td>Peggy Donaldson Smith (D).</td>
<td>Weston.</td>
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<td>Bill Hamilton (R).</td>
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<td>Mary M. Poling (D).</td>
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<td>Samuel J. Cann, Sr. (D).</td>
<td>Bridgeport.</td>
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<td>Ron Fragale (D).</td>
<td>Clarksburg.</td>
<td>70° - 73°; 75° - 80°</td>
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<td>Richard J. Iaquinta (D).</td>
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<td>Tim Miley (D).</td>
<td>Bridgeport.</td>
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<td>Mike Manypenny (D).</td>
<td>Grafton.</td>
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<td>Michael Caputo (D).</td>
<td>Fairmont.</td>
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<td>Linda Longstreth (D).</td>
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<td>77° - 80°</td>
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<td>Tim Manchin (D).</td>
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<td>Anthony Barill (D).</td>
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<td>Barbara Evans Fleischauer (D).</td>
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<td>72° - 75°; 78° - 80°</td>
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<td>Charlene Marshall (D).</td>
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<td>74° - 80°</td>
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<td>Amanda Pasdon (R).</td>
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<td>80°</td>
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<td>Stan Shaver (D).</td>
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<td>Allen V. Evans (R).</td>
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<td>Gary G. Howell (R).</td>
<td>Keyser.</td>
<td>80°</td>
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<td>Ruth Rowan (R).</td>
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<td>Larry D. Kump (R).</td>
<td>Falling Waters.</td>
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<td>Walter E. Duke (R).</td>
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<td>John Overington (R).</td>
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<td>Eric L. Householder (R).</td>
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<td>Shepherdstown.</td>
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<td>79° - 80°</td>
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(D) Democrats ........................................ 65
(R) Republicans ......................................... 35
TOTAL ........................................... 100

[XVII]
## MEMBERS OF THE SENATE

### REGULAR AND EXTRAORDINARY SESSIONS, 2012

#### OFFICERS

*President* - Jeffrey V. Kessler, Glen Dale  
*Clerk* - Darrell E. Holmes, Charleston  
*Sergeant at Arms* - Howard Wellman, Bluefield  
*Doorkeeper* - Tony Gallo, Charleston

<table>
<thead>
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<th>District</th>
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<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Orphy Klempa (D)</td>
<td>Wheeling</td>
<td>(House 78* - 79*); 80*</td>
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<td>Jack Yost (D)</td>
<td>Wellsburg</td>
<td>(House 76* - 78*); 79* - 80*</td>
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<td>New Martinsburg</td>
<td>Appt. 11/1997, 73*; 74* - 80*</td>
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<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/1985, 67*; 68* - 80*</td>
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<td>David C. Nohe (R)</td>
<td>Vienna</td>
<td>80*</td>
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<td>Fourth</td>
<td>Karen L. Facemyer (R)</td>
<td>Ripleys</td>
<td>(House 71* - 74*); 75* - 80*</td>
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<td>Mike Hall (R)</td>
<td>Hurricane</td>
<td>(House 72* - 74*); 78* - 80*</td>
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<td>Robert H. Plymale (D)</td>
<td>Ceredo</td>
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<td>Evan H. Jenkins (D)</td>
<td>Huntington</td>
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<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
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<td>Seventh</td>
<td>John Pat Fanning (D)</td>
<td>Iaeger</td>
<td>58* - 64*; 67* - 68*; 73* - 80*</td>
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<td>Earl Ray Tomblin (D)</td>
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<td>Ron Stollings (D)</td>
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<td>Eighth</td>
<td>Corey Palumbo (D)</td>
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<td>Erik P. Wells (D)</td>
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<td>Richard Browning (D)</td>
<td>Oceana</td>
<td>(House 69* - 72*); 75* - 78*; 79* - 80*</td>
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<tr>
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<td>Mike Green (D)</td>
<td>Daniels</td>
<td>78* - 80*</td>
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<td>Ronald F. Miller (D)</td>
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<td>80*</td>
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<td>Mark Wills (D)</td>
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<td>(House 74* - 75*); 80*</td>
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<td>Oak Hill</td>
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<td>Gregory A. Tucker (D)</td>
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<td>Sutton</td>
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<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/1983; 66*; 67* - 69*; 79* - 71*; 75* - 80*</td>
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<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>(House Appt. 5/1998, 73*; 74* - 79*; 80*</td>
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<td>Roman W. Prezioso, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69* - 72*); 73* - 80*</td>
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<td>Bob Williams (D)</td>
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<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
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<td>Clark Barnes (R)</td>
<td>Randolph</td>
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<td>Walt Helmick (D)</td>
<td>Marlinton</td>
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<td>69* - 70* - 80*</td>
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<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
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<td>John R. Unger II (D)</td>
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</table>

(D) Democrats. .................................. 28  
(R) Republicans. .................................. 6  

TOTAL.................................................................. 34

[XVIII]
HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2012

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, Iaquinta, Mahan, Manchin, Michael, Morgan, Shaver, Walker, 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, Caputo, Craig, Crosier, Fragale, Lawrence, Marcum, Moye, Perry, Pethel, Rodighiero, Shaver, Smith, Duke (Minority Chair), Sumner
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), Skaff (Chair of Economic Development and Small Business), Pino (Vice Chair of Economic Development and Small Business), Barill, Butcher, Caputo, Diserio, Fleischauer, Mahan, Manypenny, Marshall, Martin, Moye, Paxton, D. Poling, 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), Cann, Guthrie, Iaquinta, Mahan, Marshall, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Skaff, Stowers, Varner, Williams, Anderson (Minority Chair), Carmichael (Minority Vice Chair), Andes, Ashley, Canterbury, Cowles, Evans, C. Miller and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Boggs, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield, Jones, Martin, R. Phillips, Staggers, Swartzmiller, Talbott, Romine (Minority Chair), Azinger (Minority Vice Chair), Border, Householder, Howell, Kump, Nelson, Snuffer and Storch.
HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION COMMITTEE

Doyle (Chair), Rodighiero (Vice Chair), Ferro, Frazier, Reynolds, Storch and Walters.

JUDICIARY

Miley (Chair), Hunt (Vice Chair), Barker, Brown, Doyle, Ferro, Fleischauer, Frazier, Longstreth, Manchin, Manypenny, Michael, Moore, Pino, Poore, Walker, Wells, Ellem (Minority Chair), Lane (Minority Vice Chair), Hamilton, Ireland, J. Miller, O’Neal, Overington and Sobonya.

NATURAL RESOURCES

Talbott (Chair), Crosier (Vice Chair), Fragale, 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), Stowers (Vice Chair), Givens, Guthrie, D. Poling, Canterbury and Duke.
POLITICAL SUBDIVISIONS

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

ROADS AND TRANSPORTATION

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

RULES

Thompson (Chair), Boggs, Caputo, Fragale, Hatfield, Marshall, Miley, Morgan, Paxton, M. Poling, Talbott, Varner, White, Anderson, Armstead, Ashley, Carmichael, Duke, Overington and Sumner.

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.

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), Barill, Cann, Craig,
HOUSE OF DELEGATES COMMITTEES

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

JOINT COMMITTEES

EDUCATION

M. Poling (Cochair), Paxton (Vice Cochair), Armstead, Barill, D. Campbell, Caputo, Craig, Crosier, Duke, Ellington, Fragale, Gearheart, Lawrence, Marcum, Moye, Pasdon, Perry, Pethtel, Rodighiero, Rowan, Savilla, Shaver, Sigler, Smith and Sumner.

ENROLLED BILLS

Poore (Cochair), Ferro (Vice Cochair), Fragale and Overington.

FINANCE


GOVERNMENT AND FINANCE

Thompson (Cochair), Armstead, Boggs, Caputo, Carmichael, Miley and White.

GOVERNMENT OPERATIONS

Morgan (Cochair), Stephens, Fragale, Nelson, Rowan and Varner (nonvoting).

GOVERNMENT ORGANIZATION

Morgan (Cochair), Stephens (Vice Cochair), Azinger, Boggs, Border, Butcher, Diserio, Ferns, Givens, Hall, Hartman, Hatfield,

[XXIV]
HOUSE OF DELEGATES COMMITTEES


THE JUDICIARY

Miley (Cochair), Hunt (Vice Cochair), Barker, Brown, Doyle Ellem, Ferro, Fleischauer, Frazier, Hamilton, Ireland, Lane, Longstreth, Manchin, Manypenny, Michael, J. Miller, Moore, O’Neal, Overington, Pino, Poore, Sobonya, Walker and Wells.

LEGISLATIVE RULE-MAKING REVIEW

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

PENSIONS AND RETIREMENT

Pethtel (Cochair), Stowers (Vice Cochair), Canterbury, Duke, Givens, Guthrie and D. Poling.

RULES

Thompson (Cochair), Boggs and Armstead.

RULE-MAKING REVIEW

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

TECHNOLOGY

Varner (Cochair), Cann (Vice Cochair), Andes, Barker, T. Campbell, Canterbury, Guthrie, Hall, Mahan and Swartzmiller.
COMMITTEES OF THE SENATE
Regular Session, 2012

STANDING

AGRICULTURE

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

[XXVI]
SENATE COMMITTEES

ENERGY, INDUSTRY AND MINING

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

FINANCE

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

GOVERNMENT ORGANIZATION

Snyder (Chair), Miller (Vice Chair), Browning, Foster, Green, Jenkins, Kirkendoll, Klempa, McCabe, Minard, Williams, Yost, Boley and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (Chair), Laird (Vice Chair), Foster, Kirkendoll, Miller, Palumbo, Plymale, Prezioso, Tucker, Wills, Yost, Boley and Hall.

INTERSTATE COOPERATION

Klempa (Chair), Tucker (Vice Chair), Chafin, Palumbo, Wells, Nohe, Sypolt and Kessler (ex officio).

THE JUDICIARY

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

LABOR

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

MILITARY

Wells (Chair), Yost (Vice Chair), Edgell, Green, Jenkins, Laird, Williams, Barnes and Boley.

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

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

[XXVIII]
SENATE COMMITTEES

JOINT COMMITTEES

EDUCATION

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

ENROLLED BILLS

Tucker (Chair), Jenkins (Vice Chair), McCabe, Wells and Barnes.

FINANCE

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

GOVERNMENT AND FINANCE

Kessler (Chair), Facemyer, Hall, Palumbo, Plymale, Prezioso and Unger.

GOVERNMENT OPERATIONS

Snyder (Chair), Barnes, Facemire, Klempa and McCabe.

GOVERNMENT ORGANIZATION

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

[XXIX]
SENATE COMMITTEES

THE JUDICIARY

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

LEGISLATIVE RULE-MAKING REVIEW

Minard (Cochair), Snyder (Vice Cochair), Boley, Facemyer, Laird and Under.

PENSIONS AND RETIREMENT

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

RULES

Kessler (Cochair), Unger and Hall.

RULE-MAKING REVIEW

Minard (Cochair), Snyder (Vice Cochair), Boley, Facemyer, Laird and Unger.

TECHNOLOGY

Green (Cochair), Chafin, Facemire, Fanning, Jenkins and Sypolt.

[XXX]
CHAPTER 110

(Com. Sub. for H. B. 3174 - By Delegates Brown, Fragale, Moore and Skaff)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-11a; to amend said code by adding thereto a new section, designated §60-3A-3a; and to amend and reenact §60-3A-4 of said code, all relating to allowing Class A retail licensees the ability to conduct responsible nonintoxicating beer and liquor sampling events; requiring preapproval of the events by the ABCA commissioner; establishing standards, limitations, and prohibitions to be applied for the conduct of such events; definitions; incorporating civil penalties for violations by reference; criminal penalties for violations by reference; providing for emergency rules; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-16-11a; that said code be amended by adding thereto a new section, designated §60-3A-3a; and that §60-3A-4 of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) “Brewer” or “manufacturer” means any person, firm, association, partnership or corporation manufacturing, brewing, mixing, concocting, blending, bottling or otherwise producing or importing or transshipping from a foreign country nonintoxicating beer for sale at wholesale to any licensed distributor.

(2) “Brewpub” means a place of manufacture of nonintoxicating beer owned by a resident brewer, subject to federal regulations and guidelines, a portion of which premises are designated for retail sales.

(3) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet licensed pursuant to chapter sixty of this code.

(4) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(5) “Distributor” means and includes any person jobbing or distributing nonintoxicating beer to retailers at wholesale and whose warehouse and chief place of business shall be within this state.

(6) “Freestanding liquor retail outlet” means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.
(7) “Nonintoxicating beer” means all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater, all of which are hereby declared to be nonintoxicating and the word “liquor” as used in chapter sixty of this code shall not be construed to include or embrace nonintoxicating beer nor any of the beverages, products, mixtures or preparations included within this definition.

(8) “Nonintoxicating beer sampling event” means an event approved by the commissioner for a Class A retail Licensee to hold a nonintoxicating beer sampling authorized pursuant to section eleven-a of this article.

(9) “Nonintoxicating beer sampling day” means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to subsection (a)(1), section eighteen of this article, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(10) “Nonintoxicating craft beer” means any beverage obtained by the fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight.

(11) “Original container” means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.
(12) “Person” means and includes an individual, firm, partnership, limited partnership, association or corporation.

(13) “Resident brewer” means any person, firm, association, partnership, or corporation whose principal place of business is within the state.

(14) “Retailer” means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, any malt cooler, at his or her established and licensed place of business.

(15) “Tax Commissioner” means the Tax Commissioner of the State of West Virginia or the commissioner’s designee.

§11-16-11a. Nonintoxicating beer sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, with the written approval of the commissioner, conduct a nonintoxicating beer sampling event on a designated nonintoxicating beer sampling day.

(b) At least five business days prior to the nonintoxicating beer sampling, the Class A retail licensee shall submit a written proposal to the commissioner requesting to hold a nonintoxicating beer sampling event, including:

1. The day of the event;
2. The location of the event;
3. The times for the event;
(4) The names of up to three specific brands, types and flavors, if any, of the nonintoxicating beer to be sampled; and

(5) A statement indicating that all the nonintoxicating beer brands have been registered and approved for sale in the state by the commissioner.

(c) Upon approval by the commissioner, a Class A retail licensee may serve the complimentary nonintoxicating beer samples of the approved brands, types and flavors that are purchased by the Class A retail licensee, with all taxes paid, from its inventory.

(d) The complimentary nonintoxicating beer sample on any nonintoxicating beer sampling day shall not exceed:

(1) One separate and individual sample servings per brand, type and flavor per customer verified to be twenty-one years of age or older; and

(2) Two ounces in total volume per brand, type and flavor.

(e) Servers at the nonintoxicating beer sampling event shall:

(1) Be employees of the Class A retail licensee;

(2) Be at least twenty-one years of age or older; and

(3) Have specific knowledge of the nonintoxicating beer being sampled to convey to the customer.

(f) All servers at the nonintoxicating beer sampling event shall verify the age of the customer sampling nonintoxicating
beer by requiring and reviewing proper forms of identification. Servers at the nonintoxicating beer event may not serve any person who is:

(1) Under the age of twenty-one years; or

(2) Intoxicated.

(g) A nonintoxicating beer sampling event shall:

(1) Occur only inside the Class A retail licensee’s licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved nonintoxicating beer sampling day.

(h) Any nonintoxicating beer bottle or can used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled “SAMPLE, NOT FOR RESALE”. If the seal is broken on any nonintoxicating beer bottle or can, or if any nonintoxicating beer bottle or can is opened, then that nonintoxicating beer bottle or can must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections eighteen, nineteen, twenty, twenty-two, twenty-three, twenty-four and twenty-five of this article;

(j) To implement the provisions of this section, the commissioner may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code or propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.
CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may, with the written approval of the commissioner, conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner requesting to hold a liquor sampling event, including:

(1) The day of the event;

(2) the location of the event;

(3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be twenty-one years of age or older; and
(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee;

(2) Be at least twenty-one years of age or older; and

(3) Have specific knowledge of the West Virginia product being sampled to convey to the customer.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of twenty-one years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee’s licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled “SAMPLE, NOT FOR RESALE”. If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.
(i) Violations of this section are subject to the civil and
criminal penalties set forth in sections twenty-four, twenty-
five-a, twenty-six and twenty-seven of this article;

(j) To implement the provisions of this section, the
commissioner may promulgate emergency rules pursuant to
the provisions of section fifteen, article three, chapter twenty-
nine-a of this code or propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code.

§60-3A-4. Definitions.

(a) “Active retail license” means a current license for a
retail outlet that has been open and in continuous operation
for a period of not less than twelve months prior to July 1,
2010, or July 1 every ten years thereafter.

(b) “Active retail licensee” means a person who holds an
active retail license at the time of the effective date of the
amendments to this section during the first extraordinary
session of the Legislature in 2009 or that person’s successor
or any person who holds an active retail license when it
expires at the end of a ten-year period.

(c) “Applicant” means any person who elects to pay a
purchase option for a Class A retail license, who bids for a
retail license or who seeks the commissioner’s approval to
purchase or otherwise acquire a retail license from a retail
licensee, in accordance with the provisions of this article.

(d) “Application” means the form prescribed by the
commissioner which must be filed with the commissioner by
any person bidding for a retail license.

(e) “Board” means the Retail Liquor Licensing Board
created by this article.
(f) “Class A retail license” means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

(g) “Class B retail license” means a retail license permitting the sale of liquor at a mixed retail liquor outlet.

(h) “Current retail licensee” means a person who holds a retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person’s successor or any person who holds a retail license when it expires at the end of a ten-year period.

(i) “Designated areas” means one or more geographic areas within a market zone designated as such by the board.

(j) “Executive officer” means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.

(k) “Freestanding liquor retail outlet” means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products.

(l) “Liquor” means alcoholic liquor as defined in section five, article one of this chapter and also includes both wine and fortified wines as those terms are defined in section two, article eight of this chapter.

(m) “Liquor sampling event” means an event approved by the commissioner, for a Class A retail licensee to hold a
50 liquor sampling authorized pursuant to section three-a of this article.

52 (n) “Market zone” means a geographic area designated as such by the board for the purpose of issuing retail licenses.

54 (o) “Mixed retail liquor outlet” means a retail outlet that sells liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products, in addition to convenience and other retail products.

58 (p) “Person” means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

62 (q) “Retail license” means a license issued under the provisions of this article permitting the sale of liquor at retail.

64 (r) “Retail licensee” means the holder of a retail license.

65 (s) “Retail outlet” means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

68 (t) “Sampling day” means any days and hours of the week where retail licensees may sell liquor pursuant to section eighteen, article three-a, chapter sixty of this code for a Class A retail licensee to conduct a liquor sampling event.

72 (u) “West Virginia product” means all liquor types and classes as approved by the commissioner and maintained on the ABCA retail liquor product list.
CHAPTER 111

(H. B. 4314 - By Delegates Caputo,
Longstreth, Manchin, Fragale, Barill,
Marcum, Ellem, Boggs, Miley, Storch and Hunt)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §50-1-6 of the Code of West Virginia, 1931, as amended, relating to the appointment of magistrates; requiring that when a vacancy occurs in the office of magistrate a person of the same political party as the former officeholder shall be appointed.

Be it enacted by the Legislature of West Virginia:

That §50-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COURTS AND OFFICERS.


1 Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment of a person of the same political party as the officeholder vacating the office.

7 At a general election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge
thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. If the vacancy occurs before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five, chapter three of this code. Otherwise, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five, chapter three of this code, as in the case of filling vacancies in nominations, and the names of the persons so nominated and certified to the clerk of the circuit court of such county shall be placed upon the ballot to be voted at such next general election.

CHAPTER 112

(Com. Sub. for S. B. 507 - By Senators Palumbo, Wills, Tucker, Edgell, Kessler, Mr. President, and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact §27-4-1 and §27-4-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §27-5-4 of said code; and to amend and reenact §61-7A-5 of said
code, all relating generally to mental health; relating to the voluntary hospitalization at mental health facilities; relating to the voluntary admission of minors into a mental health facility for mental illness, intellectual disability or addiction; removing the requirement that the minor’s consent be secured before they are voluntarily admitted to a mental health facility if the minor is twelve years of age or older; requiring the consent of an emancipated minor before he or she is voluntarily committed; standards and procedures for releasing a minor who is fourteen years of age or older from voluntary hospitalization, when the minor objects to the admission or treatment; standards and procedures for the releasing a minor from voluntary hospitalization when the adult who sponsored the admission withdraws his or her consent; clarifying that the state is not obligated to pay for voluntary hospitalization; relating to the involuntary hospitalization into state mental health facilities; allocation and recapturing of copying and mailing costs associated with notice and orders for final commitment hearing and final order from counties; standards and requirements for the maintenance of mental health registry; prohibitions against persons adjudicated or committed as dangerous from possessing or carrying firearms; petitions for relief from prohibition to carry firearms; application to a court; limiting court’s consideration of petitions to cases where mental health adjudications or commitments occurred in this state; specifying minimum information which must be contained in such petitions; standards of review; applicable factors to be considered by court; required findings which must be made before petition for relief may be granted; right of appeal; reporting requirements; and requiring confidential treatment for certain submitted information.

Be it enacted by the Legislature of West Virginia:

That §27-4-1 and §27-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §27-5-4 of said code be
amended and reenacted; and that §61-7A-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

The chief medical officer of a mental health facility, subject to the availability of suitable accommodations and to the rules promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(a) Over eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and who makes application for hospitalization; or

(b) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and there is application for hospitalization therefor in his or her behalf:

(1) By the parents of such person;

(2) If only one parent is living, then by such parent;

(3) If the parents are living separate and apart, by the parent who has the custody of such person; or

(4) If there is a guardian who has legal custody of such person, then by such guardian.

(5) If the subject person under eighteen years of age is an emancipated minor, the admission of that person as a voluntary patient shall be conditioned upon the consent of the patient.
(c) No person under eighteen years of age may be admitted under this section to any state hospital unless person has first been reviewed and evaluated by a local mental health facility and recommended for admission.

(d) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the admitting health care facility shall determine if the minor consents to or objects to his or her admission to the facility. If the parent or guardian who requested the minor’s admission under this section revokes his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or her further treatment, the minor shall be discharged within ninety-six hours to the custody of the consenting parent or guardian, unless the chief medical officer of the mental health facility files a petition for involuntary hospitalization, pursuant to the provisions of section three of this article, or the minor’s continued hospitalization is authorized as an involuntary hospitalization pursuant to the provisions of article five of this chapter: Provided, That, if the ninety-six hour time period would result in the minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed, the period of time in which the patient shall be released by the facility shall be extended until the next day which is not a Saturday, Sunday or legal holiday on which the court is lawfully closed.

(e) Nothing in this section may be construed to obligate the State of West Virginia for costs of voluntary hospitalizations permitted by the provisions of this section.

§27-4-3. Right to release on application.

A voluntary patient who requests his or her release or whose release is requested in writing by his or her parents, parent, guardian, spouse or adult next of kin shall be released immediately except that:
(a) If the patient was admitted on his or her own application, and request for release is made by a person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

(b) If the patient is under eighteen years of age, his or her release prior to becoming eighteen years of age may be conditioned upon the consent of the person or persons who applied for his or her admission; or

(c) If, within ninety-six hours of the receipt of the request, the chief medical officer of the mental health facility in which the patient is hospitalized files with the clerk of the circuit court or mental hygiene commissioner of the county where the facility is situated an application for involuntary hospitalization as provided in section four, article five of this chapter, release may be postponed for twenty days pending a finding in accordance with the legal proceedings prescribed therein.

Legal proceedings for involuntary hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by him or her or the individual or individuals who applied for his or her admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) Involuntary commitment. -- Except as provided in section three of this article, no individual may be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility located
in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) How final commitment proceedings are commenced. -- Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found or the county of a mental health facility if he or she is hospitalized in a mental health facility located in a county other than where he or she resides or may be found.

(c) Oath; contents of application; who may inspect application; when application cannot be filed. --

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or addiction. The applicant shall state in detail the recent overt acts upon which the belief is based.

(3) The written application, certificate, affidavit and any warrants issued pursuant thereto, including any related documents, filed with a circuit court, mental hygiene commissioner or designated magistrate for the involuntary hospitalization of an individual are not open to inspection by
any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner or designated magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with article seven-a, chapter sixty-one of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to section five, article seven-a, chapter sixty-one of this code to regain firearm and ammunition rights.

(4) Applications may not be accepted for individuals who only have epilepsy, a mental deficiency or senility.

(d) Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate. --

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or addicted and that because of the mental illness or addiction, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is based.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.
Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;
(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings. --

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or addiction of the individual and the likelihood of causing serious harm to self or others.

(2) If the designated physician or psychologist reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician or psychologist. All such orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual
shall be released from custody unless proceedings are
instituted pursuant to section three of this article.

(3) If the reports of the appointed physician or
psychologist do not confirm that the individual is mentally ill
or addicted and might be harmful to self or others, then the
proceedings for involuntary hospitalization shall be
dismissed.

(h) Rights of the individual at the final commitment
hearing; seven days' notice to counsel required. --

(1) The individual shall be present at the final
commitment hearing and he or she, the applicant and all
persons entitled to notice of the hearing shall be afforded an
opportunity to testify and to present and cross-examine
witnesses.

(2) In the event the individual has not retained counsel,
the court or mental hygiene commissioner, at least six days
prior to hearing, shall appoint a competent attorney and shall
inform the individual of the name, address and telephone
number of his or her appointed counsel.

(3) The individual has the right to have an examination
by an independent expert of his or her choice and to present
testimony from the expert as a medical witness on his or her
behalf. The cost of the independent expert is paid by the
individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness
against himself or herself.

(i) Duties of counsel representing individual; payment of
counsel representing indigent. -
(1) Counsel representing an individual shall conduct a timely interview, make investigation and secure appropriate witnesses, be present at the hearing and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code.

(j) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A psychologist or physician testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or section two or three of this article, is not privileged information for purposes of a hearing pursuant to this section.
(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within thirty days if requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(k) **Requisite findings by the court.** --

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

(A) Whether the individual is mentally ill or addicted;

(B) Whether, because of illness or addiction, the individual is likely to cause serious harm to self or others if allowed to remain at liberty;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.
Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.

1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months.

2) The individual may not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

4) An order for an indeterminate period expires of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the Department of Health and Human Resources, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or his or her counsel requests a hearing, a hearing shall be held by the mental hygiene
(m) **Dismissal of proceedings.** -- If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not, because of the illness or addiction, likely to cause serious harm to self or others if allowed to remain at liberty, the proceedings shall be dismissed.

(n) **Immediate notification of order of hospitalization.** -- The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) **Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.** --

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.
(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth above, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) Order of custody to responsible person. -- In lieu of ordering the patient to a mental health facility, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) Individual not a resident of this state. -- If the individual found to be mentally ill or addicted by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be forthwith given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual except as qualified by the interstate compact on mental health.

(r) Report to the Secretary of the Department of Health and Human Resources. --
311 (1) The chief medical officer of a mental health facility admitting a patient pursuant to proceedings under this section shall forthwith make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

316 (2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility to comply with the time requirements of this article, the chief medical officer of the mental health facility shall forthwith, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission. --

323 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under article twenty-one, chapter twenty-nine of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

331 (2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL CONDITION TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS; DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT OF RIGHTS PROCEDURES.

§61-7A-5. Petition to regain right to possess firearms.

(a) Any person who is prohibited from possessing a firearm pursuant to the provisions of section seven, article seven of this chapter or by provisions of federal law by virtue solely of having previously been adjudicated to be mentally defective or to having a prior involuntary commitment to a mental institution pursuant to chapter twenty-seven of this code may petition the circuit court of the county of his or her residence to regain the ability to lawfully possess a firearm.

(b) Petitioners prohibited from possession of firearms due to a mental health disability, must include in the petition for relief from disability:

(1) A listing of facilities and location addresses of all prior mental health treatment received by petitioner;

(2) An authorization, signed by the petitioner, for release of mental health records to the prosecuting attorney of the county; and

(3) A verified certificate of mental health examination by a licensed psychologist or psychiatrist occurring within thirty
days prior to filing of the petition which supports that the
petitioner is competent and not likely to act in a manner
dangerous to public safety.

(c) The court may only consider petitions for relief due to
mental health adjudications or commitments that occurred in
this state, and only give the relief specifically requested in the
petition.

(d) In determining whether to grant the petition, the court
shall receive and consider at a minimum evidence:

(1) Concerning the circumstances regarding the firearms
disabilities imposed by 18 U.S.C. §922(g)(4);

(2) The petitioner’s record which must include the
petitioner’s mental health and criminal history records; and

(3) The petitioner’s reputation developed through
character witness statements, testimony, or other character
evidence.

(e) If the court finds by clear and convincing evidence
that the person is competent and capable of exercising the
responsibilities concomitant with the possession of a firearm,
will not be likely to act in a manner dangerous to public
safety, and that granting the relief will not be contrary to
public interest, the court may enter an order allowing the
petitioner to possess a firearm. If the order denies
petitioner’s ability to possess a firearm, the petitioner may
appeal the denial, which appeal is to include the record of the
circuit court rendering the decision.

(f) All proceedings for relief to regain firearm or
ammunition rights shall be reported or recorded and
maintained for review.
(g) The prosecuting attorney or one of his or her assistants shall represent the state in all proceedings for relief to regain firearm rights and provide the court the petitioner’s criminal history records.

(h) The written petition, certificate, mental health or substance abuse treatment records and any papers or documents containing substance abuse or mental health information of the petitioner, filed with the circuit court, are confidential. These documents may not be open to inspection by any person other than the prosecuting attorney or one of his or her assistants only for purposes of representing the state in and during these proceedings and by the petitioner and his or her counsel. No other person may inspect these documents, except upon authorization of the petitioner or his or her legal representative or by order of the court, and these records may not be published except upon the authorization of the petitioner or his or her legal representative.

(i) The circuit clerk of each county shall provide the Superintendent of the West Virginia State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of Appeals, or his or her designee, with a certified copy of any order entered pursuant to the provisions of this section which removes a petitioner’s prohibition to possess firearms. If the order restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed from the central state mental health registry and the superintendent or administrator shall forthwith inform the Federal Bureau of Investigation, the United States Attorney General, or other federal entity operating the National Instant Criminal Background Check System of the court action.
AN ACT to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the West Virginia Supreme Court of Appeals to establish a reasonable rate of compensation for mental hygiene services; and establishing a payment procedure for the compensation.

Be it enacted by the Legislature of West Virginia:

That §27-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of Mental Hygiene Commissioner; duties of Mental Hygiene Commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

  (a) Appointment of Mental Hygiene Commissioners. -- The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as Mental Hygiene
Commissioners to preside over involuntary hospitalization hearings. Mental Hygiene Commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code.

All persons newly appointed to serve as Mental Hygiene Commissioners shall attend and complete an orientation course, within one year of their appointment, consisting of at least three days of training provided annually by the Supreme Court of Appeals. In addition, existing Mental Hygiene Commissioners and any magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals, which course shall include, but not be limited to, instruction on the manifestations of mental illness and addiction. Persons attending such courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court -- General Judicial for reasonable expenses incurred. The Supreme Court shall establish rules for such courses, including rules providing for the reimbursement of reasonable expenses as authorized herein.

(b) Duties of Mental Hygiene Commissioners. --

(1) Mental Hygiene Commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to section four, article five of this chapter, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and
may make conclusions of law, but such findings and conclusions shall not be binding on the circuit court. All Mental Hygiene Commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental Hygiene Commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental Hygiene Commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by such chief judge. It shall be the duty of a Mental Hygiene Commissioner to conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The Mental Hygiene Commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The Mental Hygiene Commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign language and who may be subject to involuntary commitment to a mental health facility.

(2) A Mental Hygiene Commissioner appointed by the circuit court of one county or multiple county circuit may serve in such capacity in a jurisdiction other than that of his or her original appointment if such be agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during noncourt hours or on nonjudicial days.

(c) Duties of prosecuting attorney. -- It shall be the duty of the prosecuting attorney or one of his or her assistants to represent the applicants in all final commitment proceedings
filed pursuant to the provisions of this article. The
prosecuting attorney may appear in any proceeding held
pursuant to the provisions of this article if he or she deems it
to be in the public interest.

(d) Duties of sheriff. -- Upon written order of the circuit
court, Mental Hygiene Commissioner or magistrate in the
county where the individual formally accused of being
mentally ill or addicted is a resident or is found, the sheriff of
that county shall take said individual into custody and
transport him or her to and from the place of hearing and the
mental health facility. The sheriff shall also maintain custody
and control of the accused individual during the period of
time in which the individual is waiting for the involuntary
commitment hearing to be convened and while such hearing
is being conducted: Provided, That an individual who is a
resident of a state other than West Virginia shall, upon a
finding of probable cause, be transferred to his or her state of
residence for treatment pursuant to subsection (p), section
four of this article: Provided, however, That where an
individual is a resident of West Virginia but not a resident of
the county in which he or she is found and there is a finding
of probable cause, the county in which the hearing is held
may seek reimbursement from the county of residence for
reasonable costs incurred by the county attendant to the
mental hygiene proceeding. Notwithstanding any provision
of this code to the contrary, sheriffs may enter into
cooperative agreements with sheriffs of one or more other
counties, with the concurrence of their respective circuit
courts and county commissions, whereby transportation and
security responsibilities for hearings held pursuant to the
provisions of this article during noncourt hours or on
nonjudicial days may be shared in order to facilitate prompt
hearings and to effectuate transportation of persons found in
need of treatment.
(e) Duty of sheriff upon presentment to mental health care facility. -- Where a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) Duties of Supreme Court of Appeals. -- The Supreme Court of Appeals shall provide uniform petition, procedure and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

AN ACT to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to modified mental hygiene procedures; extending the termination date of the modified mental hygiene procedures pilot project; including addiction as a basis for treatment under the pilot project; authorizing additional programs throughout the state;
continuing the pilot project through July 1, 2014; and requiring
the Secretary of the Department of Health and Human
Resources to report to the Legislature regarding the efficacy of
the pilot program on or before the first day of the 2013 and
2014 regular sessions of the Legislature.

Be it enacted by the Legislature of West Virginia:

That §27-5-11 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-11. Modified procedures for temporary compliance
orders for certain medication dependent persons
with prior hospitalizations or convictions;
instituting modified mental hygiene procedures;
establishing procedures; providing for forms
and reports.

(a) The Supreme Court of Appeals shall, in consultation
with the Secretary of the Department of Health and Human
Resources and local mental health services consumers and
providers, implement throughout the state modified mental
hygiene procedures that are consistent with the requirements
set forth in this section. The judicial circuits selected for
implementing the modified procedures shall be circuits in
which the Supreme Court of Appeals determines, after
consultation with the Secretary of the Department of Health
and Human Resources and local mental health consumers and
service providers, that adequate resources will be available to
implement the modified procedures. After July 1, 2012, the
Supreme Court of Appeals and the Secretary of the
Department of Health and Human Resources in consultation
with local mental health consumers and providers may add
programs for modified mental hygiene procedures in any
judicial circuit that establishes a need for the same.
(b) The Secretary of the Department of Health and Human Resources, after consultation with the Supreme Court of Appeals and local mental health services consumers and service providers, shall prescribe appropriate forms to implement the modified procedures and shall annually prepare reports on the efficacy of the modified procedures and transmit the report to the Legislature on or before the first day of the 2013 and 2014 regular sessions of the Legislature.

(c) The Supreme Court of Appeals may, after consultation with the Secretary of the Department of Health and Human Resources and local mental health services consumers and providers further modify any specific modified procedures that are implemented pursuant to this section. The modified procedures must be consistent with the requirements of this chapter and this section. If the Secretary of the Department of Health and Human Resources determines that the use of any modified procedure in one or more judicial circuits is placing an unacceptable additional burden upon state mental health resources, the Supreme Court of Appeals shall, in consultation with the secretary, modify the procedures used in such a fashion as will address the concerns of the secretary, consistent with the requirements of this chapter. The provisions of this section and the modified procedures thereby authorized shall cease to have any force and effect on June 30, 2014, unless extended by an act of the Legislature prior to that date.

(1) The modified procedures shall authorize that a verified petition seeking a treatment compliance order may be filed by any person alleging:

(A) That an individual, on two or more occasions within a twenty-four month period prior to the filing of the petition, as a result of mental illness or addiction or both, has been hospitalized pursuant to the provisions of this chapter; or that the individual has been convicted of one or more crimes of
violence against the person within a twenty-four month period prior to the filing of the petition and the individual’s failure to take prescribed medication or follow another prescribed regimen to treat a mental illness or addiction or both was a significant aggravating or contributing factor in the circumstances surrounding the crime;

(B) That the individual’s previous hospitalizations due to mental illness or addiction or both or the individual’s crime of violence occurred after or as a result of the individual’s failure to take medication or other treatment as prescribed by a physician to treat the individual’s mental illness or addiction or both; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition’s review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the circuit judge or mental hygiene commissioner determines on the basis of the petition that it is necessary to protect the individual or to secure their examination, a detention order may be entered ordering that the individual be taken into custody and examined by a psychiatrist or licensed psychologist. A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to the provisions of section two
of this article or a final commitment hearing conducted pursuant to the provisions of section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken into custody and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment compliance order are proved by the evidence adduced at the hearing, which must include expert testimony by a psychiatrist or licensed psychologist, the circuit judge or mental hygiene commissioner may enter a treatment compliance order for a period not to exceed six months upon making the following findings:

(A) That the individual is eighteen years of age or older;

(B) That on two or more occasions within a twenty-four month period prior to the filing of the petition an individual, as a result of mental illness, has been hospitalized pursuant to the provisions of this chapter; or that on at least one occasion within a twenty-four month period prior to the filing of the petition has been convicted of a crime of violence against any person;

(C) That the individual’s previous hospitalizations due to mental illness or addiction or both occurred as a result of the individual’s failure to take prescribed medication or follow a regimen or course of treatment as prescribed by a physician or psychiatrist to treat the individual’s mental illness or addiction; or that the individual has been convicted for crimes of violence against any person and the individual’s failure to take medication or follow a prescribed regimen or course of treatment of the individual’s mental illness or addiction or both was a significant aggravating or contributing factor in the commission of the crime;
(D) That a psychiatrist or licensed psychologist who has personally examined the individual within the preceding twenty-four months has issued a written opinion that the individual, without the aid of the medication or other prescribed treatment, is likely to cause serious harm to himself or herself or to others;

(E) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or other treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against any person;

(F) That, where necessary, a responsible entity or individual is available to assist and monitor the individual’s compliance with an order requiring the individual to take the medication or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed medication or follow other prescribed regimen or course of treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to assess the individual within forty-eight hours of the entry of the treatment compliance order.

(4) The order may require an individual to take medication and treatment as prescribed and if appropriate to attend scheduled medication and treatment-related appointments: Provided, That a treatment compliance order shall be subject to termination or modification by a circuit judge or mental hygiene commissioner if a petition is filed seeking termination or modification of the order and it is shown in a hearing on the petition that there has been a
material change in the circumstances that led to the entry of the original order that justifies the order’s modification or termination: *Provided, however,* That a treatment compliance order may be extended by a circuit judge or mental hygiene commissioner for additional periods of time not to exceed six months, upon the filing of a petition seeking an extension and after a hearing on the petition or upon the agreement of the individual.

(5) After the entry of a treatment compliance order in accordance with the provisions of subdivisions (3) and (4) of this subsection if a verified petition is filed alleging that an individual has not complied with the terms of a medication and treatment compliance order and if a circuit judge or mental hygiene commissioner determines from the petition and any supporting evidence that there is probable cause to believe that the allegations in the petition are true, counsel shall be appointed for the individual and a copy of the petition and all supporting evidence shall be furnished to the individual and his or her counsel. If the circuit judge or mental hygiene commissioner considers it necessary to protect the individual or to secure his or her examination, a detention order may be entered to require that the individual be examined by a psychiatrist or psychologist.

(A) A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to section two of this article or a final commitment hearing conducted pursuant to section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(B) At a hearing on any petition filed pursuant to the provisions of paragraph (A) of this subdivision, the circuit
judge or mental hygiene commissioner shall determine whether the individual has complied with the terms of the medication and treatment compliance order. If the individual has complied with the order, the petition shall be dismissed. If the evidence presented to the circuit judge or mental hygiene commissioner shows that the individual has complied with the terms of the existing order, but the individual’s prescribed medication, dosage or course of treatment needs to be modified, then the newly modified medication and treatment prescribed by a psychiatrist who personally examined the individual may be properly incorporated into a modified order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself or herself, herself or others as a result of the individual’s mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment. Any procedures conducted pursuant to this subsection must comply with and satisfy all applicable due process and hearing requirements of sections two and three of this article.

(d) The modified procedures may authorize that upon the certification of a qualified mental health professional, as described in subsection (e) of this section, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious
harm to himself or herself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the individual at a mental health facility for immediate examination and treatment.

(e) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or licensed psychologists, whose qualifications and training have been reviewed and approved by the Supreme Court of Appeals, to issue certifications that authorize and direct the involuntary admission of an individual subject to the provisions of this section on a temporary probable cause basis to a mental health facility for examination and treatment. The authorized psychiatrist or licensed psychologist must conclude and certify based on personal observation prior to certification that the individual is mentally ill and, because of such mental illness or addiction or both, is imminently likely to cause serious harm to himself or herself or to others if not immediately restrained and promotion of the best interests of the individual requires immediate hospitalization. Immediately upon certification, the psychiatrist or licensed psychologist shall provide notice of the certification to a circuit judge, mental hygiene commissioner or designated magistrate in the county where the individual resides.

(f) No involuntary hospitalization pursuant to a temporary probable cause determination issued pursuant to the provisions of this section shall continue in effect for more than forty-eight hours without the filing of a petition for involuntary hospitalization and the occurrence of a probable cause hearing before a circuit judge, mental hygiene
commissioner or designated magistrate. If at any time the chief medical officer of the mental health facility to which the individual is admitted determines that the individual is not likely to cause serious harm as a result of mental illness or addiction or both, the chief medical officer shall discharge the individual and immediately forward a copy of the individual’s discharge to the circuit judge, mental hygiene commissioner or designated magistrate.

CHAPTER 115

(S. B. 603 - By Senators Wells, Yost, Barnes, Edgell, Green, Boley, Jenkins, Laird, Williams, Unger and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §15-1H-2 and §15-1H-4 of the Code of West Virginia, 1931, as amended, all relating to morale, welfare and recreation facilities; authorizing morale, welfare and recreation facilities within the state; authorizing the establishment of an entity to operate morale, welfare and recreation facilities within the state; and providing for use of proceeds derived from operation of morale, welfare and recreation facilities.

Be it enacted by the Legislature of West Virginia:

That §15-1H-2 and §15-1H-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1H. MORALE, WELFARE AND RECREATION FACILITIES.


(a) The Adjutant General is authorized to establish morale, welfare and recreation facilities within the state as in his or her judgment may be necessary and proper for military purposes.

(b) Notwithstanding any other provision of this code to the contrary, the Adjutant General is authorized to establish a nonappropriated fund instrumentality for the purpose of operating the morale, welfare and recreation facilities.

(c) A nonappropriated fund instrumentality established under this section may:

(1) Contract for goods and services;

(2) Hire employees under terms and conditions as it may negotiate, subject only to applicable state and federal labor laws;

(3) Establish a system of bookkeeping, accounting and auditing procedures for the proper handling of funds derived from its operations; and

(4) Perform any other action necessary to establish a board, corporation or other entity for the purpose of operating the morale, welfare and recreation facilities.

(d) A nonappropriated fund instrumentality established under this section is solely responsible for its operations. No debt of the nonappropriated fund instrumentality is a debt of the state. No action of the nonappropriated fund
instrumentality is an action of the state, nor does it obligate
the state in any manner.

§15-1H-4. Use of funds.

All proceeds derived from the operation of the morale,
welfare and recreation facilities within the state shall, after
the payment of operating expenses, notwithstanding any
 provision of this code to the contrary, be used exclusively to
benefit any morale, welfare and recreation facilities
established pursuant to this section.

CHAPTER 116

(S. B. 605 - By Senators Wells, Yost,
Barnes, Edgell, Green, Boley, Jenkins,
Laird, Williams, Klempa and Plymale)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §19-25-1, §19-25-3, §19-25-5, §19-
25-6 and §19-25-7 of the Code of West Virginia, 1931, as
amended, all relating to limiting the liability and duty of
landowners who make land available for military, law-
enforcement or homeland-defense training; defining “military,
law-enforcement or homeland-defense training”; and defining
“spelunking” as a recreational purpose and activity for which
a landowner’s liability for injury is limited.

Be it enacted by the Legislature of West Virginia:
That §19-25-1, §19-25-3, §19-25-5, §19-25-6 and §19-25-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

The purpose of this article is to encourage owners of land to make available to the public land and water areas for military, law-enforcement or homeland-defense training or recreational or wildlife propagation purposes by limiting their liability for injury to persons entering thereon and for injury to the property of persons entering thereon and limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§19-25-3. Limiting duty of landowner who grants a lease, easement or license of land to federal, state, county or municipal government or any agency thereof.

Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military, law-enforcement or homeland-defense training or recreational or wildlife propagation purposes owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the federal government or any agency thereof, or the state or any agency thereof, or any county or municipality or agency thereof, for military, law-enforcement or homeland-defense training or recreational or wildlife propagation purposes does not by giving a lease, easement or license: (a) Extend any assurance to any person using the
land that the premises are safe for any purpose; or (b) confer
upon those persons the legal status of an invitee or licensee
to whom a duty of care is owed; or (c) assume responsibility
for or incur liability for any injury to person or property
caused by an act or omission of a person who enters upon the
leased land. The provisions of this section apply whether the
person entering upon the leased land is an invitee, licensee,
trespasser or otherwise.


Unless the context used clearly requires a different
meaning, as used in this article:

(1) “Charge” means:

(A) For purposes of limiting liability for recreational or
wildlife propagation purposes set forth in section two of this
article, the amount of money asked in return for an invitation
to enter or go upon the land, including a one-time fee for a
particular event, amusement, occurrence, adventure, incident,
experience or occasion which may not exceed $50 a year per
recreational participant: Provided, That the monetary cap on
charges imposed pursuant to this article does not apply to the
provisions of article fourteen, chapter twenty of this code
pertaining to the Hatfield-McCoy regional recreational
authority or activities sponsored on the Hatfield-McCoy
recreation area;

(B) For purposes of limiting liability for military, law-
enforcement or homeland-defense training set forth in section
six of this article, the amount of money asked in return for an
invitation to enter or go upon the land;

(2) “Land” includes, but shall not be limited to, roads,
water, watercourses, private ways and buildings, structures
and machinery or equipment thereon when attached to the
realty;
(3) “Noncommercial recreational activity” shall not include any activity for which there is any charge which exceeds $50 per year per participant;

(4) “Owner” includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) “Recreational purposes” includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) “Wildlife propagation purposes” applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities as governed by article three, chapter twenty-two of this code or from the use of surface in the conduct of underground coal mining as governed by said article and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the Director of the Division of Environmental Protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be
removed without the joint consent of the director and the
owner; and

(7)”Military, law-enforcement or homeland-defense
training” includes, but is not limited to, training,
encampments, instruction, overflight by military aircraft,
parachute drops of personnel or equipment or other use of
land by a member of the Army National Guard or Air
National Guard, a member of a reserve unit of the armed
forces of the United States, a person on active duty in the
armed forces of the United States, a state or federal law-
enforcement officer, a federal agency or service employee, a
West Virginia military authority employee or a civilian
contractor supporting the military and/or government
employees acting in that capacity.

§19-25-6. Limiting duty of landowner for use of land for
military, law-enforcement or homeland-security
purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land owes no duty of care
to keep the premises safe for entry or use by others for
military, law-enforcement or homeland-defense training
purposes, regardless of whether any charge is made therefor,
or to give any warning of a dangerous or hazardous
condition, use, structure or activity on the premises to persons
entering for those purposes.

Notwithstanding the provisions of section four of this
article to the contrary, an owner of land who either directly
or indirectly invites or permits, either with or without charge,
any person to use the property for military, law-enforcement
or homeland-defense training purposes does not thereby: (a)
Extend any assurance that the premises are safe for any
purpose; (b) confer upon those persons the legal status of an
invitee or licensee to whom a duty of care is owed; or (c)
assume responsibility for or incur liability for any injury to
person or property caused by an act or omission of those
persons.


Any policy or contract of liability insurance providing
coverage for liability sold, issued or delivered in this state to
any owner of lands covered under the provisions of this
article shall be read so as to contain a provision or
endorsement whereby the company issuing such policy
waives or agrees not to assert as a defense on behalf of the
policyholder or any beneficiary thereof, to any claim covered
by the terms of such policy within the policy limits, the
immunity from liability of the insured by reason of the use of
such insured's land for recreational, wildlife propagation or
military, law-enforcement or homeland-defense purposes,
unless such provision or endorsement is rejected in writing by
the named insured.

CHAPTER 117

(Com. Sub. for H. B. 4015 - By Delegates
Moore, Guthrie, Lawrence,
Marshall, Stephens and Caputo)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §5-26-1 and §5-26-2, all relating to the creation of the Herbert Henderson Office of Minority Affairs within the Governor’s office;
establishing the powers and duties of the office; providing for an executive director; requiring annual reports to the Governor and the Joint Committee on Government and Finance; and creating a Minority Affairs 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 §5-26-1 and §5-26-2, all to read as follows:

ARTICLE 26. HERBERT HENDERSON OFFICE OF MINORITY AFFAIRS.

§5-26-1. Herbert Henderson Office of Minority Affairs created; duties and responsibilities.

(a) There is hereby created the Herbert Henderson Office of Minority Affairs within the office of the Governor. The office shall be charged with the following responsibilities and duties:

(1) Provide a forum for discussion of issues that affect the state’s minorities;

(2) Identify and promote best practices in the provision of programs and services to minorities;

(3) Review information and research that can inform state policy as to the delivery of programs and services to minorities;

(4) Make recommendations in areas of policy and allocation of resources;
(5) Apply for grants, and accept gifts from private and public sources for research to improve and enhance minority affairs;

(6) Integrate and coordinate state grant and loan programs established specifically for minority related issues;

(7) Award grants, loans and loan guaranties for minority affairs programs and activities in this state if such funds are available from grants or gifts from public or private sources;

(8) Identify other state and local agencies and programs that provide services or assistance to minorities;

(9) Establish the appropriate program linkages with related federal, state and local agencies and programs including, but not limited to, the Office of Minority Health located within the Department of Health and Human Resources and the Economic Development Authority established pursuant to article fifteen, chapter 31 of this Code; and

(10) Provide recommendations to the Governor and the Legislature regarding the most appropriate means to provide programs and services to support minority groups in the state.

(b) On or before the first day of January of each year, the office shall submit a report to the Governor and the Joint Committee on Government and Finance. The report may include, but is not limited to, findings and recommendations regarding:

(1) The extent to which programs and services for minorities are available in the state, and to which funding for providing those programs and services is available;
(2) The most appropriate means for the planning, delivery and evaluation of existing and needed programs and services for minority groups in the manner that best promotes diversity and regional, cultural and ethnic sensitivity;

(3) Recommendations for the coordination of programs and services to minority groups throughout the state and with those of other states and the federal government;

(4) Identifications of governmental and private agencies, offices, departments or other entities in existence or recommended for creation that would, alone or in concert, most effectively improve the delivery of programs and services to minority groups throughout the state;

(5) Recommendations for changes to law that would facilitate the achievement of the objectives of the office; and

(6) Such other matters as the office may determine appropriate to its purposes.

(c) The Governor shall appoint an executive director of the office to carry out its functions, and shall provide funding and offices for those purposes. The executive director shall serve at the will and pleasure of the Governor.

(d) The executive director may hire one administrative assistant to assist in carrying out the functions of the office.

§5-26-2. Minority Affairs Fund created; purpose.

There is hereby created in the State Treasury a Special Revenue Fund to be known as the “Minority Affairs Fund,” which shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments received by the Herbert Henderson Office of Minority Affairs from any governmental entity or unit or any person, firm, foundation
or corporation for the purposes of this article and all interest
or other return earned from investment of the fund.
Expenditures from the fund shall be made by the Executive
Director of the Herbert Henderson Office of Minority Affairs
to provide matching funds to obtain federal funds for the
delivery of programs and services to minorities in this state,
to award grants, loans and loan guaranties for minority affairs
programs and activities and for performance of the duties of
the office prescribed in this article. Expenditures from the
fund shall be for the purposes set forth in this article and are
not authorized from collections but are to be made only in
accordance with appropriation by the Legislature and in
accordance with the provisions of article two, chapter twelve
of this code and upon the fulfillment of the provisions of
article two, chapter eleven-b of this code.

CHAPTER 118

(Com. Sub. for H. B. 4046 - By Delegates
Morgan, Swartzmiller, Hartman,
Givens, Many Penny and Staggers)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to repeal §16-1-16 of the Code of West Virginia, 1931, as
amended; to amend and reenact §5A-1-11 of said code; to
amend and reenact §9-2-1a of said code; to amend and reenact
§18-10A-2 of said code; to amend and reenact §19-1-3a of said
code; to amend and reenact §22C-12-6 of said code; to amend
and reenact §24A-1A-2 of said code; and to amend and reenact
§47A-1-1 of said code, all relating to removing obsolete code provisions.

Be it enacted by the Legislature of West Virginia:

That §16-1-16 of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-11 of said code be amended and reenacted; that §9-2-1a of said code be amended and reenacted; that §18-10A-2 of said code be amended and reenacted; that §19-1-3a of said code be amended and reenacted; that §22C-12-6 of said code be amended and reenacted; that §24A-1A-2 of said code be amended and reenacted; and that §47A-1-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.


(a) There is continued within the Department of Administration the position of the State Americans with Disabilities Coordinator, who shall be appointed by the Secretary of the Department of Administration with input from the chairperson from each of the following four councils:

(1) The Developmental Disabilities Council;

(2) The Statewide Independent Living Council;

(3) The Mental Health Planning Council; and

(4) The State Rehabilitation Council.
(b) The coordinator shall be a full-time employee, and shall have an in-depth working knowledge of the challenges facing persons with disabilities. The coordinator may be a current employee of the Department of Administration or other state agency employee.

(c) The coordinator shall:

(1) Advise the Director of Personnel in the development of comprehensive policies and programs for the development, implementation and monitoring of a statewide program to assure compliance with 42 U.S.C. §12101, et seq., the federal Americans with Disabilities Act;

(2) Assist in the formulation of rules and standards relating to the review, investigation and resolution of complaints of discrimination in employment, education, housing and public accommodation;

(3) Consult and collaborate with state and federal agency officials in the state plan development;

(4) Consult and collaborate with agency Americans with disabilities officers on the appropriate training for managers and supervisors on regulations and issues;

(5) Represent the state on local, state and national committees and panels related to Americans with disabilities;

(6) Advise the Governor and agency heads on Americans with disabilities issues;

(7) Consult with state equal employment opportunity officers on the hiring of persons with disabilities; and
(8) Be available to inspect and advise the leasing section of the Division of Purchasing on all physical properties owned or leased by the State of West Virginia for compliance with 42 U.S.C. §12101, et seq., the federal Americans with Disabilities Act.

(d) (1) The Secretary of the Department of Administration may assess, charge and collect fees from each state spending unit which utilizes the services of the coordinator, for the direct costs and expenses incurred by the coordinator in providing those services. Costs and expenses include travel, materials, equipment and supplies. Moneys shall be collected through the Division of Finance.

(2) A state spending unit shall agree in writing to all costs and expenses before the services by the Americans with Disabilities coordinator are rendered.

(e) There is continued in the Department of Administration a special fund to be named the “Americans with Disabilities Coordinator Fund”, which shall be an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. Funds paid into the account may be derived from the following sources:

(1) All moneys received from state spending units for the costs and expenses incurred by the state Americans with Disabilities Coordinator for providing services related to the state’s implementation and compliance with 42 U.S.C. §12101, et seq., the federal Americans with Disabilities Act;

(2) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation; and
(3) All interest or return on investment accruing to the
fund.

(f) Moneys in the fund are to be used for the costs and
expenses incurred pursuant to this section. Any balance
including accrued interest in this special fund at the end of
any fiscal year shall not revert to the General Revenue Fund,
but shall remain in the fund for use by the Secretary of the
Department of Administration for providing additional
Americans with Disabilities Coordinator services within the
State of West Virginia in the ensuing fiscal years.

(g) The Secretary of the Department of Administration
shall report annually on the fund to the Governor, President
of the Senate and Speaker of the House of Delegates. The
report must be on CD ROM or other electronic media and
shall not be in print format.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of Health and Human Resources.

1 The Department of Health and Human Resources shall be
2 charged with the administration of this chapter.

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-2. Division of rehabilitation services.

1 (a) The Division of Rehabilitation Services is transferred
2 to the department of education and the arts created in article
one, chapter five-f of this code. The secretary shall appoint any such board, commission or council over the division to the extent required by federal law to qualify for federal funds for providing rehabilitation services for disabled persons. The secretary and such boards, commissions or councils as he or she is required by federal law to appoint are authorized and directed to cooperate with the federal government to the fullest extent in an effort to provide rehabilitation services for disabled persons.

(b) References in this article or article ten-b of this chapter to the State Board of Vocational Education, the State Board of Rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities means the Secretary of Education and the Arts. All references in the code to the Division of Vocational Rehabilitation means the Division of Rehabilitation Services and all references to the Director of the Division of Vocational Rehabilitation means the Director of the Division of Rehabilitation Services.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Marketing and Development Division; duties.

The duties of the Marketing and Development Division are to establish marketing, promotional and development programs to advance West Virginia agriculture in the domestic and international markets; to provide grading, inspection and market news services to the various elements of the West Virginia agricultural industry; and to regulate and license individuals involved in the marketing of agricultural products.
CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§22C-12-6. When article effective; findings; continuation.

1. This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, adoption and entering into thereof by the states of New York, Pennsylvania, Ohio and Virginia.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

§24A-1A-2. Creation of advisory committee; purpose; members; terms.

1. (a) There is continued the Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee, the purpose of which is to study the implementation of the commercial motor vehicle weight and safety enforcement program set forth in this article.

6. (b) The committee consists of the following members:

7. (1) One member who is an employee of the Division of Highways, to be appointed by the Commissioner of Highways;

10. (2) One member who is an employee of the Public Service Commission, to be appointed by the Chairman of the Public Service Commission;
(3) One member who is a State Police officer, to be appointed by the Superintendent of the State Police;

(4) One member who is an employee of the Division of Motor Vehicles, to be appointed by the Commissioner of Motor Vehicles;

(5) One member who is an employee of the Development Office, to be appointed by the Governor;

(6) One member who is representative of the coal industry, to be appointed by the Governor;

(7) One member of the Senate, to be appointed by the President of the Senate;

(8) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates;

(9) Two citizen members, to be appointed by the Governor;

(10) One member of the largest organization representing coal miners, to be appointed by the Governor; and

(11) One member of the largest organization representing natural resource transportation drivers, to be appointed by the Governor.

(c) Members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms.

(d) The committee shall annually nominate from its members a chair, who shall hold office for one year.
(e) The committee shall hold at least four meetings each year or more often as may, in the discretion of the chair, be necessary to effectuate the purposes of this article.

(f) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law.

(g) Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(h) On or before January 1 of each year the committee shall submit to the Governor and to the Legislature a report of its recommendations for improving the effectiveness of the commercial vehicle weight and safety enforcement program.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; termination of board.

(a) The Legislature finds and declares that:

(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions requires specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at
reasonable rates to the citizens of this state while affording a
competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or
transactions, forbearance or other similar transactions
executed in this state should be prescribed from time to time
to reflect changed economic conditions, current interest rates
and finance charges throughout the United States and the
availability of credit within the state in order to promote the
making of such loans in this state; and

(3) The prescribing of such maximum interest rates and
finance charges can be accomplished most effectively and
flexibly by a board comprised of the heads of designated
government agencies, university schools of business and
administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of
this section to establish the West Virginia Lending and Credit
Rate Board and authorize said board to prescribe
semiannually the maximum interest rates and finance charges
on loans, credit sales or transactions, forbearance or similar
transactions made pursuant to this section subject to the
provisions, conditions and limitations hereinafter set forth
and to authorize lenders, sellers and other creditors to charge
up to the maximum interest rates or finance charges so fixed.
The rates prescribed by the board are alternative rates and
any creditor may utilize either the rate or rates set by the
board or any other rate or rates which the creditor is
permitted to charge under any other provision of this code.

(c) The West Virginia Lending and Credit Rate Board
shall be comprised of:

(1) The director of the Governor’s office of Economic
and Community Development;
(2) The West Virginia State Treasurer;

(3) The West Virginia Banking Commissioner;

(4) The deans of the schools of business and administration at Marshall University and West Virginia University;

(5) The Director of the Division of Consumer Protection of the Attorney General's Office; and

(6) Three members of the public appointed by the Governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the Governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia Banking Commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia Lending and Credit Rate Board is authorized and directed to meet after December 31, 1983, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on June 1 and on December 1, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest
and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional commercial short-term loans and notes throughout West Virginia and throughout the United States and on corporate interest-bearing securities of high quality, the availability of credit at reasonable rates to the citizens of this state which afford a competitive return to persons extending credit and other factors as the board may determine.

(e) Any petition proposing a change in the prescribed maximum rates of interest and finance charges must be filed in the office of the Banking Commissioner no later than February 15 in order to be voted on at the board meeting on the first Tuesday of April and no later than August 15 in order to be voted on at the board meeting on the first Tuesday of October. Whenever any change in the prescribed maximum rates of interest and finance charges is proposed the board shall schedule a hearing, at least fifteen days prior to the board meeting at which the proposed rates of interest and finance charge will be voted on by the members of the board, and shall give all interested parties the opportunity to testify and to submit information at such public hearing that is relevant. Notice of the scheduled public hearing shall be issued and disseminated to the public at least twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later than April 20 and not later than October 20, in accordance with the provisions of subsection (d) of this section, the maximum rates of interest and finance charge for the next succeeding six months for any loan, credit sale, forbearance or similar transaction made pursuant to this section and shall cause the maximum rate of interest and finance charge to be issued and disseminated to the public, to be effective on June 1 and December 1 for the next succeeding six months.
(g) Notwithstanding the other provisions of this chapter, the West Virginia Lending and Credit Rate Board shall not be required to meet if no petition has been filed with the board requesting a hearing and interest rates and economic conditions have not changed sufficiently to indicate that any change in the existing rate order would be required, and there are not at least two board members who concur that a meeting of the board is necessary. If the board does not meet, the maximum rates of interest and finance charges prescribed by the board in the existing rate order shall remain in full force and effect until the next time the board meets and prescribes different maximum rates of interest and finance charges.

(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia Lending and Credit Rate Board, at which time the chairperson shall give ten days’ notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at the emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of the emergency meeting.

(i) Each member of the board, except those whose regular salary is paid by the State of West Virginia, shall receive $75 per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the special revenue account of the Division of Banking upon a requisition upon the State Auditor, properly certified by the Banking Commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of
credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determining the rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

CHAPTER 119

(S. B. 336 - By Senator Minard)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §31-17-2 of the Code of West Virginia, 1931, as amended, relating to license required for residential mortgage lenders and brokers and exemptions thereto; and eliminating the exemption for a lender under the regular supervision and examination for consumer compliance by any agency of the federal government.

Be it enacted by the Legislature of West Virginia:

That §31-17-2 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.

§31-17-2. License required for lender and broker originator; exemptions.

(a) A person may not engage in this state in the business of lender or broker unless and until he or she first obtains a
license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoke, and no foreign corporation may engage in business in this state unless it is registered with the Secretary of State to transact business in this state.

(b) All mortgage loan originators, as that term is defined by section two, article seventeen-a of this chapter, shall obtain a mortgage loan originator license pursuant to said article.

c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on January 1, 2004.

(d) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;

(4) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(5) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or
(6) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state. Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(e) The provisions of this article do not apply to loans brokered by a federally insured depository institution.

(f) A person or entity designated in subsection (d) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.

(g) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.
AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to prohibitions on primary and subordinate mortgage loans.

Be it enacted by the Legislature of West Virginia:

That §31-17-8 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.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed eighteen percent per year on the unpaid balance of the amount financed.
(b) A borrower shall have the right to prepay his or her debt, in whole or in part, at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by section one hundred nine, article three, chapter forty-six-a of this code and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made: Provided, That in the event the loan is not made, the licensee is not required to refund an appraisal fee that is collected from a loan applicant by the licensee and paid to an unrelated third-party appraiser unless the fee is required to be refunded pursuant to federal law.

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan on that property made within twenty-four months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower’s circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain the documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section shall apply.

(e) Notwithstanding other provisions of this section, a delinquent charge or late charge may be charged on any installment made ten or more days after the regularly
scheduled due date in accordance with section one hundred
twelve or one hundred thirteen, article three, chapter
forty-six-a of this code, whichever is applicable. The charge
may be made only once on any one installment during the
term of the primary or subordinate mortgage loan.

(f) Hazard insurance may be required by the lender. The
charges for any insurance shall not exceed the standard rate
approved by the Insurance Commissioner for the insurance.
Proof of all insurance in connection with primary and
subordinate mortgage loans subject to this article shall be
furnished to the borrower within thirty days from and after
the date of application therefor by the borrower.

(g) Except for fees for services provided by unrelated
third parties for appraisals, inspections, title searches and
credit reports, no application fee may be allowed whether or
not the mortgage loan is consummated; however, the
borrower may be required to reimburse the licensee for actual
expenses incurred by the licensee in a purchase money
transaction after acceptance and approval of a mortgage loan
proposal made in accordance with the provisions of this
article which is not consummated because of:

(1) The borrower's willful failure to close the loan; or

(2) The borrower's false or fraudulent representation of a
material fact which prevents closing of the loan as proposed.

(h) No licensee shall make, offer to make, accept or offer
to accept any primary or subordinate mortgage loan except on
the terms and conditions authorized in this article.

(i) No licensee shall induce or permit any borrower to
become obligated to the licensee under this article, directly or
contingently, or both, under more than one subordinate
mortgage loan at the same time for the purpose or with the
result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) No instrument evidencing or securing a primary or subordinate mortgage loan shall contain:

(1) Any power of attorney to confess judgment;

(2) Any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date;

(4) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the
licensee also registers and complies with all requirements set
forth for credit service organizations in article six-c, chapter
forty-six-a of this code, including all additional bonding
requirements as may be established therein.

(l) No licensee shall make or broker revolving loans
secured by a primary or subordinate mortgage lien for the
retail purchase of consumer goods and services by use of a
lender credit card.

(m) In making any primary or subordinate mortgage loan,
no licensee may, and no primary or subordinate mortgage
lending transaction may, contain terms which:

(1) Collect a fee not disclosed to the borrower; collect
any attorney fee at closing in excess of the fee that has been
or will be remitted to the attorney; collect a fee for a product
or service where the product or service is not actually
provided; misrepresent the amount charged by or paid to a
third party for a product or service; or collect duplicate fee or
points to act as both broker and lender for the same mortgage
loan, however, fees and points may be divided between the
broker and the lender as they agree, but may not exceed the
total charges otherwise permitted under this article: Provided,
That the fact of any fee, point or compensation is disclosed to
the borrower consistent with the solicitation representation
made to the borrower;

(2) Compensate, whether directly or indirectly, coerce or
intimidate an appraiser for the purpose of influencing the
independent judgment of the appraiser with respect to the
value of real estate that is to be covered by a deed of trust or
is being offered as security according to an application for a
primary or subordinate mortgage loan;

(3) Make or assist in making any primary or subordinate
mortgage loan with the intent that the loan will not be repaid
and that the lender will obtain title to the property through foreclosure: *Provided,* That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(4) Require the borrower to pay, in addition to any periodic interest, combined fees, compensation or points of any kind to the lender and broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the aggregate, six percent of the loan amount financed, including any yield spread premium paid by the lender to the broker: *Provided,* That reasonable closing costs, as defined in section one hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may not be included within this limitation: *Provided, however,* That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds eighteen percent per year on the unpaid balance of the amount financed: *Provided further,* That if no yield spread premium is charged, the aggregate of fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points are permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;
(7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision may not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of a new residential dwelling or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and Certification Board and prepared in compliance with the uniform standards of professional appraisal practice: Provided, That commencing January 1, 2012, and continuing until January 1, 2015, this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Homes Affordable Modification Program, a part of the federal Making Home Affordable program, or any other mortgage modification or refinancing loan funded through any other federal or state program or litigation settlement;

(9) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction; or
196    (10) Knowingly violate any provision of any other
197    applicable state or federal law regulating primary or
198    subordinate mortgage loans, including, without limitation,
199    chapter forty-six-a of this code.

CHAPTER 121

(H. B. 4271 - By Delegates Moore,
Reynolds and Azinger)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §31-17-11 of the Code of West
Virginia, 1931, as amended, relating to the reporting
requirements for residential mortgage lenders and broker
licensees; providing that such reporting shall be done through
the Nationwide Mortgage Licensing System and Registry for
the periods established by the Nationwide Mortgage Licensing
System and Registry; preserving the confidentiality of such
reports; giving the Commissioner of Banking the discretion to
direct that the reports shall be filed directly with the Division
of Banking; and replacing the duty of the Commissioner of
Banking to provide an aggregate analysis of the information
contained in reports with a requirement that the commissioner
shall publish annually a list of the licenses issued under this
chapter and direct consumers to the public information
available through the Nationwide Mortgage Licensing System
and Registry.

Be it enacted by the Legislature of West Virginia:
That §31-17-11 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.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state, at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file a report through the Nationwide Mortgage Licensing System and Registry under oath or affirmation concerning his or her business and operations in this state for the defined reporting period established by the Nationwide Mortgage Licensing System and Registry and on a date established by the Nationwide Mortgage Licensing System and Registry. These reports are not public records and may not be open to public inspection. The commissioner may direct that the reports required by this subsection be filed directly with the Division of Banking.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts
and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is complying with the provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually a list of the licenses issued under this chapter and shall direct consumers to public information available through the Nationwide Mortgage Licensing System and Registry.

(e) The commissioner may enter into cooperative and information-sharing agreements with regulators in other states or with federal authorities to discharge his or her responsibilities under this article.

CHAPTER 122

(H. B. 4103 - By Delegates Staggers, L. Phillips, Barker, Ferro, Guthrie and Cowles)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17A-2B-1, §17A-2B-2 and §17A-2B-3, all relating to consolidating government services and enforcement of laws pertaining to the motor carrier industry; stating legislative findings and purpose;
designating the Division of Motor Vehicles as the lead agency to develop a plan for the consolidation; and requiring the division to report its plan and recommendations for consolidation to the Joint Committee on Government and Finance by December 1, 2012.

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 §17A-2B-1, §17A-2B-2 and §17A-2B-3, all to read as follows:

ARTICLE 2B. CONSOLIDATION OF THE REGULATION OF THE MOTOR CARRIER INDUSTRY.

§17A-2B-1. Legislative findings and purpose.

(a) The Legislature finds that responsibility for delivery of government services and the enforcement of laws pertaining to the motor carrier industry currently resides in several state agencies, divisions and departments including the Division of Motor Vehicles, Public Service Commission, Division of Highways, State Tax Department and the State Police. The Division of Motor Vehicles currently administers numerous provisions of this code relating to the regulation of the motor carrier industry in this state, including chapter seventeen-a of this code, which prescribe the process for titling and registration of all motor vehicles, the provisions for commercial drivers licenses set forth in chapter seventeen-b of this code, and has numerous other responsibilities relating to the motor carrier industry. The Division of Motor Vehicles also has significant interaction with the various federal agencies and other state agencies responsible for the administration of government functions relative to the industry. It further appears to the Legislature that a significant portion of the responsibility, in terms of
The volume of transactions and its database, routine contact with the industry and assignment of staff pertaining to regulating the motor carrier industry, is currently vested in the Division of Motor Vehicles. Therefore, the Legislature finds that the Division of Motor Vehicles is the appropriate agency to plan the consolidation of the administration and enforcement of the various state laws pertaining to the motor carrier industry.

(b) The Legislature further finds that it is very cumbersome and onerous for motor carrier business entities to obtain the necessary permits, licenses and file the necessary returns, reports and other documents through numerous state agencies whose offices are scattered both geographically and administratively throughout state government. The lack of centralization of these various state agencies also results in the redundancy of information provided by motor carrier entities to the various state agencies. The Legislature further finds that the lack of centralization of these government functions does not encourage the growth and success of this industry in the State.

(c) The Legislature further finds that it would be more cost effective and efficient to both the state agencies and the motor carrier industry to provide these services through consolidated facilities, licensing and permitting processes and electronic information and communication technologies.

(d) Therefore, it is the purpose of this article to facilitate the consolidation of the administration of government services pertaining to the motor carrier industry and to designate the division as the lead agency in planning the consolidation of state government services and enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.
§17A-2B-2. Development of plan of consolidation of government services and regulation applicable to the motor carrier industry.

(a) Notwithstanding any other provisions of this code to the contrary, the Division of Motor Vehicles is authorized and directed, and is designated the lead state agency to formulate and develop a plan for the consolidation of state government services and enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(b) (1) The Public Service Commission, Division of Highways, State Tax Department and the State Police shall cooperate with the division and provide information, aid and assistance as requested by the division to plan the consolidation of state government services and of enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(2) The division shall consult with these agencies and shall solicit and use any applicable experience and expertise that can be beneficial to the development of the plan of consolidation.


(a) The Division of Motor Vehicles shall submit to the Joint Committee on Government and Finance on or before December 1, 2012, a report setting forth the plan for the consolidation of state government services and of enforcement of laws pertaining to the regulation and taxation of the motor carrier industry.

(b) The report shall make recommendations pertaining to changes in laws, administration, personnel and procedure in the provision of government services applicable to the motor carrier industry and shall include drafts of recommended legislation necessary to implement the proposed consolidation.
AN ACT to amend and reenact §17-24A-4 of the Code of West Virginia, 1931, as amended, relating to raising the maximum value amount of an abandoned motor vehicle $2,500 to $7,500 before someone may sell that vehicle; allowing towing companies to obtain title to abandoned vehicles acquired in a manner other than the request of law enforcement; and clarifying definitions.

Be it enacted by the Legislature of West Virginia:

That §17-24A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24A. DISPOSAL OF ABANDONED MOTOR VEHICLES, JUNKED MOTOR VEHICLES, AND ABANDONED OR INOPERATIVE HOUSEHOLD APPLIANCES.

§17-24A-4. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

1 (a) The enforcement agency which takes into custody and possession an abandoned motor vehicle or junked motor
vehicle shall, within fifteen days after taking custody and
possession thereof, notify the last-known registered owner of
the motor vehicle and all lienholders of record that the motor
vehicle has been taken into custody and possession, the
notification to be by registered or certified mail, return
receipt requested. The notice shall:

(1) Contain a description of the motor vehicle, including
the year, make, model, manufacturer's serial or identification
number or any other number which may have been assigned
to the motor vehicle by the Commissioner of Motor Vehicles
and any distinguishing marks;

(2) Set forth the location of the facility where the motor
vehicle is being held and the location where the motor
vehicle was taken into custody and possession;

(3) Inform the owner and any lienholders of record of
their right to reclaim the motor vehicle within ten days after
the date notice was received by the owner or lienholders,
upon payment of all towing, preservation and storage charges
resulting from taking and placing the motor vehicle into
custody and possession; and

(4) State that the failure of the owner or lienholders of
record to exercise their right to reclaim the motor vehicle
within the ten-day period shall be deemed a waiver by the
owner and all lienholders of record of all right, title and
interest in the motor vehicle and of their consent to the sale
or disposal of the abandoned motor vehicle or junked motor
vehicle at a public auction or to a licensed salvage yard or
demolisher.

(b) If the identity of the last registered owner of the
abandoned motor vehicle or junked motor vehicle cannot be
determined or if the certificate of registration or certificate of
title contains no address for the owner or if it is impossible to
determine with reasonable certainty the identity and
addresses of all lienholders, notice shall be published as a
Class I legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, the publication
area shall be the county wherein the motor vehicle was
located at the time the enforcement agency took custody and
possession thereof and the notice shall be sufficient to meet
all requirements of notice pursuant to this article. Any notice
by publication may contain multiple listings of abandoned
motor vehicles and junked motor vehicles. The notice shall
be published within fifteen days after the motor vehicle is
taken into custody and possession and shall have the same
contents required for a notice pursuant to subsection (a) of
this section, except that the ten-day period shall run from the
date the notice is published as aforesaid.

(c) An enforcement agency which hires any person or
entity to take into custody and possession an abandoned
motor vehicle or junked motor vehicle pursuant to this
section shall notify the person or entity hired of the name and
address of the registered owner of the motor vehicle, if
known, and all lienholders of record, if any, within fifteen
days after the vehicle is taken into custody and possession:
Provided, That the requirements of this subsection shall not
apply to motor vehicles for which the registered owner
cannot be ascertained by due diligence or investigation.

(d) The person or entity hired by an enforcement agency
to take into custody or possession an abandoned motor
vehicle or junked motor vehicle shall, within thirty days after
the possession, notify the registered owner of the vehicle and
all lienholders of record, if any, as identified by the
enforcement agency pursuant to subsection (c) of this section,
by registered mail, return receipt requested, that the motor
vehicle has been taken into custody and possession. The notice shall have the same contents required for a notice pursuant to subsection (a) of this section, including the ten-day period the owner or lienholder has to reclaim the motor vehicle. Upon the issuance of the notice, the identified owner of the motor vehicle is liable and responsible for all costs for towing, preservation and storage of the motor vehicle: Provided, That failure to issue the notice required by this subsection within thirty days after possession of the motor vehicle relieves the identified owner of the motor vehicle of any liability for charges for towing, preservation and storage in excess of the sum of the first five days of the charges: Provided, however, That the requirements of this subsection do not apply to motor vehicles for which the registered owner thereof cannot be ascertained by due diligence or investigation.

(e) For an abandoned motor vehicle or junked vehicle having a loan value of $7,500 or less, as ascertained by values placed upon motor vehicles using a standard industry reference book, a person or entity hired by an enforcement agency to tow the abandoned motor vehicle or junked motor vehicle may, if the motor vehicle is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section or if the identity of the last registered owner of the abandoned motor vehicle or junked motor vehicle cannot be determined or if the certificate of registration or certificate of title contains no address of the owner or if it is impossible to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the Division of Motor Vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The person or entity may then sell the motor vehicle at private sale or public auction.
(f) For an abandoned motor or junked motor vehicle having a loan value of $7,500 or less, as ascertained by values placed upon motor vehicles using a standard industry reference book, a licensed motor vehicle dealer, as defined in section one, article one, chapter seventeen-a of this code, a motor vehicle repair facility or a towing company registered with the Public Service Commission pursuant to section two-a, article two, chapter twenty-four-a of this code may, if a motor vehicle is abandoned on the property or place of business of the dealer or a motor vehicle repair facility or towing company and is not claimed by the owner or a lienholder after notice within the time set forth in subsection (d) of this section or if the identity of the last registered owner of the abandoned motor vehicle cannot be determined or if the certificate of registration or certificate of title contains no address of the owner or if it is impossible to determine with reasonable certainty the identity and address of all lienholders after publication as set forth in subsection (b) of this section, file an application with the Division of Motor Vehicles for a certificate of title and registration which, upon payment of the appropriate fees, shall be issued. The dealer or motor vehicle repair facility or towing company may then sell the motor vehicle at private sale or public auction.

(g) For purposes of this section motor vehicle repair facilities and towing companies are not used motor vehicle dealers as that term is defined by subdivision (2), subsection (a), section one, article six, chapter seventeen-a of this code.
AN ACT to amend and reenact §17A-3-23 of the Code of West Virginia, 1931, as amended, relating to registration plates for state, county, municipal and other governmental vehicles; authorizing the Commissioner of the Division of Motor Vehicles to issue no more than five Class A registration plates to the division for vehicles to be used by investigators for commercial driver examination fraud investigation and driver’s license issuance fraud detection and fraud prevention; authorizing the commissioner to issue Class A registration plates to Medicaid Fraud Control Unit and the West Virginia Insurance Fraud Unit; deleting an outdated requirement; and providing penalties.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its
departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the Office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by natural resources police officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the Office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services, not to exceed sixteen vehicles operated by inspectors of the Office of the Alcohol Beverage Control Commissioner and vehicles operated by probation officers employed under the Supreme Court of Appeals may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white.

(b) Registration plates issued to vehicles owned by counties shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom.

(c) Registration plates issued to a city or municipality shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom.
(d) Registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the word “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law-enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law-enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

(e) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word “Sheriff” on top of the plate and the words “West Virginia” on the bottom. The plate shall contain a gold shield representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of $10 for each vehicle submitted by July 1, 2002.

(f) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

(g) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

(h) The commissioner is authorized to issue a maximum of five Class A license plates to be used on vehicles assigned
to the Division of Motor Vehicle investigators for
commercial driver examination fraud investigation and
driver’s license issuance fraud detection and fraud
prevention.

(i) The commissioner is authorized to issue an unlimited
number of license plates per applicant to authorized drug and
violent crime task forces in the State of West Virginia when
the chairperson of the control group of a drug and violent
crime task force signs a written affidavit stating that the
vehicle or vehicles for which the plates are being requested
will be used only for official undercover work conducted by
a drug and violent crime task force.

(j) The commissioner is authorized to issue twenty Class
A license plates to the Criminal Investigation Division of the
Department of Revenue for use by its investigators.

(k) The commissioner may issue a maximum of ten Class
A license plates to the Division of Natural Resources for use
by natural resources police officers. The commissioner shall
designate the color and design of the registration plates to be
displayed on the front and the rear of all other state-owned
vehicles owned by the Division of Natural Resources and
operated by natural resources police officers.

(l) The commissioner is authorized to issue an unlimited
number of Class A license plates to the Commission on
Special Investigations for state-owned vehicles used for
official undercover work conducted by the Commission on
Special Investigations.

(m) The commissioner is authorized to issue a maximum
of two Class A plates to the Division of Protective Services
for state-owned vehicles used by the Division of Protective
Services in fulfilling its mission.
(n) The commissioner is authorized to issue Class A registration plates for vehicles used by the Medicaid Fraud Control Unit created by section seven, article seven, chapter nine of this code.

(o) The commissioner is authorized to issue Class A registration plates for vehicles used by the West Virginia Insurance Fraud Unit created by section eight, article forty-one, chapter thirty-three of this code.

(p) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(q) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for the vehicles shall start with the number five hundred and the commissioner shall issue consecutive numbers for all state-owned cars.

(r) It is the duty of each office, department, bureau, commission or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(s) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The special registration
plate shall be designed by the commissioner and shall display
the words “public transit” or words or letters of similar effect
to indicate the public purpose of the use of the vehicle. The
special registration plate shall be issued without charge.

(t) Any person who violates the provisions of this section
is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than $50 nor more than $100. Magistrates
have concurrent jurisdiction with circuit courts for the
enforcement of this section.

AN ACT to amend and reenact §17A-4-10 of the Code of West
Virginia, 1931, as amended, relating to vehicles scraped,
compressed, dismantled or destroyed; providing an additional
means to notify the division; prescribing form; extending time
period for a person to surrender title; and providing for the use
of additional brands used by other jurisdictions that are
consistent with the National Motor Vehicle Title Information
System.

Be it enacted by the Legislature of West Virginia:

That §17A-4-10 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:
ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: Provided, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term “total loss” means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmically damaged or nonrepairable. Within ten days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner and the registration certificate if the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage
certificate, on a form prescribed by the commissioner, in the
name of the insurance company, the insurer or the vehicle
owner if the owner has chosen to retain the vehicle. The
certificate shall contain, on the reverse, spaces for one
successive assignment before a new certificate at an
additional fee is required. Upon the sale of the vehicle, the
insurance company, insurer or vehicle owner if the owner has
chosen to retain the vehicle, shall complete the assignment of
ownership on the salvage certificate and deliver it to the
purchaser. The vehicle may not be titled or registered for
operation on the streets or highways of this state unless there
is compliance with subsection (g) of this section. The
division shall charge a fee of $15 for each salvage title
issued.

(d) If the insurance company or insurer determines the
damage to a totaled vehicle is exclusively cosmetic and no
repair is necessary in order to legally and safely operate the
motor vehicle on the roads and highways of this state, the
insurance company or insurer shall, upon payment of the
claim, submit the certificate of title to the division. Neither
the insurance company nor the division may require the
vehicle owner to surrender the registration certificate in the
event of a cosmetic total loss settlement.

(1) The division shall, without further inspection, issue a
title branded “cosmetic total loss” to the insured or claimant
owner if the insured or claimant owner wishes to retain
possession of the vehicle, in lieu of a salvage certificate. The
division shall charge a fee of $5 for each cosmetic total loss
title issued. The terms “cosmetically damaged” and “cosmetic
total loss” do not include any vehicle which has been
damaged by flood or fire. The designation “cosmetic total
loss” on a title may not be removed.

(2) If the insured or claimant owner elects not to take
possession of the vehicle and the insurance company or
insurer retains possession, the division shall issue a cosmetic
total loss salvage certificate to the insurance company or
insurer. The division shall charge a fee of $15 for each
cosmetic total loss salvage certificate issued. The division
shall, upon surrender of the cosmetic total loss salvage
certificate issued under the provisions of this paragraph and
payment of the five percent motor vehicle sales tax on the fair
market value of the vehicle as determined by the
commissioner, issue a title branded “cosmetic total loss”
without further inspection.

(e) If the insurance company or insurer determines that
the damage to a totaled vehicle renders it nonrepairable,
incapable of safe operation for use on roads and highways
and as having no resale value except as a source of parts or
scrap, the insurance company or vehicle owner shall, in the
manner prescribed by the commissioner, request that the
division issue a nonrepairable motor vehicle certificate in lieu
of a salvage certificate. The division shall issue a
nonrepairable motor vehicle certificate without charge.

(f) Any owner who scraps, compresses, dismantles or
destroys a vehicle without further transfer or sale for which
a certificate of title, nonrepairable motor vehicle certificate or
salvage certificate has been issued shall, within forty-five
days, surrender the certificate of title, nonrepairable motor
vehicle certificate or salvage certificate to the division for
cancellation.

(g) Any person who purchases or acquires a vehicle as
salvage or scrap, to be dismantled, compressed or destroyed,
shall, within forty-five days, surrender to the division the
certificate of title, nonrepairable motor vehicle certificate,
salvage certificate or a statement of cancellation signed by
the seller, on a form prescribed by the commissioner.
Subsequent purchasers of salvage or scrap are not required to
comply with the notification requirement.
(h) If the motor vehicle is a “reconstructed vehicle” as defined in this section or section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state's laws or a term consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand “reconstructed”, “salvage”, “cosmetic total loss”, “cosmetic total loss salvage”, “flood”, “fire” or other brand is shown. The division shall charge a fee of $5 for each title so issued.

(j) If application is made for title to a motor vehicle, the title to which has previously been branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or other brand by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand “reconstructed”, “cosmetic total loss”, “cosmetic total loss salvage”, “flood”, “fire” or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as reconstructed, cosmetic total loss, flood, fire or other brand under the provisions of this section shall be based on fifty
percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of $15 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of $35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's Office and may be expended by the division to carry out the provisions of this article: Provided, That on and after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed $25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

(1) “Reconstructed vehicle” means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of subsection (m), section one, article one of this chapter.
“Flood-damaged vehicle” means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.

“Other brand” means a brand consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 and rules promulgated by the United States Department of Justice to alert consumers, motor vehicle dealers or the insurance industry of the history of a vehicle.

Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood- or fire-damaged vehicle.

Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than $1,000 nor more than $2,500, or imprisoned in jail for not more than one year, or both fined and imprisoned.
AN ACT to amend and reenact §17A-10-1 and §17A-10-3 of the Code of West Virginia, 1931, as amended, all relating to classification of motor vehicles for purpose of registration; changing the definition of “Class A” vehicles by increasing the maximum weight of Class A to include certain vehicles now classified as Class B; establishing the fee for those reclassified vehicles; and defining “Class Farm Truck” as “Class X”.

Be it enacted by the Legislature of West Virginia:

That §17A-10-1 and §17A-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions of this chapter shall be placed in the following classes for the purpose of registration:

4 Class A. Motor vehicles of passenger type and trucks with a gross weight of ten thousand pounds or less;
Class B. Motor vehicles designated as trucks with a gross weight of more than ten thousand pounds, truck tractors or road tractors;

Class C. All trailers and semitrailers, except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

Class G. Motorcycles and parking enforcement vehicles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;

Class R. House trailers;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and

Class X. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of eighty thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the
soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. A farm truck may be used only for the transportation of agricultural products produced by the owner of the truck, for the transportation of agricultural supplies used in the production or for private passenger use.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) Class A. -- The registration fee for motor vehicles of this class is $28.50: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B. -- The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of ten thousand one pounds to sixteen thousand pounds -- $28 plus $5 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds ten thousand pounds.
(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds -- $78.50 plus $10 for each one thousand or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more -- $737.50 plus $15.75 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) **Class G.** -- The registration fee for each motorcycle or parking enforcement vehicle is $8: *Provided,* That the registration fee and any other fees required by this chapter for Class G vehicles shall be for at least one year and under an optional biennial registration system the annual fee shall be multiplied by two and paid biennially to the division.

(4) **Class H.** -- The registration fee for all vehicles for this class operating entirely within the state is $5; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the Division of Motor Vehicles.

(5) **Class J.** -- The registration fee for all motor vehicles of this class is $85. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) **Class M.** -- The registration fee for all vehicles of this class is $17.50.
(7) Class X. -- The registration fee for all motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds -- $30.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds -- $60.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds -- $90.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds -- $115.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds -- $160.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds -- $205.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds -- $250:

Provided, That the provisions of subsection (a), section eight, article one, chapter seventeen-e of this code do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. -- The annual registration fee for all vehicles of this class is $12.
83 (2) **Class T.** -- The annual registration fee for all vehicles
84 of this class is $8.

85 (c) The fees paid to the division for a multiyear
86 registration provided by this chapter shall be the same as the
87 annual registration fee established by this section and any
88 other fee required by this chapter multiplied by the number of
89 years for which the registration is issued.

90 (d) The registration fee for all Class C vehicles is $50.
91 All Class C trailers shall be registered for the duration of the
92 owner’s interest in the trailer and do not expire until either
93 sold or otherwise permanently removed from the service of
94 the owner: **Provided,** That a registrant may transfer a Class C
95 registration plate from a trailer owned less than thirty days to
96 another Class C trailer titled in the name of the registrant
97 upon payment of the transfer fee prescribed in section ten of
98 this article.

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**CHAPTER 127**

*(S. B. 544 - By Senators D. Facemire,
Klemka and Beach)*

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §17C-13A-3 of the Code of West
Virginia, 1931, as amended, relating to Diesel-Powered Motor
Vehicle Idling Act; and removing the expiration date for
occupied vehicles with sleeper-berth compartments.

*Be it enacted by the Legislature of West Virginia:*
That §17C-13A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. DIESEL-POWERED MOTOR VEHICLE IDLING ACT.

§17C-13A-3. Exceptions.

(a) The idling restrictions set forth in section two of this article do not apply to motor homes, commercial implements of husbandry, implements of husbandry or farm tractors.

(b) The idling restrictions set forth in section two of this article do not apply to construction equipment that cannot be licensed for on-road driving or construction equipment that is not designed primarily for on-road driving, notwithstanding that such equipment may be operated or driven on road from time to time and in the course of performing its primary functions: Provided, That idling is necessary to power work-related mechanical, safety or electrical operations related to construction operations other than propulsion.

(c) A diesel-powered motor vehicle with a gross weight of ten thousand one pounds or more may idle beyond the time allowed in subsection (a) for one or more of the following reasons:

(1) When a vehicle idles while forced to remain motionless because of on-highway traffic, an official traffic control device or signal or at the direction of a law-enforcement official.

(2) When a vehicle must idle to operate defrosters, heaters, air conditioners or cargo refrigeration equipment, or to install equipment, in order to prevent a safety or health emergency, and not for the purpose of a rest period, or as
otherwise necessary to comply with manufacturers’ operating
requirements, specifications and warranties in accordance
with federal or state motor carrier safety regulations or local
requirements.

(3) When a police, fire, ambulance, public safety,
military, utility service vehicle or other emergency or law-
enforcement vehicle or any vehicle being used in an
emergency or public safety capacity shall idle while in an
emergency or training mode and not for the convenience of
the driver.

(4) When the primary propulsion engine idles for
maintenance, particulate matter trap regeneration, servicing
or repair of the vehicle, or for vehicle diagnostic purposes, if
idling is required for that activity.

(5) When a vehicle idles as part of a federal or state
inspection to verify that all equipment is in good working
order, if idling is required as part of the inspection.

(6) When idling of a primary propulsion engine is
necessary to power work-related mechanical, safety or
electrical operations other than propulsion. This exemption
does not apply when idling is done for cabin comfort or to
operate nonessential onboard equipment.

(7) When idling of a primary propulsion engine is
necessary as part of a security inspection either entering or
exiting a facility.

(8) When an armored vehicle must idle when a person
remains inside the vehicle to guard contents or while the
vehicle is being loaded or unloaded.

(9) When a vehicle must idle due to mechanical
difficulties over which the driver has no control, if the vehicle
owner submits the repair paperwork or product repair verifying that the mechanical problem has been fixed, by mail to the commission within thirty days of the repair.

(10) When a bus or school bus must idle to provide heating or air conditioning when nondriver passengers are onboard. For the purposes of this exemption, the bus or school bus may idle for no more than a total of fifteen minutes in a continuous sixty-minute period, except when idling is necessary to maintain a safe temperature for bus passengers.

(11) An occupied vehicle with a sleeper-berth compartment that idles for purposes of air conditioning or heating during a rest or sleep period and the outside temperature at the location of the vehicle is less than forty degrees or greater than seventy-five degrees Fahrenheit at any time during the rest or sleep period. This applies to a motor vehicle subject to this article parked in any place that the vehicle is legally permitted to park, including, but not limited to, a fleet trucking terminal, commercial truck stop or designed rest area. This exemption does not apply if the vehicle is parked at a location equipped with stationary idle reduction technology that is available for use at the start of the rest period.

(12) When idling is necessary for sampling, weighing, active loading or active unloading or for an attended motor vehicle waiting for sampling, weighing, loading or unloading. For the purposes of this exemption, the vehicle may idle for up to a total of fifteen minutes in any continuous sixty-minute period.

(13) When idling by a school bus off school grounds during queuing for the sequential discharge or pickup of students is necessary because the physical configuration of a school or the school’s surrounding streets does not allow for stopping.
(14) When idling is necessary for maintaining safe operating conditions while waiting for a police escort when transporting a load that requires the issuance of a permit in accordance with section eleven, article seventeen of this chapter.

(15) When actively engaged in solid waste collection or the collection of source-separated recyclable materials. This exemption does not apply when a vehicle is not actively engaged in solid waste collection or the collection of source-separated recyclable materials.

(16) When a diesel-powered motor vehicle exhibits a label issued by the California Air Resources Board under 13 CCR §1956.8(a)(6)(C) (relating to exhaust emissions standards and test procedures - 1985 and subsequent model heavy-duty engines and vehicles) showing that the vehicle’s engine meets the optional NOx idling emission standard.

(17) When a diesel-powered motor vehicle is powered by clean diesel technology or bio-diesel fuels.

CHAPTER 128

(S. B. 493 - By Senators Snyder, Beach and Palumbo)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §17C-15-36a of the Code of West Virginia, 1931, as amended, relating to exempting certain vehicles from sun-screening restrictions; exempting certain law-enforcement vehicles and vehicles with manufacturer
installed sun-screening devices from state standards; and prohibiting unmarked law-enforcement vehicles with sun-screening exemption from making routine traffic stops.

Be it enacted by the Legislature of West Virginia:

That §17C-15-36a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.


1 (a) No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun-screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section: Provided, That law-enforcement K-9 and other emergency vehicles that are designed to haul animals, unmarked law-enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement. No unmarked law-enforcement vehicle, herein exempted, may engage in routine traffic stops.

(b) A sun-screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color. A sun-screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.
(c) A sun-screening device when used in conjunction with the automotive safety glazing materials of the side wings or side windows located at the immediate right and left of the driver shall be a nonreflective type with reflectivity of not more than twenty percent and have a light transmission of not less than thirty-five percent. The side windows behind the driver and the rear most windows may have a sun-screening device that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent. If a sun-screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

(1) Certify to the West Virginia State Police and Division of Motor Vehicles that a sun-screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;

(2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun-screening material and each glazing surface to which it is applied that contains the manufacturer’s name and its percentage of light transmission; and

(3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person may:
(1) Offer for sale or for use any sun-screening product
or material for motor vehicle use not in compliance with this
section; or

(2) Install any sun-screening product or material on
vehicles intended for use on public roads without
permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor
vehicle registered in this state in the name of a person, or the
person’s legal guardian, who has an affidavit signed by a
physician or an optometrist licensed to practice in this state
that states that the person has a physical condition that makes
it necessary to equip the motor vehicle with sun-screening
material which would be of a light transmittance or luminous
reflectance in violation of this section. The affidavit must be
in the possession of the person so afflicted, or the person’s
legal guardian, at all times while being transported in the
motor vehicle.

(g) The light transmittance requirement of this section
does not apply to windows behind the driver on trucks, buses,
trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

(1) “Bus” means a motor vehicle with motive power,
except a trailer, designed for carrying more than ten persons.

(2) “Light transmission” means the ratio of the amount
of total light to pass through a product or material to the
amount of the total light falling on the product or material.

(3) “Luminous reflectants” means the ratio of the
amount of total light that is reflected outward by the product
or material to the amount of the total light falling on the
product or materials.
82 (4) “Manufacturer” means any person engaged in the manufacturing or assembling of sun-screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

87 (5) “Motor homes” means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

91 (6) “Multipurpose passenger vehicle” means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

96 (7) “Nonreflective” means a product or material designed to absorb light rather than to reflect it.

98 (8) “Passenger car” means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.

101 (9) “Sun-screening device” means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

105 (10) “Truck” means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

108 (i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-5-2a; to amend and reenact §8-10-2a and §8-10-2b of said code; to amend and reenact §8-13-15 of said code; and to amend and reenact §50-3-2a of said code, all relating to certain payments to governmental units; authorizing the use of credit or check cards for certain payments; authorizing a fee to be collected for the use of credit or check cards; requiring governmental units to obtain bids for credit card services; requiring compliance with rules of issuer of credit cards; requiring governmental units to wait ninety days after failure to pay costs, fines, forfeitures, restitutions or penalties or failure to appear before notifying the Division of Motor Vehicles; requiring costs, fines, forfeitures, restitutions or penalties imposed by magistrate courts to be paid in full; and establishing the priority of crediting payments to certain funds.

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 §7-5-2a; that 8-10-2a and §8-10-2b of said code be amended and reenacted; that §8-13-15 of said code be amended and reenacted; and that §50-3-2a of said code be amended and reenacted, all to read as follows:
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-2a. Credit cards as form of payment.

Notwithstanding any code provision to the contrary, county officers required or authorized to collect fines, fees, taxes or other moneys provided by law may accept credit or check cards as a form of payment. County officers may set a fee to be added to each transaction equal to the charge paid by the county officers for the use of the credit or check card by the payor: Provided, That the county officer is required to obtain three bids and use the lowest qualified bid received: Provided, however, That if a county officer has obtained credit card services, another county officer may be added to that service without receiving bids for that service. The county officer shall disclose the amount of the fee to the payor prior to the transaction and no other fees for the use of a credit or check card may be imposed upon the payor. Acceptance of a credit or check card as a form of payment shall be in accordance with the rules and requirements set forth by the credit or check card provider.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2a. Payment of fines by credit cards or payment plan; suspension of driver’s license for failure to pay motor vehicle violation fines or to appear in court.

(a) A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties. A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court
so long as the court requires the balance to be paid within one hundred eighty days from the date of judgment and in accordance with a payment plan: Provided, That all costs, fines, forfeitures or penalties imposed by the municipal court upon a nonresident of this state by judgment entered upon a conviction for a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code must be paid within eighty days from the date of judgment. The payment plan shall specify: (1) The number of additional payments to be made; (2) the dates on which such payments and amounts shall be made; and (3) amounts due on such dates.

(b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations as defined in section three-a, article three, chapter seventeen-b of this code are not paid within the time limits imposed pursuant to subsection (a) of this section, or if a person fails to appear or otherwise respond in court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code, the municipal court must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear: Provided, That notwithstanding any other provision of this code to the contrary, the municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full or, for failure to appear or otherwise respond, ninety days from the date of such failure before notifying the Division of Motor Vehicles thereof.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within one
hundred eighty days of the judgment, the municipal court
clerk or, upon a judgment rendered on appeal, the circuit
clerk shall notify the Division of Motor Vehicles of the
failure to pay: Provided, That notwithstanding any other
provision of this code to the contrary, for residents of this
state, the municipal court shall wait at least ninety days from
the date that all costs, fines, forfeitures or penalties are due in
full before notifying the Division of Motor Vehicles thereof:
Provided, however, That at the time the judgment is imposed,
the judge shall provide the person with written notice that
failure to pay the same as ordered may result in the
withholding of any income tax refund due the licensee and
shall result in the suspension of the person’s license or
privilege to operate a motor vehicle in this state and that the
suspension could result in the cancellation of, the failure to
renew or the failure to issue an automobile insurance policy
providing coverage for the person or the person’s family:
Provided further, That the failure of the judge to provide
notice does not affect the validity of any suspension of the
person’s license or privilege to operate a motor vehicle in this
state. For purposes of this section, payment shall be stayed
during any period an appeal from the conviction which
resulted in the imposition of costs, fines, forfeitures or
penalties is pending.

Upon notice, the Division of Motor Vehicles shall
suspend the person’s driver’s license or privilege to operate
a motor vehicle in this state until such time that the costs,
fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to the
contrary, the notice of the failure to pay costs, fines,
forfeitures or penalties may not be given where the municipal
court, upon application of the person upon whom the costs,
fines, forfeitures or penalties were imposed filed prior to the
expiration of the period within which these are required to be
paid, enters an order finding that the person is financially
unable to pay all or a portion of the costs, fines, forfeitures or penalties: Provided, That where the municipal court, upon finding that the person is financially unable to pay a portion of the costs, fines, forfeitures or penalties, requires the person to pay the remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person’s failure to pay if not paid within the period of time ordered by the court.

(c) If a person charged with a criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: Provided, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least ninety days from the date of the person’s failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person’s driver’s license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

(d) On and after July 1, 2008, if the licensee fails to respond to the Division of Motor Vehicles order of suspension within ninety days of receipt of the certified letter, the municipal court of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the costs, fines, forfeitures or penalties assessed by the court or has failed to respond to the citation. The notice provided by the municipal court to the Tax Commissioner must include the licensee’s Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties due to the municipality, the Tax Commissioner’s administration fee for the withholding and any and all fees that the municipal court would have collected had the licensee appeared: Provided, That the Tax Commissioner’s administration fee may not
Provided, however, That the Tax Commissioner may change this maximum amount limitation for this fee for fiscal years beginning on or after July 1, 2008, by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided further, That the administrative fees deducted shall be deposited in the special revolving fund hereby created in the State Treasury, which shall be designated as the Municipal Fines and Fees Collection Fund, and the Tax Commissioner shall make such expenditures from the fund as he or she deems appropriate for the administration of this subsection. After deduction of the Tax Commissioner’s administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant to this section and the municipal court shall distribute applicable costs, fines, forfeitures or penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims Compensation Fund, the Community Corrections Fund, the Governor’s subcommittee on law-enforcement training or any other fund or payee that may be applicable. After the costs, fines, forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties being withheld pursuant to this section, the Tax Commissioner’s administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community Corrections Fund; and (5) the final four percent
shall be paid to the Governor’s subcommittee on law-enforcement training. When the costs, fines, forfeitures or penalties exceed the licensee’s income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate municipality no later than July 1, of each year. If the municipal court or the municipality subsequently determines that any such costs, fines, forfeitures or penalties were erroneously imposed, the municipality shall promptly notify the Tax Commissioner. If the refunds have not been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the municipality and shall so inform the municipality. If the refunds have already been withheld and remitted to the municipality, the Tax Commissioner shall so inform the municipality. In either event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by the municipality and not by the Tax Commissioner.

(e) Rules and effective date. -- The Tax Commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature, to be effective on July 1, 2008. Rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(f) On or before July 1, 2005, the municipal court may elect to reissue notice as provided in subsections (a) and (c) of this section to the Division of Motor Vehicles for persons who remain noncompliant: Provided, That the person was convicted or failed to appear on or after January 1, 1993. If the original notification cannot be located, the Division of Motor Vehicles shall accept an additional or duplicate notice from the municipal court clerk.
ARTICLE 13. TAXATION AND FINANCE.


1 Unless otherwise provided, it shall be the duty of the treasurer of the municipality or other individual who may be designated by general law, by charter provisions or by the governing body, to collect and promptly pay into the municipal treasury all taxes, fines, special assessments or other moneys due the municipality. All such taxes, fines, special assessments (except assessments for permanent or semipermanent public improvements) and other moneys due the municipality are hereby declared to be debts owing to the municipality, for which the debtor shall be personally liable, and the treasurer, or other individual so designated, may enforce this liability by appropriate civil action in any court of competent jurisdiction, and is hereby vested with the same rights to distrain for the same as is vested in the sheriff for the collection of taxes. Such treasurer or other individual shall give a bond, conditioned according to law, in such penalty and with such security as the governing body may require:

Provided. That nothing in this article shall prohibit the payment of taxes, fines, special assessments or other moneys due the municipality by credit or check card. The municipality or municipal court may set a fee to be added to each transaction equal to the charge paid by the municipality for the use of the credit or check card by the debtor:

Provided, however, That the municipality is required to obtain three bids and use the lowest qualified bid received.

Provided, further, That if a municipality has obtained credit card services, the municipal court may be added to that service without receiving bids for that service. The municipality or municipal court shall disclose the amount of the fee to the debtor prior to the transaction and no other fees for the use of a credit or check card may be imposed upon the debtor. Acceptance of a credit or check card as a form of payment shall be in accordance with the rules and
CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.

(a) A magistrate court may accept credit cards in payment of all costs, fines, fees, forfeitures, restitution or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture or penalty.

(b) Unless otherwise required by law, a magistrate court may collect a portion of any costs, fines, fees, forfeitures, restitution or penalties at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a payment plan which specifies: (1) The number of payments to be made; (2) the dates on which the payments are due; and (3) the amounts due for each payment. The written agreement represents the minimum payments and the last date those payments may be made. The obligor or the obligor’s agent may accelerate the payment schedule at any time by paying any additional portion of any costs, fines, fees, forfeitures, restitution or penalties.

(c) (1) If any costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the

requirements set forth by the credit or check card provider. Allowing for the collection of these funds by credit or check card shall be at the discretion of the municipality or municipal court.
23 magistrate court clerk or, upon judgment rendered on appeal,
24 the circuit clerk shall notify the Commissioner of the
25 Division of Motor Vehicles of the failure to pay: Provided,
26 That in a criminal case in which a nonresident of this state is
27 convicted of a motor vehicle violation defined in section
28 three-a, article three, chapter seventeen-b of this code, the
29 appropriate clerk shall notify the Division of Motor Vehicles
30 of the failure to pay within eighty days from the date of
31 judgment and expiration of any stay of execution. Upon
32 notice, the Division of Motor Vehicles shall suspend any
33 privilege the person defaulting on payment may have to
34 operate a motor vehicle in this state, including any driver’s
35 license issued to the person by the Division of Motor
36 Vehicles, until all costs, fines, fees, forfeitures, restitution or
37 penalties are paid in full. The suspension shall be imposed in
38 accordance with the provisions of section six, article three,
39 chapter seventeen-b of this code: Provided, That any person
40 who has had his or her license to operate a motor vehicle in
41 this state suspended pursuant to this subsection and his or her
42 failure to pay is based upon inability to pay, may, if he or she
43 is employed on a full- or part-time basis, petition to the
44 circuit court for an order authorizing him or her to operate a
45 motor vehicle solely for employment purposes. Upon a
46 showing satisfactory to the court of inability to pay,
47 employment and compliance with other applicable motor
48 vehicle laws, the court shall issue an order granting relief.

49 (2) In addition to the provisions of subdivision (1) of this
50 subsection, if any costs, fines, fees, forfeitures, restitution or
51 penalties imposed or ordered by the magistrate court for a
52 hunting violation described in chapter twenty of this code are
53 not paid within one hundred eighty days from the date of
54 judgment and the expiration of any stay of execution, the
55 magistrate court clerk or, upon a judgment rendered on
56 appeal, the circuit clerk shall notify the Director of the
57 Division of Natural Resources of the failure to pay. Upon
58 notice, the Director of the Division of Natural Resources
59 shall suspend any privilege the person failing to appear or
otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the magistrate court for a fishing violation described in chapter twenty of this code are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(d) (1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within ninety days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver’s license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code.
(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full.

(e) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.
(f) (1) If all costs, fines, fees, forfeitures, restitution or penalties imposed by a magistrate court and ordered to be paid are not paid within one hundred eighty days from the date of judgment and the expiration of any stay of execution, the clerk of the magistrate court shall notify the prosecuting attorney of the county of nonpayment and provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerks of the county commissions shall record and index the abstracts of judgment without charge or fee to the prosecuting attorney and when so recorded, the amount stated to be owing in the abstract shall constitute a lien against all property of the defendant.

(2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of section one, article twelve, chapter thirty-eight of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in civil or criminal matters shall be
made in full. Partial payments of costs, fines, fees, forfeitures, restitution or penalties made pursuant to this section shall be credited to amounts due in the following order:

(1) Regional Jail Fund;
(2) Worthless Check Payee;
(3) Restitution;
(4) Magistrate Court Fund;
(5) Worthless Check Fund;
(6) Per Diem Regional Jail Fee;
(7) Community Corrections Fund;
(8) Regional Jail Operational Fund;
(9) Law Enforcement Training Fund;
(10) Crime Victims Compensation Fund;
(11) Court Security Fund;
(12) Courthouse Improvement Fund;
(13) Litter Control Fund;
(14) Sheriff arrest fee;
(15) Teen Court Fund;
(16) Other costs, if any;
(17) Fine.
AN ACT to amend and reenact §8-2-6 and §8-2-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §8-3A-1 and §8-3A-2, all relating to Class IV towns or villages; permitting a new class IV town or village to select a form of government; and permitting a current Class IV town or village to change its form of government.

Be it enacted by the Legislature of West Virginia:

That §8-2-6 and §8-2-7 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 §8-3A-1 and §8-3A-2, all to read as follows:

ARTICLE 2. CREATION OF MUNICIPALITIES.

§8-2-6. Same -- Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount.

1 Class I, II, or III city
(a) On the date named in the notice for the taking of the vote, each qualified elector of the territory sought to be incorporated as a Class I, II, or III city, may cast his or her vote for or against such incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box, or by use of a voting machine, to be provided by the county commission for that purpose. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

☐ ☐ For Incorporation

☐ ☐ Against Incorporation

The ballot or ballot label shall be a separate, special ballot or ballot label.

(b) The election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of the election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. If any commissioner or clerk designated to serve in the election shall fail or refuse to serve, the vacancy may be filled in like manner as vacancies in the positions are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring a recount providing adequate assurance to the county commission that the party or parties will pay all costs of the recount.
(c) Each qualified elector of the territory sought to be incorporated as a Class IV town or village may cast his or her vote for or against the incorporation at the precinct in which he or she resides, by depositing a ballot in a ballot box or by use of a voting machine to be provided by the county commission for that purpose, on the date named in the notice for the taking of the vote. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

☐☐ For Incorporation
☐☐ Against Incorporation

The form of governance:

☐☐ Plan I -- “Mayor-Council Plan”
☐☐ Plan II -- “Strong-Mayor Plan”
☐☐ Plan III -- “Manager Plan”
☐☐ Plan IV -- “Manager-Mayor Plan”

The ballot or ballot label shall be a separate, special ballot or ballot label.

(d) The election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of the election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. If any commissioner or clerk designated to serve in the election fails or refuses to serve, the vacancy may be filled in like manner as vacancies in such positions are filled in
general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring the recount providing adequate assurance to the county commission that the party or parties will pay all costs of the recount.

§8-2-7. County commission order declaring boundaries of city; certificate of incorporation of town or village; dismissal of proceeding.

  (a) Class I, II, or III city. -- If the proceeding be for the incorporation of a city, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by order duly made and entered of record declare that the territory in question (reciting the boundaries) shall thereby become a body corporate, and shall thenceforth be known as the city of ......................, but that until a charter is framed and adopted as provided in article three of this chapter, the city shall have and exercise no powers of a municipality except the power to frame and adopt a charter as therein provided.

  (b) Class IV town or village. -- If the proceeding be for the incorporation of a town or village, and it appears to the county commission, upon the returns being canvassed, that a majority of the legal votes cast on the question of incorporation were in favor of the incorporation and the commission is satisfied that all of the applicable provisions of this article have been complied with, the commission shall by order duly made and entered of record, direct the clerk of the commission to issue a certificate of incorporation in form or in substance as follows:
“It appearing to the commission that under the provisions of article two, chapter eight of the Code of West Virginia, 1931, as amended, at an election duly held on the .......... day of ............., 20......, a majority of the legal votes cast on the question of incorporation by the qualified voters of the following territory, to wit: Beginning, etc. (here recite the boundaries), were cast in favor of the incorporation of the town or village of .................., in the County of .................., bounded as herein set forth; adopting the ................. form of government, and it appearing to the satisfaction of the commission that all of the provisions of article two, chapter eight of the Code of West Virginia, as amended, have been complied with by the petitioners for incorporation, the town or village is declared to be a body corporate, duly authorized to exercise all of the corporate powers conferred upon towns or villages by chapter eight of the Code of West Virginia, 1931, as amended, from and after the date of this certificate. (Signed) .................., Clerk County Commission.”

(c) Thereupon, the first election of officers shall be held as provided in sections two, three and four, article five of this chapter.

(d) If, on the returns being canvassed on the question of incorporation, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed, and no subsequent proceeding for incorporation of the same or any portion of the territory shall be considered or election had within a period of three years.

ARTICLE 3A. GOVERNMENT OF CLASS IV TOWNS OR VILLAGES.

§8-3A-1. Class IV town or village form of government.

In the absence of any charter or official declaration to the contrary, a Class IV town or village shall be the mayor-
council form of government, as set out in section two, article three of this chapter. The Class IV town or village form of government may be changed pursuant to the provisions of section two of this article.

§8-3A-2. Changing Class IV town or village form of government.

(a) A Class IV town or village may change its form of government upon the submission of a petition containing the signatures of twenty-five percent of the qualified voters.

(b) After receipt and verification of the petition, the question shall be submitted to the voters of the Class IV town or village at the next general or primary election.

(c) A Class IV town or village shall select from the following government plans:

Plan I -- “Mayor-Council Plan”. Under this plan:

(1) There shall be a town or village council, elected at large or by wards, or both at large and by wards, by the qualified voters of the town or village; a mayor elected by the qualified voters of the town or village; and such other elective officers as set by ordinance; and

(2) The mayor and council shall be the governing body and administrative authority.

Plan II -- “Strong-Mayor Plan”. Under this plan:

(1) There shall be a mayor elected by the qualified voters of the town or village; and a town or village council elected at large or by wards, or both at large and by wards, by the qualified voters of the town or village;

(2) The council shall be the governing body;
(3) The mayor shall be the administrative authority; and

(4) Other officers and employees shall be appointed by the mayor or by his or her order in accordance with this chapter, but the appointments by the mayor or by his or her order may be made subject to the approval of the council.

Plan III -- “Manager Plan”. Under this plan:

(1) There shall be a council of not less than five nor more than eleven members, elected either at large or from the geographical districts as may be established by ordinance, or partly at large and partly from the geographical districts, and the ordinance may empower the council to change the geographical districts without amending the ordinance: Provided, That the change of these districts may not take effect during the terms of office of the members of the council making the change;

(2) There shall be a mayor elected by the council from among its membership who shall serve as the presiding officer of the council; and a town or village manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority and shall manage the affairs of the town or village under the supervision of the council and shall be responsible to the council. The manager shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work the manager is responsible to the council.

Plan IV -- “Manager-Mayor Plan”. Under this plan:

(1) There shall be a council of not less than five nor more than eleven members, elected either at large or from the geographical districts as may be established by ordinance, or partly at large and partly from the geographical districts, and
the ordinance may empower the council to change these
geographical districts without amending the ordinance:
Provided, That the change of these geographical districts may
not take effect during the terms of office of the members of
the council making the change;

(2) There shall be a mayor elected at large by the
qualified voters of the town or village as may be established
by the ordinance, who shall serve as a member and the
presiding officer of the council; and a town or village
manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority and
shall manage the affairs of the town or village under the
supervision of the council and shall be responsible to the
council. The manager shall appoint or employ, in accordance
with this chapter, all subordinates and employees for whose
duties or work the manager is responsible to the council.

CHAPTER 131

(Com. Sub. for H. B. 4279 - By Delegates
Manchin, Lawrence, Cann, Doyle,
Longstreth and Morgan)

[Amended and again passed, in an effort to meet the objections of the
Governor, March 16, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §8-5-5 of the Code of West Virginia,
1931, as amended, relating to elected municipal officers; and
authorizing municipalities to stagger and/or change the terms
of elected municipal officers by ordinance and approval of the voters.

Be it enacted by the Legislature of West Virginia:

That §8-5-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

PART II. REGULAR ELECTION OF OFFICERS.

§8-5-5. Regular election of officers; establishment of longer terms.

1 (a) After the first election of officers of a city, town or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages.

6 (b) A municipal election date established by a charter provision may fall on the same day as the county-state primary election or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as the county-state primary or general election, the
14 municipality and county may agree to use the county election
15 officials in the municipal elections, if practicable, or the
16 municipality may provide for separate election officials.

17 (c) A municipal election date established by charter
18 provision may fall within twenty-five days of a county-state
19 primary or general election only where separate registration
20 books are provided and maintained for the municipal
21 election.

22 (d) Any municipality which establishes its election date
23 by charter provision must comply with the provisions of this
24 section or the election date shall be the second Tuesday of
25 June. The language of this section may not be construed to
26 prevent any city, town or village from amending the
27 provisions of its charter or special legislative charter, to
28 provide that its municipal election be held on some day other
29 than the second Tuesday in June.

30 (e) Officers of a city may be elected for a four-year term
31 at the same election at which a proposed charter, proposed
32 charter revision or charter amendment providing for four-year
33 terms is voted upon. The ballots or ballot labels used for the
34 election of officers must indicate that the officers will be
35 elected for four-year terms if the proposed charter, revision
36 or amendment is approved. Officers of a town or village may
37 be elected for a four-year term upon approval by a majority
38 of the legal votes cast at a regular municipal election of a
39 proposition calling for four-term terms. The ballots or ballot
40 labels used for the election of officers must indicate that the
41 officers will be elected for four-year terms if the proposition
42 is approved.

43 (f) Municipalities are authorized to stagger and/or change
44 the terms of elected municipal officers. Prior to any changes
45 being made to the terms of elected municipal officers, the
46 procedure to stagger and/or change the terms shall be set by
47 ordinance and must be approved by a majority of the voters.
(1) A municipality whose officers serve two-year terms, may lengthen the term to four years for half of the elected officers, except that the lengthening of terms cannot be implemented until following the subsequent election for that office;

(2) A municipality whose officers serve four-year terms, may shorten the term to two years for half of the elected officers;

(3) After the terms are lengthened or shortened as permitted by this subsection, those officers shall resume the two-year or four-year term of office; and

(4) Selection of elected officers whose term is shortened shall be determined by a random chance with an equal chance for each official's term to be shortened.

CHAPTER 132

(Com. Sub. for S. B. 343 - By Senators Laird, Kessler, Mr. President, Unger, Klempa, Nohe, Browning, Plymale, Yost, Jenkins and Beach)

[Passed February 20, 2012; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2012.]

AN ACT to amend and reenact §8-15-8a of the Code of West Virginia, 1931, as amended, relating to the eligibility of volunteer or part volunteer fire companies or departments to allocation from municipal pensions and protection fund and the Fire Protection Fund; providing requirements for eligibility; providing a grace period for these volunteer fire companies or
departments to comply with submission of data; making certain exemptions from reporting requirements; and requiring the State Fire Marshal to notify these volunteer fire companies or departments of the dates and grace period.

_Be it enacted by the Legislature of West Virginia:_

That §8-15-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.**


(a) In order to be eligible to receive revenues allocated from the municipal pensions and protection fund or the Fire Protection Fund, each volunteer or part volunteer fire company or department must meet the following requirements:

(1) Submit and maintain current submission of fire loss data to the State Fire Marshal;

(2) Complete or be in the process of receiving firefighters training, including section one of the West Virginia University fire service extension or its equivalent. The fire company or department must have at least ten members certified as having completed the training or if a volunteer fire company or department has twenty or fewer members, fifty percent of the active volunteer members must have completed such training; and
(3) Comply with all applicable federal and state laws.

(b) Each volunteer or part volunteer fire company or department shall have a grace period of ninety days, beyond the allocation date in which to comply with submission requirements to the State Fire Marshal. The State Fire Marshal shall notify each volunteer or part volunteer fire company or department of the due date for submitting the information required by this section and the grace period by certified mailing requiring signature and a return receipt.

(c) When the records of a volunteer or part volunteer fire company or department are destroyed by a fire or other natural disaster, then the affected volunteer or part volunteer fire company or department is exempt from the provisions of subdivision (1), subsection (a) of this section, for the three months period immediately following the destruction of the records.

CHAPTER 133

(Com. Sub. for H. B. 4601 - By Delegates Iaquinta, Swartzmiller, Longstreth, Pethtel, Fleischauer, Pasdon, Nelson, Staggers, Paxton and Smith)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1B-27, relating to authorizing the West Virginia National Guard to participate
in a federal asset forfeiture or sharing program; creating the West Virginia National Guard Counterdrug Forfeiture Fund administered by the Adjutant General; and authorizing the Adjutant General to propose rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §15-1B-27, to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-27. Asset Forfeiture and Asset Sharing.

1 (a) The West Virginia National Guard is authorized to participate in asset forfeiture and seizure programs established by the United States government relating to drug interdiction and counter-drug activities, pursuant to the provisions of 32 U. S. C. §112.

2 (b) (1) There is hereby created in the State Treasury a special revenue account, designated the West Virginia National Guard Counterdrug Forfeiture Fund which shall be administered by the Adjutant General.

3 (2) Any balance in the account at the end of the fiscal year shall not revert to the general revenue fund but shall remain in the account, and be expended as provided in this section. The fund shall consist of property seized or forfeited to the United States under any federal asset, forfeiture or sharing program and shared with the West Virginia National Guard Counter Drug Program.

4 (3) Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections,
but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That for fiscal year ending June 30, 2013, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Expenditures from the fund shall be for facilities, equipment, administrative expenses and to defray any other necessary expenses incidental to and associated with the program.

29  (c) The Adjutant General shall propose rules pursuant to article three, chapter twenty-nine-a of this code for the operation of any asset forfeiture and asset sharing program by the West Virginia National Guard Counterdrug Support Program and for the operation of the special revenue fund account established under this section.

CHAPTER 134


[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §16-2D-5c, relating to development and operation of a nursing home by a nonprofit community health care organization designated by a county commission; creating an exemption from the current moratorium on nursing home beds; establishing the prerequisite
requirements for the exemption; and mandating conformance to current certificate of need requirements.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-2D-5c, to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5c. Exception permitting development and operation of certain nursing beds by a nonprofit community health care organization.

(a) Notwithstanding any provision of law to the contrary and any rule issued by the state agency, a nonprofit community group designated by a county commission shall be exempt from the existing moratorium on nursing home beds established in subsection (g), section five of this article, in order to develop and operate a nursing home bed facility in any county in West Virginia that currently is without a nursing home provided that:

1. The nursing bed facility will be located in the county of that county commission;

2. The nursing bed facility will be operated on real property owned by the nonprofit community health care organization and designated by the county commission;

3. The nursing bed facility will exist in a county which has been continuously without nursing home beds since prior to the nursing home bed moratorium was enacted;

4. The nonprofit community group develops and operates no more than thirty-six nursing home beds pursuant to this section; and
(5) The nonprofit community group applies for a license to operate the nursing home within twenty-four months after the effective date of this section.

(b) The establishment of a nursing home and nursing beds under this section shall be required to apply for a certificate of need and shall be subject to all certificate of need laws and rules.

CHAPTER 135

(Com. Sub. for S. B. 435 - By Senators Chafin, Yost and Wills)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §16-5C-18 of the Code of West Virginia, 1931, as amended, relating to the conveyance of personal funds upon death of nursing home residents.

Be it enacted by the Legislature of West Virginia:

That §16-5C-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each nursing home subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the nursing home.
(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such nursing home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each nursing home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the nursing home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident's stay in the nursing home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the director's ability to perform his or her oversight function as mandated by federal regulations and this section.

(f) Notwithstanding subsection (b) of this section or any other provision of this code, upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of said resident: Provided, That if after thirty days there has been no qualification over the decedent resident’s estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, section one, article eight, chapter thirty-six of this code, et sequella.
CHAPTER 136

(Com. Sub. for S. B. 360 - By Senators Tucker and Plymale)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §11-10-13f of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §38-1-17, all relating to creating a procedure for deeming personal property abandoned following a transfer of real property by tax sale or foreclosure; requiring notice to the owner of personal property remaining on real property after the previous owner has vacated; creating a procedure for notice and removal of personal property within a thirty-day period; giving the purchaser of real property the authority to remove personal property after proper notice and waiting period; and prohibiting waiver of notice requirement prior to vacation of property.

Be it enacted by the Legislature of West Virginia:

That §11-10-13f 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 §38-1-17, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-13f. Certificate of sale; deed to real property; notice and access to recover personal property; abandonment and removal of personal property.

(a) Certificate of sale. -- In the case of property sold as provided in section thirteen-c the Tax Commissioner shall
provide to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser and the price paid therefor.

(b) Deed to real property. -- In the case of any real property sold as provided in section thirteen-c and not redeemed in the manner and within the time provided in section thirteen-e, the Tax Commissioner shall execute, in accordance with the laws of this state pertaining to sales of real property under execution, to the purchaser of that real property at the sale, upon his or her surrender of the certificate of sale, a deed to the real property so purchased by him or her reciting the facts set forth in the certificate.

(c) Real property purchased by the state. -- If real property is declared purchased by the State of West Virginia at a sale pursuant to section thirteen-c, the Tax Commissioner shall, at the proper time, execute a deed therefor, and without delay cause the deed to be duly recorded in the office of the clerk of the county in which the real property is located.

(d) Removal of personal property. -- Following the execution of a deed to real property pursuant to this section, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides notice, pursuant to this subsection, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property.
on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at their usual place of business or their usual place of abode or last known address. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person’s mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of the real property may dispose of the remaining personal property in his or her discretion. The notice required by this section may not be waived before the property is vacated.

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-17. Personal property after foreclosure; notice and access to recover personal property; abandonment.

Following a foreclosure on residential real property pursuant to this article, and after the previous owner has vacated the property either voluntarily or following an eviction proceeding, any personal property remaining on the real property may be deemed abandoned if the purchaser of the real property provides
notice, pursuant to this section, and the personal property remains on the real property at the conclusion of the notice period. The notice shall state that the personal property will be deemed abandoned if it is not removed from the real property before the end of the thirtieth day following the postmark date of the notice. If the locks are changed or the previous owner is otherwise prevented from accessing the personal property, the purchaser shall provide the previous owner access to the personal property on reasonable terms. The notice shall state a phone number, a mailing address, and a physical address where the purchaser or an agent for the purchaser who can provide access to the personal property can be contacted; and shall further state that the previous owner may contact the purchaser, and that purchaser will provide the previous owner access to the personal property on reasonable terms. The notice shall be sent to the former owner(s) of the real property at all the address(es) to which notice of foreclosure sale was sent as set forth in the trustee’s report of sale, as well as the last known address, if different. If the purchaser has received notice in writing or by electronic record that personal property belongs to another or that another person or entity has a security interest in the personal property, and if that person’s or entity’s mailing address is also received by the purchaser in writing or by electronic record, notice shall be sent to that person or entity as well. The notice shall be made to all required persons, as stated in this section, by both certified mail and regular mail. The notice is complete when mailed, notwithstanding the fact that the notice may be returned as unclaimed or refused. If the notice period passes and the personal property remains on the real property, then the personal property shall be deemed abandoned and the purchaser of the real property may dispose of the remaining personal property in the purchaser’s discretion. The notice required by this section may not be waived before the property is vacated.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §53-8-1, §53-8-2, §53-8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16 and §53-8-17, all relating to personal safety orders; confidentiality of proceedings; who may file a petition; contents of petition; temporary hearing and relief available; contents of temporary order; respondent’s opportunity to be heard; notice to respondent; final hearing and forms of relief; modification and rescission; appeals; criminal penalties; priority of petitions; fees and costs; service by law enforcement; rules and forms; limitation on use of information; and the sealing of records.

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 §53-8-1, §53-8-2, §53-8-3, §53-8-4, §53-8-5, §53-8-6, §53-8-7, §53-8-8, §53-8-9, §53-8-10, §53-8-11, §53-8-12, §53-8-13, §53-8-14, §53-8-15, §53-8-16 and §53-8-17, all to read as follows:
ARTICLE 8. PERSONAL SAFETY ORDERS.

§53-8-1. Definitions.

1. In this article the following words have the meanings indicated.

   1. (1) Final personal safety order. -- “Final personal safety order” means a personal safety order issued by a magistrate under section seven of this article.

   2. (2) Incapacitated adult. -- “Incapacitated adult” means any person who by reason of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health.

   3. (3) Law-enforcement officer. -- “Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public personal safety and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances.

   4. (4) Petitioner. -- “Petitioner” means an individual who files a petition under section four of this article.

   5. (5) Place of employment. -- “Place of employment” includes the grounds, parking areas, outbuildings and common or public areas in or surrounding the place of employment.

   6. (6) Residence. -- “Residence” includes the yard, grounds, outbuildings and common or public areas in or surrounding the residence.

   7. (7) Respondent. -- “Respondent” means an individual alleged in a petition to have committed an act specified in subsection (a), section four of this article against a petitioner.
(8) School. -- “School” means an educational facility comprised of one or more buildings, including school grounds, a school bus or any school-sponsored function or extracurricular activities. For the purpose of this subdivision, “school grounds” includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school. “Extracurricular activities” means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the State Board of Education and include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs.

(9) Sexual offense. -- “Sexual offense” means the commission of any of the following sections:

(A) Section nine, article eight, chapter sixty-one of this code;

(B) Section twelve, article eight, chapter sixty-one of this code;

(C) Section two, article eight-a, chapter sixty-one of this code;

(D) Section four, article eight-a, chapter sixty-one of this code;

(E) Section five, article eight-a, chapter sixty-one of this code;

(F) Section three, article eight-b, chapter sixty-one of this code;

(G) Section four, article eight-b, chapter sixty-one of this code;
(H) Section five, article eight-b, chapter sixty-one of this code;

(I) Section seven, article eight-b, chapter sixty-one of this code;

(J) Section eight, article eight-b, chapter sixty-one of this code;

(K) Section nine, article eight-b, chapter sixty-one of this code;

(L) Section two, article eight-c, chapter sixty-one of this code;

(M) Section three, article eight-c, chapter sixty-one of this code;

(N) Section three-a, article eight-d, chapter sixty-one of this code;

(O) Section five, article eight-d, chapter sixty-one of this code; and

(P) Section six, article eight-d, chapter sixty-one of this code.

(10) Temporary personal safety order. – “Temporary personal safety order” means a personal safety order issued by a magistrate under section five of this article.

§53-8-2. Confidentially of proceedings.

(a) General Provisions. -- All orders, findings, pleadings, recordings, exhibits, transcripts or other documents contained in a court file are confidential and are not available for public inspection: Provided, That unless the file is sealed pursuant to section *eighteen of this article or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the
parties, attorneys of record, guardians ad litem, designees authorized by a party in writing and law enforcement. A magistrate or circuit judge may open and inspect the entire contents of the court file in any case pending before the magistrate’s or judge’s court. When sensitive information has been disclosed in a hearing, pleading or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only pursuant to section *eighteen of this article.

(b) (1) Proceedings are not open to the public. -- Hearings conducted pursuant to this article are closed to the general public except that persons whom the court determines have a legitimate interest in the proceedings may attend.

(2) A person accompanying the petitioner may not be excluded from being present if his or her presence is desired by the person seeking a petition unless the person’s behavior is disruptive to the proceeding.

(c) Orders permitting examination or copying of file contents. -- Upon written motion, for good cause shown, the court may enter an order permitting a person who is not permitted access to a court file under subsection (a) to examine and/or copy documents in a file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, copying, or both, and shall specify the particular documents to be examined and/or copied and the arrangements under which such examination, copying, or both, may take place.

(d) Obtaining confidential records. -- Unless both the petitioner and the respondent waive confidentiality in writing,

*Clerk’s Note: On lines 5 and 15, the reference to “section eighteen of this article” should have read “section seventeen of this article”.
records contained in the court file may not be obtained by
subpoena but only by court order and upon full compliance
with statutory and case law requirements.

§53-8-3. Who may file; exclusivity; applicability of article.

(a) Who may file a petition. -- A petition for relief under
this article may be filed by:

(1) A person seeking relief under this article for herself
or himself; or

(2) A parent, guardian or custodian on the behalf of a
minor child or an incapacitated adult.

(b) Other remedies generally not precluded. -- By
proceeding under this article, a petitioner is not limited to or
precluded from pursuing any other legal remedy.

(c) Circumstances where article is inapplicable. -- This
article does not apply to a petitioner who is a person eligible
for relief under article twenty-seven, chapter forty-eight of
this code.

(d) Right to file. -- No person may be refused the right
to file a petition under the provisions of this article. No
person may be denied relief under the provisions of this
article if she or he presents facts sufficient under the
provisions of this article for the relief sought.

§53-8-4. Petition seeking relief.

(a) Underlying acts. -- A petitioner may seek relief under
this article by filing with a magistrate court a petition that
alleges the commission of any of the following acts against
the petitioner by the respondent:
(1) A sexual offense or attempted sexual offense as defined in section one of this article; or

(2) A violation of section nine-a, article two, chapter sixty-one of this code.

(b) Contents. --

The petition shall:

(1) Be verified and provide notice to the petitioner that an individual who knowingly provides false information in the petition is guilty of a misdemeanor and on conviction is subject to the penalties specified in subsection (d) of this section;

(2) Subject to the provisions of subsection (c) of this section, contain the address of the petitioner; and

(3) Include all information known to the petitioner of:

(A) The nature and extent of the act specified in subsection (a) of this section for which the relief is being sought, including information known to the petitioner concerning previous harm or injury resulting from an act specified in subsection (a) of this section by the respondent;

(B) Each previous and pending action between the parties in any court; and

(C) The whereabouts of the respondent.

(c) Address may be stricken. -- If, in a proceeding under this article, a petitioner alleges, and the court finds, that the disclosure of the address of the petitioner would risk further harm to the petitioner or a member of the petitioner’s household, that address may be stricken from the petition and
omitted from all other documents filed with, or transferred to, a court.

(d) Providing false information. -- An individual who knowingly provides false information in a petition filed under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $1,000 or confined in jail not more than ninety days, or both.

(e) Withdrawal or dismissal of a petition prior to adjudication operates as a dismissal without prejudice. -- No action for a personal safety order may be dismissed because the respondent is being prosecuted for a crime against the petitioner. For any action commenced under this article, dismissal of a case or a finding of not guilty, does not require dismissal of the action for a civil protection order.

§53-8-5. Temporary personal safety orders.

(a) Authorized; forms of relief available. --

(1) If after a hearing on a petition, whether ex parte or otherwise, a magistrate finds that there is reasonable cause to believe that the respondent has committed an act specified in subsection (a), section four of this article, against the petitioner, the magistrate shall issue a temporary personal safety order to protect the petitioner.

(2) The temporary personal safety order may include any or all of the following relief:

(A) Order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), section four of this article against the petitioner;

(B) Order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly,
indirectly or through third parties regardless of whether those third parties know of the order;

(C) Order the respondent to refrain from entering the residence of the petitioner;

(D) Order the respondent to remain away from the place of employment, school or residence of the petitioner: 
Provided, That when the respondent is alleged to have committed an act specified in subdivision (2), subsection (a), section four of this article, the magistrate may not prohibit the respondent from entering the respondent’s place of employment;

(E) Order the respondent not to visit, assault, molest or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner’s siblings and minors residing in the household of the petitioner;

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in section seven, article seven, chapter sixty-one of this code if:

(i) A weapon was used or threatened to be used in the commission of the offense predating the petitioning for the personal safety order;

(ii) The respondent has violated any prior order as specified under this article; or

(iii) The respondent has been convicted of an offense involving the use of a firearm; and

(G) Order either party to pay filing fees and costs of a proceeding pursuant to section thirteen of this article.
(3) If the magistrate issues an order under this section, the order shall contain only the relief necessary to protect the petitioner.

(b) *Immediate.* -- The temporary personal safety order shall be immediately served on the respondent by law enforcement, or at the option of the petitioner, pursuant to rules promulgated pursuant to section fifteen of this article.

(c) *Length of effectiveness.* --

(1) The temporary personal safety order shall be effective for not more than ten days after service of the order.

(2) The magistrate may extend the temporary personal safety order to effectuate service of the order or for other good cause. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition.

(d) *Final personal safety order hearing.* -- The magistrate may proceed with a final personal safety order hearing instead of a temporary personal safety order hearing if:

(1) (A) The respondent appears at the hearing; or

(B) The court otherwise has personal jurisdiction over the respondent; and

(2) The petitioner and the respondent expressly consent to waive the temporary personal safety order hearing.

§53-8-6. **Respondent’s opportunity to be heard; notice to respondent.**

(a) *Respondent’s opportunity to be heard.* -- A respondent shall have an opportunity to be heard on the
question of whether the magistrate should issue a final personal safety order subject to the provisions of this section.

(b) Personal safety order hearing. -- Date and time; notice.

(1) (A) The temporary personal safety order shall state the date and time of the final personal safety order hearing.

(B) Unless continued for good cause, the final personal safety order hearing shall be held no later than ten days after the temporary personal safety order is served on the respondent.

(2) The temporary personal safety order shall include notice to the respondent:

(A) In at least ten-point bold type, that if the respondent fails to appear at the final personal safety order hearing, the respondent may be served by first-class mail at the respondent’s last known address with the final personal safety order and all other notices concerning the final personal safety order;

(B) Specifying all the possible forms of relief under subsection (d) of section seven, that the final personal safety order may contain;

(C) That the final personal safety order shall be effective for the period stated in the order, not to exceed two years; and

(D) In at least ten-point bold type, that the respondent must notify the court in writing of any change of address.
§53-8-7. Personal safety hearing; forms of relief.

(a) Final personal safety order hearing. --

Proceeding; issuance of order. -- If the respondent appears for the final personal safety order hearing, has been served with a temporary personal safety order or the respondent waives personal service, the magistrate:

(1) May proceed with the final personal safety order hearing; and

(2) May issue a final personal safety order to protect the petitioner if the court finds by a preponderance of the evidence that:

(A) (i) The respondent has committed an act specified in subsection (a), section four of this article against the petitioner; and

(ii) The petitioner has a reasonable apprehension of continued unwanted or unwelcome contacts by the respondent; or

(B) The respondent consents to the entry of a personal safety order.

(b) A final personal safety order may be issued only to an individual who has filed a petition or on whose behalf a petition was filed under section three of this article.

(c) In cases where both parties file a petition under section four of this article, the court may issue mutual personal safety orders if the court finds by a preponderance of the evidence that:
(1) Each party has committed an act specified in subsection (a), section four of this article against the other party; and

(2) Each party has a reasonable apprehension of continued unwanted or unwelcome contacts by the other party.

(d) Personal safety order - Forms of relief. --

(1) The final personal safety order may include any or all of the following relief:

(A) Order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), section four of this article against the petitioner;

(B) Order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(C) Order the respondent to refrain from entering the residence of the petitioner;

(D) Order the respondent to remain away from the place of employment, school or residence of the petitioner;

(E) Order the respondent not to visit, assault, molest or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner’s siblings and minors residing in the household of the petitioner;

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in section seven, article seven, chapter sixty-one of this code if:
(i) A weapon was used or threatened to be used in the commission of the offense predicating the petitioning for the personal safety order;

(ii) The respondent has violated any prior order as specified under this article; or

(iii) The respondent has been convicted of an offense involving the use of a firearm; and

(G) Order either party to pay filing fees and costs of a proceeding pursuant to section thirteen of this article.

(2) If the magistrate issues an order under this section, the order shall contain only the relief necessary to protect the petitioner.

(e) Personal safety order - Service. --

(1) A copy of the final personal safety order shall be served on the petitioner, the respondent, the appropriate law-enforcement agency and any other person the court determines is appropriate, including a county board of education, in open court or, if the person is not present at the final personal safety order hearing, by first-class mail to the person’s last known address or by other means in the discretion of the court.

(2) (A) A copy of the final personal safety order served on the respondent in accordance with subdivision (1) of this subsection or the hearing of the announcement of the court’s ruling in court, constitutes actual notice to the respondent of the contents of the final personal safety order.

(B) Service is complete upon mailing.
(f) *Length of effectiveness.* -- All relief granted in a final personal safety order shall be effective for the period stated in the order, not to exceed two years.

§53-8-8. Modification and rescission.

(a) A personal safety order may be modified or rescinded during the term of the personal safety order after:

(1) Giving notice to the petitioner and the respondent; and

(2) A hearing.

(b) Modification may include extending the term of the personal safety order if the order was previously issued for a term of less than the two-year maximum term set forth in section seven of this article.

§53-8-9. Appeals.

(a) If a magistrate grants or denies relief under a petition filed under this article, a respondent or a petitioner may appeal to the circuit court for the county where the magistrate court is located.

(b) An appeal taken under this section shall be heard de novo in the circuit court.

(c) (1) If an appeal is filed under this section, the magistrate court judgment shall remain in effect until superseded by a judgment of the circuit court; and

(2) Unless the circuit court orders otherwise, modification or enforcement of the magistrate court order shall be by the magistrate court.
§53-8-10. Statement concerning violations.

A temporary personal safety order and final personal safety order issued under this article shall state that a violation of the order may result in:

1. Criminal prosecution; and
2. Incarceration, fine or both.

§53-8-11. Penalties.

(a) Fines or incarceration. -- An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall:

1. For a first offense, be fined not more than $1,000 or confined in jail not more than ninety days, or both; and
2. For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both.

(b) Arrest. -- A law-enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of a temporary or final personal safety order in effect at the time of the violation.

§53-8-12. Priority of petitions.

Any petition filed in magistrate court under the provisions of this article shall be given priority over any other civil action before the court, except actions pursuant to article twenty-seven, chapter forty-eight of this code and those in
§53-8-13. Fees and costs.

(a) Charges for fees and costs postponed. -- No fees may be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.

(b) Assessment of court costs and fees when temporary order is denied. -- If the petition is denied, court costs and fees shall be assessed by the magistrate against the petitioner at the conclusion of the temporary hearing, unless a fee waiver affidavit reflecting inability to pay has been filed or prohibited by federal law.

(c) Costs and fees may not be assessed against a prevailing party.

(d) Assessment of court costs and fees when personal safety order is granted. -- Except as in subsection (c), court costs and fees shall be assessed by the court at the conclusion of a proceeding, unless a fee waiver affidavit reflecting inability to pay has been filed.

(e) Assessment of court costs and fees when petitioner moves to terminate order. -- No court costs or fees shall be assessed against a petitioner who moves to terminate an order, whether the court grants or denies the motion.

(f) A person seeking waiver of fees, costs or security pursuant to section one, article two, chapter fifty-nine of this code shall execute before the clerk where the matter is pending a fee waiver affidavit which shall be kept
An additional fee waiver affidavit shall be filed whenever the financial condition of the person no longer conforms to the financial condition established by the Supreme Court of Appeals for determining inability to pay fees or whenever an order has been entered directing the filing of a new affidavit.

§53-8-14. Service by law enforcement.

Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized and required to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer may refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement’s receipt of the order. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.


(a) Authorized. -- The Supreme Court of Appeals may adopt rules and forms to implement the provisions of this article.

(b) Petition form. --

(1) The Supreme Court of Appeals is requested to adopt a form for a petition under this article.

(2) A petition form shall contain notice to a petitioner that an individual who knowingly provides false information in a petition filed under this subtitle is guilty of a misdemeanor and, on conviction, is subject to the penalties specified in section four of this article.
§53-8-16. Limitation on use of information.

Nothing in this article authorizes the inclusion of information contained in petition, pleadings or orders provided for by this article to be submitted to any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code. Nothing in this section prohibits the West Virginia State Police from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

§53-8-17. Sealing of records.

(a) Definitions. --

(1) In this section the following words have the meanings indicated.

(2) “Court record” means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps. “Court record” includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order and a judgment.

(3) “Seal” means to remove information from public inspection in accordance with this section.

(4) “Sealing” means:

(A) With respect to a record kept in a courthouse, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access;

(B) With respect to electronic information about a proceeding on the website maintained by the magistrate
court, circuit court or the Supreme Court of Appeals, removing the information from the public website; and

(C) With respect to a record maintained by any law-enforcement agency, by removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access.

(b) Written request. -- Either party to a petition filed pursuant to this article may file a written request with the clerk to seal all court records relating to the proceeding.

(c) Timing. -- A request for sealing under this section may not be filed within two years after the entry of a final order, or the denial or dismissal of the petition.

(d) Notice, hearing and findings. --

(1) On the filing of a request for sealing under this section, the court shall schedule a hearing on the request.

(2) The court shall give notice of the hearing to the parties.

(3) After the hearing, the court shall order the sealing of all court records relating to the proceeding if the court finds:

(A) Good cause to grant the request. In determining whether there is good cause to grant the request to seal court records, the court shall balance the privacy and potential danger of adverse consequences to the parties against the potential risk of future harm and danger to the petitioner and the community; and

(B) That none of the following are pending at the time of the hearing:
45 (i) A temporary personal safety order or protective order issued against the respondent in a proceeding between the petitioner and the respondent; or

48 (ii) A criminal charge against the respondent arising from an alleged act described in subsection (a) section four of this article in which the petitioner is the victim.

51 (e) Access to a sealed record. --

52 (1) This section does not preclude the following persons from accessing a sealed record for a legitimate reason:

54 (A) A law-enforcement officer;

55 (B) An attorney who represents or has represented the petitioner or the respondent in a proceeding;

57 (C) A prosecuting attorney; or

58 (D) An employee of the Department of Health and Human Resources.

60 (2) (A) A person not listed in subdivision (1) of this subsection may subpoena or file a motion for access to a record sealed under this section.

63 (B) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the sealed record under the terms and conditions that the court determines.

67 (C) In ruling on a motion under this subdivision, the court shall balance the person’s need for access to the record with the respondent’s right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.
(f) Compliance with order. -- Within sixty days after entry of an order under subdivision (3), subsection (d) of this section, each custodian of court records that are subject to the order of sealing shall advise in writing the court and the parties of compliance with the order.

CHAPTER 138

(Com. Sub. for S. B. 418 - By Senator Laird)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §62-12-12 of the Code of West Virginia, 1931, as amended, relating to expanding educational qualifications and adding work experience requirements for members of the Parole Board; and clarifying that members are eligible for reappointment.

Be it enacted by the Legislature of West Virginia:

That §62-12-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.


(a) The West Virginia Parole Board is continued. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same
political party. The board shall be appointed by the Governor, by and with the advice and consent of the Senate.

(b) Appointments shall be made in such a manner that each congressional district is represented and so that no more than four and no less than two members of the board reside in any one congressional district. No more than two members of the board may reside in any one county.

(c) Any person initially appointed to the board on or after July 1, 2012, shall have a degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, medicine or a combination thereof and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. The Governor shall appoint one of the nine appointed members to serve as chairperson at the Governor’s will and pleasure.

CHAPTER 139

(H. B. 4002 - By Delegates Morgan, Stephens, Hatfield, Hartman, Staggers and Talbott)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §30-1-2a of the Code of West Virginia, 1931, as amended, relating to annual seminar requirements for professional licensing boards.
Be it enacted by the Legislature of West Virginia:

That §30-1-2a of the Code of West Virginia, 1931, as amended be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-2a. Required orientation session.

(a) The Auditor shall provide at least one seminar each year for state licensing boards to inform the boards of the duties and requirements imposed by state law and rules. All state agencies shall cooperate with and assist in providing the seminar if the Auditor requests.

(b) The seminar may include the following topics:

1. Powers and duties of the boards and board members;
2. The financial procedures for boards;
3. Purchasing requirements;
4. Open meeting requirements;
5. Ethics;
6. Rule-making procedures;
7. Procedures for the handling of complaints, investigations and administrative hearings;
(8) Disciplinary actions available to boards;

(9) Records management procedures;

(10) Annual reports; and

(11) Any other topics the Auditor determines necessary or informative.

(c) (1) The board members and the executive director or the chief financial officer of a board newly created under the provisions of this chapter shall attend a seminar provided under this section within one year of the creation of the board.

(2) The chairperson, the executive director or the chief financial officer of the board shall annually attend a seminar provided under this section.

(3) Each board member shall attend at least one seminar provided under this section during each term of office.

(d) The Auditor may charge a registration fee for the seminar to cover the cost of providing the seminar. The fee may be paid from funds available to a board and a board may approve an expense reimbursement for the attendance of its members, executive director and the chief financial officer of the board.

(e) Prior to January 1 of each year, the Auditor shall provide to the chairs of the Joint Standing Committee on Government Organization a list of:

(1) The names and titles of the persons who attended the seminar;
Ch. 140] PROFESSIONS AND OCCUPATIONS 1183

(2) The boards represented; and

(3) The number and dates of the seminars offered by the Auditor during the previous year.

(f) Ex officio members who are elected or appointed state officers or employees and members of boards that have purely advisory functions with respect to a department or agency of the state are exempt from the requirements of this section.

CHAPTER 140

(Com. Sub. for H. B. 4001 - By Delegates Morgan, Stephens, Hatfield, Hartman, Staggers and Talbott)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §30-1-6 of the Code of West Virginia, 1931, as amended, relating to professional licensing boards; authorizing boards to establish fees by legislative rule notwithstanding specific fees established in code; providing for methods to notify licensees of proposal of fees in legislative rules; clarifying the requirement to redact social security numbers from records released to the public; prohibiting discrimination against an applicant; and establishing a denial of authorization to practice procedure.

Be it enacted by the Legislature of West Virginia:

That §30-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-6. Application for license or registration; examination fee; establishment of application deadline and fees by legislative rule; prohibiting discrimination.

(a) An applicant for an authorization to practice under the provisions of this chapter shall apply in writing to the proper board and submit the applicable fees.

(b) Each board may establish, by legislative rule, a deadline for an application for an examination.

(c) Notwithstanding the specific fees set forth in this chapter, each board may set fees by legislative rule that are sufficient to enable the board to effectively carry out its duties and responsibilities. At least thirty days prior to proposing a rule on fees, the board shall notify its membership of the proposed rule by:

(1) Mailing a copy of the proposed rule to its membership; or

(2) Posting the proposed rule on its website and notifying its membership of the website posting by:

(A) Mailing a postcard;

(B) Emailing a notice; or

(C) Placing a notice in its newsletter.

(d) In addition to any other information required by the board, an applicant’s social security number shall be recorded
on an application: *Provided*, That the board shall redact the social security number on any copies provided to the public.

(e) A board may not discriminate against an applicant because of political or religious opinion or affiliation, marital status, race, color, gender, creed, age, national origin, disability or other protected group status.

(f) A board may deny an applicant an authorization to practice in this state if an applicant’s authorization to practice in another jurisdiction has been revoked. The denial may be made by the board without a hearing unless the applicant requests a hearing within thirty days of the denial. A hearing must be conducted pursuant to the provisions of this article or the provisions contained in the rules of the board.

### CHAPTER 141

(Com. Sub. for H. B. 4037 - By Delegates Iaquinta, Longstreth, Fleischauer, Jones, Stephens, Walker and Azinger)

[Passed March 1, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §30-1-6a and §30-1-6b, all relating to the professional and occupational licensure and registration of former and current members of the armed forces of the United States; providing legislative findings and declarations; requiring consideration and appropriate acceptance of military education, training and experience for qualification for professional licensure;
providing rule-making authority for licensing or registration boards; providing exceptions; and requiring the extension of licenses and the waiver of certain requirements for licenses or registration of certain persons and accompanying spouses on active duty in the armed forces of the United States.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §30-1-6a and §30-1-6b, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-6a. Legislative findings and declarations; consideration of military education, training and experience for licensure or registration, generally; rule of construction.

(a) The Legislature finds that:

1 (1) Many current and former members of the United States Armed Forces have acquired extensive academic, professional and occupational training and experience in various professions and occupations while serving in the Armed Forces.

2 (2) In many instances, that level of academic education, training and experience may be comparable to, or may exceed, what is required in this state to register for examination, or qualify for licensure, certification or registration for a similar or related occupation or profession.

3 (3) Armed forces service members often leave the military with documented training, education and experience
which may be sufficient for application toward the requirements in this state to register for examination, or qualify for licensure, certification or registration in a comparable profession or occupation.

(4) Armed forces members who are separating from service are frequently delayed getting post-service employment even though they have applicable military education, training and experience which can qualify them for professional license, certifications or registration.

(5) Military veterans have expended and sacrificed a significant portion of their most productive earning potential and working years to the service of their country; however, reported unemployment rates of veterans are higher than national averages, and accordingly, military veterans should be given the opportunity to take advantage of their military education, experience and training, as appropriate, toward pursuing a career in many of the professions and occupations identified in this chapter.

(6) The state may be experiencing a shortage of qualified candidates for licensure, certification or registration for these various professions and occupations. Therefore, it is in the public interest of this state to accommodate and attract persons with the appropriate military education, training and experience, to apply for licensure, certification or registration in a profession or occupation in West Virginia.

(7) The boards in this chapter have the particular expertise necessary to evaluate and determine what military education, training and experience is adequate, acceptable and appropriate to be applied toward the qualifications for licensure, certification or registration and whether it is necessary that the competency of those persons be determined and evaluated by examination before they are so licensed, certified or registered.
(b) Except as provided in subsection (d) of this section, and notwithstanding any law to the contrary, all boards referred to in this chapter shall, upon presentation of satisfactory evidence by an applicant for licensure, certification or registration, accept education, training or experience of an individual as a member of the Armed Forces or Reserves of the United States, the National Guard of any state, or the military reserves of any state, as part of the evaluation process toward the qualifications to receive, or take examination for, that respective professional license, certification, or registration.

(c) Boards referred to in this chapter may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this section. The proposed rules shall establish criteria or requirements for military education, training and experience that qualify the applicant to take an examination for licensure, certification or registration or for a waiver of any examination requirement to be licensed, certified or registered.

(d) The provisions of this section do not apply to the boards referred to in this chapter whose license, certification or registration requirements are subject to the provisions of article twenty-four of this chapter.

(e) This section shall be liberally construed to effectuate its purpose in the light of these findings and declarations.

§30-1-6b. Licensure, certification or registration of persons and spouses of persons on military active duty outside this state; extension of licenses or registration; waiver of certain license, certification or registration requirements.

(a) During periods when the licensee, certificate holder or registrant is on active duty as a member of the Armed Forces
of the United States, the National Guard of this state or any
other state, or any other military reserve component and
deployed outside of this state, and for six months after
discharge from active duty, the license, certification or
registration of a person regulated by a board in this chapter
shall continue in good standing and shall be renewed without
payment of any dues or fees for the maintenance or renewal
of the license, certification or registration, and without
meeting continuing education requirements for the license,
certification or registration, when circumstances associated
with military duty prevent the individual from obtaining the
required continuing education.

(b) The licensee shall submit a waiver request to the
appropriate board, informing the board of circumstances
which include, but are not limited to, deployment outside of
the United States or in any combat area and verify that the
individual performs the licensed, certified or registered
profession or occupation as part of his or her military duties
as annotated in Defense Department Form 214 (DD214).

(c) During periods when the licensee, certificate holder or
registrant is accompanying his or her spouse who is on active
duty as a member of the Armed Forces of the United States,
the National Guard of this state or any other state, or any
other military reserve component and deployed outside of this
state, and for six months after discharge from active duty, the
license, certification or registration of that person regulated
by a board referred to in this chapter, shall continue in good
standing and shall be renewed without payment of any dues
or fees for the maintenance or renewal of the license,
certification or registration, and without meeting continuing
education requirements for the license certification or
registration when circumstances associated with
accompanying a spouse on military duty prevent the
individual from obtaining the required continuing education.
(d) The licensee shall submit a waiver request to the appropriate board informing the board of these circumstances which include, but are not limited to, deployment outside of the United States or in any combat area.

CHAPTER 142

(S. B. 214 - By Senators Snyder, Foster, Browning, Miller, Chafin, Boley, Jenkins, Stollings and Wills)

[Passed March 6, 2012; in effect from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of the Code of West Virginia, 1931, as amended, all relating to professions and occupations; revising the sunrise process; deleting the requirement for substantial change; and providing for sunrise application when establishing a scope of practice.

Be it enacted by the Legislature of West Virginia:

That §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

(a) Any professional or occupational group or organization, any individual or any other interested party
which proposes the regulation of any unregulated professional or occupational group or organization, or who proposes to establish, revise or expand the scope of practice of a regulated profession or occupation shall submit an application to the Joint Standing Committee on Government Organization, as set out in this article.

(b) The Joint Standing Committee on Government Organization may only accept an application for regulation of a professional or occupational group or organization, or establishment, revision or expansion of the scope of practice of a regulated profession or occupation, when the party submitting an application files with the committee a statement of support for the proposed regulation which has been signed by at least ten residents or citizens of the State of West Virginia who are members of the professional or occupational group or organization for which regulation is being sought, or for which establishment, revision or expansion of the scope of practice of a regulated profession or occupation is being sought.

(c) The completed application shall contain:

(1) A description of the occupational or professional group or organization for which regulation is proposed, or for which establishment, revision or expansion of the scope of practice of a regulated profession or occupation is proposed, including a list of associations, organizations and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation or establishment, revision or expansion of the scope of practice is necessary;

(3) The reasons why certification, registration, licensure or other type of regulation is being requested and why that regulatory alternative was chosen;
(4) A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation or the establishment, revision or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in this chapter;

(6) The benefit to the public that would result from the proposed regulation or establishment, revision or expansion of the scope of practice; and

(7) The cost of the proposed regulation or establishment, revision or expansion of the scope of practice.

§30-1A-3. Analysis and evaluation of application.

(a) The Joint Committee on Government Organization shall refer the completed application of the professional or occupational group or organization to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsection (c) of this section. The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit a report, and such supporting materials as may be required, to the Joint Standing Committee on Government Organization, as set out in this section.

(c) For an application proposing the regulation of an unregulated professional or occupational group or
organization, the report shall include evaluation, analysis and findings as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(2) Whether the practice of the profession or occupation requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational competence;

(3) Whether the public can be adequately protected by other means in a more cost-effective manner; and

(4) Whether the professional or occupational group or organization should be regulated as proposed in the application.

(d) For an application proposing the establishment, revision or expansion of the scope of practice of a regulated profession or occupation, the report shall include the evaluation, analysis and findings as set forth in subsection (c) of this section inasmuch as applicable, and a clear recommendation as to whether the scope of practice should be established, revised or expanded as proposed in the application.

(e) For an application received after December 1, and on or before June 1, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall present a report to the Joint Committee on Government Organization by December 31 of that year.
(f) For an application received after June 1 and on or before December 1, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall present a report to the Joint Committee on Government Organization by June 30 of the next year.

§30-1A-5. Reapplication requirements.

(a) If the Joint Standing Committee on Government Organization approves an application for regulation of a professional or occupational group or organization, but the legislation incorporating its recommendations does not become law in the year in which it is first introduced, the applicants for regulation may introduce legislation during each of the two successive regular sessions without having to make reapplication.

(b) If the Joint Standing Committee on Government Organization does not approve an application for regulation, establishment, revision or expansion of the scope of practice of a professional or occupational group or organization, any party who continues to propose the regulation, establishment, revision or expansion must reapply in accordance with the provisions of this article.

§30-1A-6. Article construction.

(a) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing one.

(b) Notwithstanding the provisions of subsection (a) of this section, the recommendations of the Joint Standing Committee on Government Organization are to be given
considerable weight in determining if a profession or occupation should be regulated, or if the scope of practice of a regulated profession or occupation should be established, revised or expanded.

CHAPTER 143

(Com. Sub. for S. B. 535 - By Senators Stollings, Foster and Miller)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §30-3-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-15a of said code; and to amend and reenact §30-14A-1 of said code, all relating to expanding prescriptive authority of advanced practice registered nurses, physician assistants and assistants to osteopathic physicians and surgeons to allow the prescribing of medications for chronic diseases for an annual supply; clarifying that controlled substances are not included and chronic pain management is excluded from chronic diseases; eliminating the exclusion for prescribing anticoagulants for the specific prescribers; and correcting terminology.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §30-7-15a of said code be amended and reenacted; and that §30-14A-1 of said code be amended and reenacted, all to read as follows:
ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) “Approved program” means an educational program for physician assistants approved and accredited by the Committee on Accreditation of Allied Health Education Programs or its successor;

(2) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office;

(3) “Physician assistant” means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master’s degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(4) “Physician assistant-midwife” means a physician assistant who meets all qualifications set forth under subdivision (3) of this subsection and fulfills the requirements set forth in subsection (d) of this section, is subject to all provisions of this section and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods; and
(b) The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the extent to which physician assistants may function in this state. The rules shall provide that the physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of a physician permanently licensed in this state but that supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant’s normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his or her direction but a separate place of work for the physician assistant may not be established. In promulgating the rules, the board shall allow the physician assistant to perform those procedures and examinations and, in the case of certain authorized physician assistants, to prescribe at the direction of his or her supervising physician, in accordance with subsection (r) of this section, those categories of drugs submitted to it in the job description required by this section. Certain authorized physician assistants may pronounce death in accordance with the rules proposed by the board which receive legislative approval. The board shall compile and publish an annual report that includes a list of currently licensed physician assistants and their supervising physician(s) and location in the state.

(c) The board shall license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence to it that he or she has met the following standards:
(1) Is a graduate of an approved program of instruction in primary health care or surgery;

(2) Has passed the certifying examination for a primary care physician assistant administered by the National Commission on Certification of Physician Assistants and has maintained certification by that commission so as to be currently certified;

(3) Is of good moral character; and

(4) Has attained a baccalaureate or master’s degree.

d) The board shall license as a physician assistant-midwife any person who meets the standards set forth under subsection (c) of this section and, in addition thereto, the following standards:

(1) Is a graduate of a school of midwifery accredited by the American College of Nurse-Midwives;

(2) Has passed an examination approved by the board; and

(3) Practices midwifery under the supervision of a board-certified obstetrician, gynecologist or a board-certified family practice physician who routinely practices obstetrics.

e) The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to July 1, 1994, and has passed the certifying examination for a physician assistant administered by the National Commission on Certification of Physician Assistants and has maintained certification by that commission so as to be currently certified; or
(2) He or she had been certified by the board as a physician assistant then classified as Type B prior to July 1, 1983.

(f) Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(g) When a graduate of an approved program who has successfully passed the National Commission on Certification of Physician Assistants’ certifying examination submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, and a $50 temporary license fee, and the application is complete, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant.

(h) When a graduate of an approved program submits an application to the board for a physician assistant license, accompanied by a job description as referenced by this section, and a $50 temporary license fee, and the application is complete, the board shall issue to the applicant a temporary license allowing the applicant to function as a physician assistant until the applicant successfully passes the National Commission on Certification of Physician Assistants’ certifying examination so long as the applicant sits for and obtains a passing score on the examination next offered following graduation from the approved program.

(i) No applicant may receive a temporary license who, following graduation from an approved program, has not obtained a passing score on the examination.

(j) A physician assistant who has not been certified by the National Commission on Certification of Physician Assistants will be restricted to work under the direct supervision of the supervising physician.
(k) A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the National Commission on Certification of Physician Assistants of his or her performance on the certifying examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall terminate automatically and the board shall so notify the physician assistant in writing.

(l) In the event a physician assistant fails a recertification examination of the National Commission on Certification of Physician Assistants and is no longer certified, the physician assistant shall immediately notify his or her supervising physician or physicians and the board in writing. The physician assistant shall immediately cease practicing, the license shall terminate automatically and the physician assistant is not eligible for reinstatement until he or she has obtained a passing score on the examination.

(m) A physician applying to the board to supervise a physician assistant shall affirm that the range of medical services set forth in the physician assistant’s job description are consistent with the skills and training of the supervising physician and the physician assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician and the physician assistant must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving the assistant an opportunity to be heard in the manner provided by article five, chapter twenty-nine-a of this code and as set forth in rules duly adopted by the board.

(n) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician
assistant remains with the supervising physician at all times including occasions when the assistant under his or her direction and supervision aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician but the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of the physician assistant unless the physician assistant is an employee of the facility.

(o) The acts or omissions of a physician assistant employed by health care facilities providing inpatient or outpatient services are the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

(p) A health care facility shall report in writing to the board within sixty days after the completion of the facility’s formal disciplinary procedure and after the commencement and conclusion of any resulting legal action, the name of any physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to the action. The health care facility shall also report any other formal disciplinary action taken against any physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(q) When functioning as a physician assistant, the physician assistant shall wear a name tag that identifies him or her as a physician assistant. A two and one-half by three and one-half inch card of identification shall be furnished by the board upon licensure of the physician assistant.
(r) A physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. A fee of $50 will be charged for prescription-writing privileges. The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the eligibility and extent to which a physician assistant may prescribe at the direction of the supervising physician. The rules shall include, but not be limited to, the following:

(1) Provisions and restrictions for approving a state formulary classifying pharmacologic categories of drugs that may be prescribed by a physician assistant are as follows:

(A) Schedules I and II of the Uniform Controlled Substances Act, antineoplastic, radiopharmaceuticals, general anesthetics and radiographic contrast materials shall be excluded from the formulary;

(B) Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill;

(C) In addition to the above referenced provisions and restrictions and at the direction of a supervising physician, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a “chronic condition” is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures and obesity. The prescriber authorized in this section shall note on the prescription the chronic disease being treated.

(D) Categories of other drugs may be excluded as determined by the board.
(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section;

(3) The maximum dosage a physician assistant may prescribe;

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant and, in meeting the national certification requirements, shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection permits a physician assistant to independently prescribe or dispense drugs.

(s) A supervising physician may not supervise at any one time more than three full-time physician assistants or their equivalent, except that a physician may supervise up to four hospital-employed physician assistants. No physician shall supervise more than four physician assistants at any one time.

(t) A physician assistant may not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (r) of this section. A physician assistant may not perform any service that his or her supervising physician is not qualified to perform. A physician assistant may not perform any service that is not included in his or her job description and approved by the board as provided for in this section.
(u) The provisions of this section do not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(v) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of $200. A fee of $100 is to be charged for the biennial renewal of the license. A fee of $50 is to be charged for any change or addition of supervising physician or change or addition of job location. A fee of $50 will be charged for prescriptive writing privileges.

(w) As a condition of renewal of physician assistant license, each physician assistant shall provide written documentation of participation in and successful completion during the preceding two-year period of continuing education, in the number of hours specified by the board by rule, designated as Category I by the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians and continuing education, in the number of hours specified by the board by rule, designated as Category II by the Association or either Academy.

(x) Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation results in the automatic expiration of any license as a physician assistant until the written documentation is submitted to and approved by the board.

(y) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:

(1) Provide certification with supporting written documentation of the successful completion of the required continuing education;
(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

(z) If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

(aa) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than two years, or be fined not more than $2,000, or both fined and imprisoned.

(bb) All physician assistants holding valid certificates issued by the board prior to July 1, 1992, are licensed under this section.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15a. Prescriptive authority for prescription drugs; coordination with Board of Pharmacy.

(a) The board may, in its discretion, authorize an advanced practice registered nurse to prescribe prescription drugs in a collaborative relationship with a physician licensed to practice in West Virginia and in accordance with applicable state and federal laws. An authorized advanced practice registered nurse may write
or sign prescriptions or transmit prescriptions verbally or by other means of communication.

(b) For purposes of this section an agreement to a collaborative relationship for prescriptive practice between a physician and an advanced practice registered nurse shall be set forth in writing. Verification of the agreement shall be filed with the board by the advanced practice registered nurse. The board shall forward a copy of the verification to the Board of Medicine and the Board of Osteopathic Medicine. Collaborative agreements shall include, but are not limited to, the following:

(1) Mutually agreed upon written guidelines or protocols for prescriptive authority as it applies to the advanced practice registered nurse’s clinical practice;

(2) Statements describing the individual and shared responsibilities of the advanced practice registered nurse and the physician pursuant to the collaborative agreement between them;

(3) Periodic and joint evaluation of prescriptive practice; and

(4) Periodic and joint review and updating of the written guidelines or protocols.

(c) The board shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code governing the eligibility and extent to which an advanced practice registered nurse may prescribe drugs. Such rules shall provide, at a minimum, a state formulary classifying those categories of drugs which shall not be prescribed by advanced practice registered nurse including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals and general anesthetics. Drugs listed under Schedule III shall be limited to a seventy-two hour supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a collaborative agreement as set forth
in subsections (a) and (b) of this section, the rules shall permit the
prescribing of an annual supply of any drug, with the exception of
controlled substances, which is prescribed for the treatment of a
chronic condition, other than chronic pain management. For the
purposes of this section, a “chronic condition” is a condition
which lasts three months or more, generally cannot be prevented
by vaccines, can be controlled but not cured by medication and
does not generally disappear. These conditions, with the
exception of chronic pain, include, but are not limited to, arthritis,
asthma, cardiovascular disease, cancer, diabetes, epilepsy and
seizures, and obesity. The prescriber authorized in this section
shall note on the prescription the chronic disease being treated.

(d) The board shall consult with other appropriate boards for
the development of the formulary.

(e) The board shall transmit to the Board of Pharmacy a list of
all advanced practice registered nurse with prescriptive authority.
The list shall include:

(1) The name of the authorized advanced practice registered
nurse;

(2) The prescriber’s identification number assigned by the
board; and

(3) The effective date of prescriptive authority.

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC
PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic
physicians and surgeons; definitions; board of
osteopathy rules; licensure; temporary licensure;
renewal of license; job description required;
revocation or suspension of license; responsibilities
of the supervising physician; legal responsibility
for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of “osteopathic physician assistant”; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) “Approved program” means an educational program for osteopathic physician assistants approved and accredited by the Committee on Allied Health Education and Accreditation or its successor.

(2) “Board” means the Board of Osteopathy established under the provisions of article fourteen, chapter thirty of this code.

(3) “Direct supervision” means the presence of the supervising physician at the site where the osteopathic physician assistant performs medical duties.

(4) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office.

(5) “License” means a certificate issued to an osteopathic physician assistant who has passed the examination for a primary care or surgery physician assistant administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants. All osteopathic physician assistants holding valid certificates issued by the board prior to March 31, 2010, are licensed under the provisions of this article, but must renew the license pursuant to the provisions of this article.

(6) “Osteopathic physician assistant” means an assistant to an osteopathic physician who is a graduate of an approved program
of instruction in primary care or surgery, has passed the National Certification Examination and is qualified to perform direct patient care services under the supervision of an osteopathic physician.

(7) “Supervising physician” means a doctor of osteopathy permanently licensed in this state who assumes legal and supervising responsibility for the work or training of an osteopathic physician assistant under his or her supervision.

(b) The board shall propose emergency and legislative rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, governing the extent to which osteopathic physician assistants may function in this state. The rules shall provide that:

(1) The osteopathic physician assistant is limited to the performance of those services for which he or she is trained;

(2) The osteopathic physician assistant performs only under the supervision and control of an osteopathic physician permanently licensed in this state but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the osteopathic physician assistant’s normal place of employment is on the premises of the supervising physician. The supervising physician may send the osteopathic physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the osteopathic physician assistant may not be established; and

(3) The board may allow the osteopathic physician assistant to perform those procedures and examinations and, in the case of authorized osteopathic physician assistants, to prescribe at the direction of his or her supervising physician in accordance with subsections (p) and (q) of this section those categories of drugs submitted to it in the job description required by subsection (f) of this section.
(c) The board shall compile and publish an annual report that includes a list of currently licensed osteopathic physician assistants and their employers and location in the state.

(d) The board shall license as an osteopathic physician assistant a person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she has met the following standards:

1. Is a graduate of an approved program of instruction in primary health care or surgery;

2. Has passed the examination for a primary care or surgery physician assistant administered by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants; and

3. Is of good moral character.

(e) When a graduate of an approved program submits an application to the board, accompanied by a job description in conformity with this section, for an osteopathic physician assistant license, the board may issue to the applicant a temporary license allowing the applicant to function as an osteopathic physician assistant for the period of one year. The temporary license may be renewed for one additional year upon the request of the supervising physician. An osteopathic physician assistant who has not been certified as such by the National Board of Medical Examiners on behalf of the National Commission on Certification of Physician Assistants will be restricted to work under the direct supervision of the supervising physician.

(f) An osteopathic physician applying to the board to supervise an osteopathic physician assistant shall provide a job description that sets forth the range of medical services to be provided by the assistant. Before an osteopathic physician assistant can be employed or otherwise use his or her skills, the
The supervising physician must obtain approval of the job description from the board. The board may revoke or suspend a license of an assistant to a physician for cause, after giving the person an opportunity to be heard in the manner provided by sections eight and nine, article one of this chapter.

(g) The supervising physician is responsible for observing, directing and evaluating the work records and practices of each osteopathic physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with an osteopathic physician assistant within ten days of his or her termination. The legal responsibility for any osteopathic physician assistant remains with the supervising physician at all times, including occasions when the assistant, under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a supervising physician must designate an alternate supervising physician but the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of an osteopathic physician assistant unless the osteopathic physician assistant is an employee of the facility.

(h) The acts or omissions of an osteopathic physician assistant employed by health care facilities providing in-patient services are the legal responsibility of the facilities. Osteopathic physician assistants employed by such facilities in staff positions shall be supervised by a permanently licensed physician.

(i) A health care facility shall report in writing to the board within sixty days after the completion of the facility’s formal disciplinary procedure, and after the commencement and the conclusion of any resulting legal action, the name of an osteopathic physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all
pertinent information relating to such action. The health care facility shall also report any other formal disciplinary action taken against an osteopathic physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(j) When functioning as an osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(k) (1) A supervising physician shall not supervise at any time more than three osteopathic physician assistants except that a physician may supervise up to four hospital-employed osteopathic physician assistants: Provided, That an alternative supervisor has been designated for each.

(2) An osteopathic physician assistant shall not perform any service that his or her supervising physician is not qualified to perform.

(3) An osteopathic physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided in this section.

(4) The provisions of this section do not authorize an osteopathic physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, registered nurses, licensed practical nurses, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(l) An application for license or renewal of license shall be accompanied by payment of a fee established by legislative rule of the Board of Osteopathy pursuant to the provisions of article three, chapter twenty-nine-a of this code.
(m) As a condition of renewal of an osteopathic physician assistant license, each osteopathic physician assistant shall provide written documentation satisfactory to the board of participation in and successful completion of continuing education in courses approved by the Board of Osteopathy for the purposes of continuing education of osteopathic physician assistants. The osteopathy board shall propose legislative rules for minimum continuing hours necessary for the renewal of a license. These rules shall provide for minimum hours equal to or more than the hours necessary for national certification. Notwithstanding any provision of this chapter to the contrary, failure to timely submit the required written documentation results in the automatic suspension of a license as an osteopathic physician assistant until the written documentation is submitted to and approved by the board.

(n) It is unlawful for any person who is not licensed by the board as an osteopathic physician assistant to use the title of osteopathic physician assistant or to represent to any other person that he or she is an osteopathic physician assistant. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $2,000.

(o) It is unlawful for an osteopathic physician assistant to represent to any person that he or she is a physician. A person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one, nor more than two years, or be fined not more than $2,000, or both fined and imprisoned.

(p) An osteopathic physician assistant may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the eligibility
and extent to which an osteopathic physician assistant may
prescribe at the direction of the supervising physician. The rules
shall provide for a state formulary classifying pharmacologic
categories of drugs which may be prescribed by such an
osteopathic physician assistant. In classifying such pharmacologic
categories, those categories of drugs which shall be excluded
include, but are not limited to, Schedules I and II of the Uniform
Controlled Substances Act, antineoplastics, radiopharmaceuticals,
general anesthetics and radiographic contrast materials. Drugs
listed under Schedule III are limited to a seventy-two hour supply
without refill. In addition to the above referenced provisions and
restrictions and at the direction of a supervising physician, the
rules shall permit the prescribing an annual supply of any drug
other than controlled substances which is prescribed for the
treatment of a chronic condition other than chronic pain
management. For the purposes of this section, a “chronic
condition” is a condition which last three months or more,
generally cannot be prevented by vaccines, can be controlled but
not cured by medication and does not generally disappear. These
conditions include, but are not limited to, arthritis, asthma,
cardiovascular disease, cancer, diabetes, epilepsy and seizures and
obesity. The prescriber authorized in this section shall note on the
prescription the condition for which the patient is being treated.
The rules shall provide that all pharmacological categories of
drugs to be prescribed by an osteopathic physician assistant be
listed in each job description submitted to the board as required in
this section. The rules shall provide the maximum dosage an
osteopathic physician assistant may prescribe.

(q) (1) The rules shall provide that to be eligible for such
prescription privileges, an osteopathic physician assistant must:

(A) Submit an application to the board for prescription
privileges;

(B) Have performed patient care services for a minimum of
two years immediately preceding the application; and
(C) Have successfully completed an accredited course of instruction in clinical pharmacology approved by the board.

(2) The rules shall provide that to maintain prescription privileges, an osteopathic physician assistant shall:

(A) Continue to maintain national certification as an osteopathic physician assistant; and

(B) Complete a minimum of ten hours of continuing education in rational drug therapy in each licensing period.

(3) Nothing in this subsection permits an osteopathic physician assistant to independently prescribe or dispense drugs.

CHAPTER 144

(Com. Sub. for H. B. 4077 - By Delegates Perdue, Hatfield, Lawrence, Marshall, Moye, Poore, Staggers, Ferns, Ellington, J. Miller and Rowan)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §30-4-17 of the Code of West Virginia, 1931, as amended, relating to activities that may be performed by a dental hygienist without a prior exam by a dentist; requiring a Public Health Practice permit; providing for the sealants to be placed pursuant to a collaborative agreement with a supervising dentist; and requiring a referral for a dental examination within six months.

Be it enacted by the Legislature of West Virginia:
That §30-4-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-17. Scope of practice; dental hygienist.

1 The practice of dental hygiene includes the following:

2 (1) Performing a complete prophylaxis, including the
3 removal of any deposit, accretion or stain from the surface of
4 a tooth or a restoration;

5 (2) Applying a medicinal agent to a tooth for a
6 prophylactic purpose;

7 (3) Taking a dental X-ray;

8 (4) Instructing a patient on proper oral hygiene practice;

9 (5) Placing sealants on a patient’s teeth without a prior
10 examination by a licensed dentist: Provided, That for this
11 subdivision, the dental hygienist has a Public Health Practice
12 permit issued by the West Virginia Board of Dental
13 Examiners, and subject to a collaborative agreement with a
14 supervising dentist and the patient is referred for a dental
15 examination within six months of sealant application.

16 (6) Performing all delegated procedures of a dental
17 hygienist specified by rule by the board; and

18 (7) Performing all delegated procedures of a dental
19 assistant specified by rule by the board.
CHAPTER 145

(Com. Sub. for S. B. 572 - By Senators Stollings, Kessler, Mr. President, Tucker, Foster, Williams and Klempa)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §30-7-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-7-1a; and to amend and reenact §30-7-15b and §30-7-15c of said code, all relating to advanced practice registered nurses; replacing the term “advanced nurse practitioner” with “advanced practice registered nurse”; providing a new definition; making technical corrections; including the Board of Osteopathic Medicine in receipt of copy of certain verifications; providing a grandfather clause; permitting the West Virginia Board of Examiners for Registered Professional Nurses to set an application fee by legislative rule; and providing the board rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-7-1 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 §30-7-1a; and that §30-7-15b and §30-7-15c of said code be amended and reenacted, all to read as follows:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-1. Definitions.

1 As used in this article the term:
(a) The practice of “advanced practice registered nurse” is a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination. An advanced practice registered nurse shall meet all the requirements set forth by the board by rule for an advance practice registered nurse which shall include, at a minimum, a valid license to practice as a certified registered nurse anesthetist, a certified nurse midwife, a clinical nurse specialist or a certified nurse practitioner.

(b) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses;

(c) The practice of “registered professional nursing” means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others;

(d) “Temporary permit” means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.
§30-7-1a. Eligibility for licensure by meeting requirements which existed prior to the legislative enactments during the 2012 legislative session.

An applicant for licensure as an advanced practice registered nurse as set forth in section one of this article who completed an advanced nursing education program and was recognized, licensed or certified in an advanced practice or a certified nurse midwife by West Virginia or another state before December 31, 2012, may apply for and receive an advanced practice registered nurse license if that applicant meets the requirements that were in place in West Virginia at the time the applicant qualified for initial advanced practice licensure.

§30-7-15b. Eligibility for prescriptive authority; application; fee.

An advanced practice registered nurse who applies for authorization to prescribe drugs shall:

(a) Be licensed and certified in West Virginia as an advanced practice registered nurse;

(b) Not be less than eighteen years of age;

(c) Provide the board with evidence of successful completion of forty-five contact hours of education in pharmacology and clinical management of drug therapy under a program approved by the board, fifteen hours of which shall be completed within the two-year period immediately before the date of application;

(d) Provide the board with evidence that he or she is a person of good moral character and not addicted to alcohol or the use of controlled substances; and
§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by an advanced practice registered nurse must comply with all applicable state and federal laws; must be signed by the prescriber with the initials “A.P.R.N.” or the designated certification title of the prescriber; and must include the prescriber's identification number assigned by the board or the prescriber’s national provider identifier assigned by the National Provider System pursuant to 45 C. F. R. §162.408.

(b) Prescriptive authorization shall be terminated if the advanced practice registered nurse has:

(1) Not maintained current authorization as an advanced practice registered nurse; or

(2) Prescribed outside the advanced practice registered nurse’s scope of practice or has prescribed drugs for other than therapeutic purposes; or

(3) Has not filed verification of a collaborative agreement with the board.

(c) Prescriptive authority for an advanced practice registered nurse must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the Board of Pharmacy, the Board of Medicine and the Board of Osteopathic Medicine within twenty-four hours after termination of, or change in, an advanced practice registered nurse’s prescriptive authority.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-11a; and to amend said code by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all relating to authorizing the West Virginia Board of Examiners for Registered Professional Nurses to designate nurse health programs for licensees and applicants for treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary action if the person complies with the goals and restrictions of the program; confidentiality, disclosure and waiver requirements; definitions; requirements for nurse health programs; and immunity from civil liability and civil action.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-7-11a; and that said code be amended by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:
ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11a. Voluntary agreements relating to alcohol or chemical dependency; confidentiality.

(a) In order to encourage voluntary participation in monitored alcohol, chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, any person who holds a license to practice registered nursing in this state or who is applying for a license to practice registered nursing in this state may enter into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter. The agreement between the licensee or applicant and the nurse health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(b) Any voluntary agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

(1) Such voluntary agreement is the result of the licensee or applicant self enrolling or voluntarily participating in the board- designated nurse health program;

(2) The board has not received nor filed any written complaints regarding said licensee or applicant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients; and

(3) The licensee or applicant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.
(c) Pursuant to this section, if any licensee or applicant enters into a voluntary agreement with a nurse health program as defined in section one, article seven-e of this chapter, and then fails to comply with or fulfill the terms of said agreement, the nurse health program shall report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to section eleven of this article or may permit continued participation in the nurse health program or both.

(d) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any licensee or applicant and any voluntary agreement made pursuant to this section shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

(e) Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this section to licensing boards in other jurisdictions of which the board has become aware and may be appropriate.

ARTICLE 7E. NURSE HEALTH PROGRAMS.

§30-7E-1. Definitions.

For the purposes of this article, the following words and terms have the meanings ascribed to them, unless the context clearly indicates otherwise.

(1) “Board” means the West Virginia Board of Examiners for Registered Professional Nurses.
(2) “Major mental illness” means a diagnosis of a mental disorder within the axis of psychotic or affective or mood, alcohol or chemical abuse or alcohol or chemical dependency as stipulated in the International Code of Diagnosis.

(3) “Nurse” means those health care professionals licensed by the West Virginia Board of Examiners for Registered Professional Nurses.

(4) “Nurse health program” means a program meeting the requirements of this article.

(5) “Qualifying illness” means the diagnosis of alcohol or substance abuse, alcohol or substance dependency or major mental illness.

§30-7E-2. Nurse health program.

(a) The board is authorized to designate one or more nurse health programs. To be eligible for designation by the board, a nurse health program shall:

(1) Enter into an agreement with the board outlining specific requirements of the program;

(2) Agree to make its services available to all licensed West Virginia registered professional nurses with a qualifying illness;

(3) Provide for the education of nurses with respect to the recognition and treatment of alcohol, chemical dependency and mental illness and the availability of the nurse health program for qualifying illnesses;
(4) Offer assistance to any person in referring a nurse for purposes of assessment or treatment or both for a qualifying illness;

(5) Monitor the status of a nurse who enters treatment for a qualifying illness pursuant to a written, voluntary agreement during treatment;

(6) Monitor the compliance of a nurse who enters into a written, voluntary agreement for a qualifying illness with the nurse health program setting forth a course for recovery;

(7) Agree to accept referrals from the board to provide monitoring services pursuant to a board order; and

(8) Include such other requirements as the board deems necessary.

(b) A designated nurse health program shall:

(1) Set and collect reasonable fees, grants and donations for administration and services provided;

(2) Work collaboratively with the board to develop model compliance agreements;

(3) Work collaboratively with the board to identify qualified providers of services as may be needed by the individuals participating in the nurse health program;

(4) Report to the board, no less than annually, statistics including the number of individuals served; the number of compliant individuals; the number of individuals who have successfully completed their agreement period; and the number of individuals reported to the board for suspected noncompliance: Provided, That in making such report the nurse health program shall not disclose any personally
identifiable information relating to any nurse participating in a voluntary agreement as provided herein. Provided, however, That in the case of a nurse not in compliance with the requirements, full disclosure of information will be provided to the board.

(c) The fact that a nurse is participating in a designated nurse health program is confidential, as is all nurse patient information acquired, created or used by the nurse health program, and it shall remain confidential and may not be subject to discovery or subpoena in a civil case. The disclosure of participation and noncompliance to the board, as required by a compliance agreement, waives the confidentiality as to the board for disciplinary purposes.

(d) The nurse health program and all persons engaged in nurse health program activities are immune from civil liability and no civil action may be brought or maintained while the nurse health program and all persons engaged in nurse health program activities are acting in good faith and within the scope of their duties.

(e) The board is immune from civil liability and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of the nurse health program or the board referral of an individual to the nurse health program when they are acting in good faith and within the scope of their duties.

§30-7E-3. Discretionary authority of boards to designate programs.

The West Virginia Board of Examiners of Registered Professional Nurses has the sole discretion to designate nurse health programs for licensees of the board and no provision of this article may be construed to entitle any nurse to the creation or designation of a nurse health program for any individual qualifying illness or group of qualifying illnesses.
AN ACT to amend and reenact §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Board of Osteopathy; renaming the board the West Virginia Board of Osteopathic Medicine; providing definitions; increasing board membership; providing board composition; increasing the board membership term length; adding term limits; authorizing certain associations to make recommendations on board membership; and adding certain requirements to qualify to serve on the board.

Be it enacted by the Legislature of West Virginia:

That §30-14-1, §30-14-2, §30-14-3 and §30-14-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-1. License required.

It is unlawful for any person to practice or offer to practice medicine and surgery as an osteopathic physician and surgeon in this state without a license or permit issued by the West Virginia Board of Osteopathic Medicine: Provided, That any license
heretofore issued under the laws of this state, authorizing its holder
to practice osteopathy and surgery, shall in no way be affected by
the enactment of this article; except that the holder of every such
license shall be subject to all of the provisions of this article
respecting the requirements and obligations herein prescribed for
the continuance in force of such license.

§30-14-2. Definitions.

(a) “Accredited osteopathic college” means a college of
osteopathy and surgery which requires as a minimum prerequisite
for admission preprofessional training of at least two years of
academic work in specified scientific subjects, as prescribed by the
board or by the college accrediting agency of the American
Osteopathic Association, in an accredited college of arts and
sciences and which requires for graduation a course of study
approved by the board in accordance with the minimum standards
established by the American Osteopathic Association;

(b) “Approved program of post-graduate clinical training”
means a program of clinical training approved by, or subject of
approval by, the American Osteopathic Association or approved
by the Accreditation Council for Graduate Medical Education for
the purposes of intern or resident training;

(c) “Board” means the West Virginia Board of Osteopathic
Medicine: Provided, That where used elsewhere in the Code, the
West Virginia Board of Osteopathy and Board of Osteopathy shall
also mean the West Virginia Board of Osteopathic Medicine;

(d) “License” means legal authorization issued by the board
to a fully qualified osteopathic physician to engage in the regular
practice of osteopathic medicine and surgery;

(e) “Osteopathy” means that system of the healing art which
places the chief emphasis on the structural integrity of the body
mechanism as being the most important single factor in
maintaining the well-being of the organism in health and disease;
(f) “Permit” means a limited, legal authorization issued by the board to an osteopathic physician to practice osteopathic medicine and surgery in this state while serving under special circumstances of public need or while undergoing post-graduate clinical training as a prerequisite to licensure;

(g) “Reciprocal endorsement” means a duly authenticated verification of the board, addressed to a board or agency of another country, state, territory, province or the District of Columbia, vouching that a license issued to an osteopathic physician and surgeon pursuant to the laws of this state is currently valid and not suspended or revoked for any cause or causes specified in this article.

§30-14-3. Board of Osteopathic Medicine.

(a) The West Virginia Board of Osteopathy is continued and effective July 1, 2012 shall be known as the West Virginia Board of Osteopathic Medicine. The members of the board shall continue to serve until a successor is appointed and may be reappointed.

(b) The Governor shall appoint, by and with advice and consent of the Senate, two additional members and stagger their initial terms:

(1) One person who is a licensed osteopathic physician or surgeon; and

(2) One person who is a licensed osteopathic physician assistant.

(c) The board consists of the following seven members, who are appointed to staggered terms by the Governor with the advice and consent of the Senate:

(1) Four licensed osteopathic physicians and surgeons;
(2) One licensed osteopathic physician assistant; and

(3) Two citizen members, who are not associated with the practice of osteopathic medicine.

(d) After the initial appointment, a board member’s term shall be for 5 years.

(e) The West Virginia Osteopathic Medical Association may submit recommendations to the Governor for the appointment of an osteopathic physician board member, and the West Virginia Association of Physician Assistants may submit recommendations to the Governor for the appointment of an osteopathic physician assistant board member.

(f) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment.

(g) Each member of the board must be a U.S. citizen and a resident of this state for a period of not less than five years immediately preceding the appointment and while serving as a member of the board.

(h) A member may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member may continue to serve until a successor has been appointed and has qualified.

(i) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.
(j) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(k) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, he or she is convicted of a felony under the laws of any jurisdiction, or he or she becomes a nonresident of this state.

(l) The board shall elect annually one of its members as a chairperson and one of its members as a secretary who shall serve at the will of the board.

(m) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(n) A simple majority of the membership serving on the board at a given time constitutes a quorum.

(o) The board shall hold at least two meetings each year. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(p) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

(q) The members of the board when acting in good faith, without malice and within the scope of their duties as board members shall enjoy immunity from individual civil liability.

§30-14-12b. Special volunteer medical license; civil immunity for voluntary services rendered to indigents.

(a) There is hereby established a special volunteer medical license for physicians retired or retiring from the active practice of
osteopathy who wish to donate their expertise for the medical care
and treatment of indigent and needy patients in the clinic setting
of clinics organized, in whole or in part, for the delivery of health
care services without charge. The special volunteer medical
license shall be issued by the West Virginia Board of Osteopathic
Medicine to physicians licensed or otherwise eligible for licensure
under this article and the rules promulgated hereunder without the
payment of any application fee, license fee or renewal fee, shall be
issued for a fiscal year or part thereof, and shall be renewable
annually. The board shall develop application forms for the special
license provided for in this subsection which shall contain the
physician’s acknowledgment that: (1) The physician’s practice
under the special volunteer medical license will be exclusively and
totally devoted to providing medical care to needy and indigent
persons in West Virginia; (2) the physician will not receive any
payment or compensation, either direct or indirect, or have the
expectation of any payment or compensation, for any medical
services rendered under the special volunteer medical license; (3)
the physician will supply any supporting documentation that the
board may reasonably require; and (4) the physician agrees to
continue to participate in continuing medical education as required
of physicians in active practice.

(b) Any physician who renders any medical service to
indigent and needy patients of clinics organized, in whole or in
part, for the delivery of health care services without charge under
a special volunteer medical license authorized under subsection (a)
of this section without payment or compensation or the
expectation or promise of payment or compensation is immune
from liability for any civil action arising out of any act or omission
resulting from the rendering of the medical service at the clinic
unless the act or omission was the result of the physician’s gross
negligence or willful misconduct. In order for the immunity under
this subsection to apply, there must be a written agreement
between the physician and the clinic pursuant to which the
physician will provide voluntary noncompensated medical
services under the control of the clinic to patients of the clinic
before the rendering of any services by the physician at the clinic:

Provided, That any clinic entering into such written agreement shall be required to maintain liability coverage of not less than one million dollars per occurrence.

(c) Notwithstanding the provisions of subsection (a) of this section, a clinic organized, in whole or in part, for the delivery of health care services without charge shall not be relieved from imputed liability for the negligent acts of a physician rendering voluntary medical services at or for the clinic under a special volunteer medical license authorized under subsection (a) of this section.

(d) For purposes of this section, “otherwise eligible for licensure” means the satisfaction of all the requirements for licensure as listed in section ten of this article and in the legislative rules promulgated hereunder, except the fee requirements of subsections (b) and (d) of said section and of the legislative rule promulgated by the board relating to fees.

(e) Nothing in this section may be construed as requiring the board to issue a special volunteer medical license to any physician whose medical license is or has been subject to any disciplinary action or to any physician who has surrendered a medical license or caused such license to lapse, expire and become invalid in lieu of having a complaint initiated or other action taken against his or her medical license, or who has elected to place a medical license in inactive status in lieu of having a complaint initiated or other action taken against his or her medical license, or who have been denied a medical license.

(f) Any policy or contract of liability insurance providing coverage for liability sold, issued or delivered in this state to any physician covered under the provisions of this article shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives or agrees not to assert as a defense on behalf of the policyholder or any beneficiary thereof, to any claim
covered by the terms of such policy within the policy limits, the
immunity from liability of the insured by reason of the care and
treatment of needy and indigent patients by a physician who holds
a special volunteer medical license.

CHAPTER 148

(H. B. 4097 - By Delegates Morgan,
Doyle and Lawrence)

[Passed March 6, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §30-27-3 and §30-27-8 of the Code
of West Virginia, 1931, as amended, all relating to professions
and occupations; Board of Barbers and Cosmetologists; and
creating a license to practice hair styling.

Be it enacted by the Legislature of West Virginia:

That §30-27-3 and §30-27-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.


1. As used in this article, the following words and terms
2. have the following meanings, unless the context clearly
3. indicates otherwise:

(a) “Aesthetics” or “esthetics” means any one or any
4. combination of the following acts when done on the human
5. body for compensation and not for the treatment of disease:
(1) Administering cosmetic treatments to enhance or improve the appearance of the skin, including cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating or performing any other similar procedure on the skin of the human body or scalp;

(2) Applying, by hand or with a mechanical or electrical apparatus, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person’s face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(3) The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, back, shoulders, hands, elbows and feet up to and including the knee;

(4) The waxing, tweezing and threading of hair on another person’s body;

(5) The wrapping of another person’s body in a body wrap;

(6) Applying artificial eyelashes and eyebrows; and

(7) The lightening of hair on the body except the scalp.

(b) “Aesthetician” or “esthetician” means a person licensed under the provisions of this article who engages in the practice of aesthetics.

(c) “Applicant” means a person making application for a professional license, license, certificate, registration, permit or renewal under the provisions of this article.

(d) “Barber” means a person licensed under the provisions of this article who engages in the practice of barbering.
(e) “Barbering” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Shaving, shaping and trimming the beard, or both;
2. Cutting, singeing, shampooing, arranging, dressing, tinting, bleaching, or applying lotions or tonics on human hair, or a wig or hairpiece; and
3. Applications, treatments or rubs of the scalp, face, or neck with oils, creams, lotions, cosmetics, antiseptics, powders, or other preparations in connection with the shaving, cutting or trimming of the hair or beard.

(f) “Barber crossover” or “cosmetologist crossover” is a person who is licensed to perform barbering and cosmetology.

(g) “Barber permanent waving” means the following acts done on the human body for compensation and not for the treatment of disease:

1. The bleaching or tinting of hair; and
2. The permanent waving of hair.

(h) “Barber permanent wavist” means a person licensed to perform barbering and barber permanent waving.

(i) “Board” means the West Virginia Board of Barbers and Cosmetologists.

(j) “Certificate” means an instructor certificate to teach in a school under the provisions of this article.
(k) “Certificate holder” means a person certified as an instructor to teach in a school under the provisions of this article.

(l) “Cosmetologist” means a person licensed under the provisions of this article who engages in the practice of cosmetology.

(m) “Cosmetology” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

2. Nail care;

3. Applying by hand or with a mechanical or electrical device or appliance, any cosmetics, makeups, oils, powders, clays, antiseptics, tonics, lotions, creams or chemical preparations necessary for the practice of aesthetics to another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

4. The rubbing, cleansing, exercising, beautifying or grooming of another person’s face, neck, shoulders, hands, elbows and feet up to and including the knee;

5. The wrapping of another person’s body in a body wrap; and

6. Performing aesthetics.
“General supervision” means:

1. For schools, a master or certified instructor is on the premises and is quickly and easily available; or

2. For salons, a professional licensee is on the premises and is quickly and easily available.

“Hair braiding” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease: Braiding, plaiting, twisting, wrapping, threading, weaving, extending or locking of natural human hair by hand or mechanical device.

“Hair Styling” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. Cutting, styling, shaping, arranging, braiding, weaving, dressing, adding extensions, curling, waving, permanent waving, relaxing, straightening, shampooing, cleansing, singeing, bleaching, tinting, coloring, waxing, tweezing, threading or similarly work on human hair, or a wig or hairpiece, by any means, including hands, mechanical or electrical devices or appliances;

2. The rubbing, cleansing, exercising, beautifying or grooming of another person's face, neck, shoulders, hands, elbows and feet up to and including the knee.

“Hair Stylist” means a person licensed under the provisions of this article who engages in the practice of hair styling.

“License” means a professional license, a salon license or a school license.
(s) “Licensee” means a person, corporation or firm holding a license issued under the provisions of this article.

(t) “Nail care” means any one or any combination of the following acts when done on the human body for compensation and not for the treatment of disease:

1. The cleansing, dressing, or polishing of nails of a person;
2. Performing artificial nail service; and
3. The cosmetic treatment of the feet up to the knee and the hands up to the elbow.

(u) “Nail technician” or “manicurist” means a person licensed under the provisions of this article who engages in the practice of nail care.

(v) “Permit” means a work permit.

(w) “Permitee” means a person holding a work permit.

(x) “Professional license” means a license to practice as an aesthetician, barber, barber crossover, barber permanent wavist, cosmetologist, cosmetologist crossover or nail technician.

(y) “Registration” means a registration issued by the board to a person who rents or leases a booth or chair from a licensed salon owner and operator, or both, or a registration issued by the board to a person who is a student in a school.

(z) “Registrant” means a person who holds a registration under the provisions of this article.

(aa) “Salon” means a shop or other facility where a person practices under a professional license.
(bb) “Salon license” means a license to own and operate a salon.

(cc) “School” means a facility to educate persons to be licensed with professional licenses under the provisions of this article.

(dd) “School license” means a license to own and operate a school.

(ee) “Student registration” means a registration issued by the board to a student to study at a school licensed under the provisions of this article.

§30-27-8. Professional license requirements.

(a) An applicant for a professional license to practice as an aesthe tician, barber, barber crossover, barber permanent wavist, cosmetologist, hair stylist, cosmetologist crossover or nail technician shall present satisfactory evidence that he or she:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has a high school diploma, a GED, or has passed the “ability to benefit test” approved by the United States Department of Education;

(4) Has graduated from a school which has been approved by the board;

(5) Has passed an examination that tests the applicant’s knowledge of subjects specified by the board: Provided, that the board may recognize a certificate or similar license in lieu of the examination or part of the examination that the board requires;

(6) Has paid the applicable fee;
(7) Presents a certificate of health from a licensed physician;

(8) Is a citizen of the United States or is eligible for employment in the United States; and

(9) Has fulfilled any other requirement specified by the board.

(b) A license to practice issued by the board prior to July 1, 2009, shall for all purposes be considered a professional license issued under this article: Provided, That a person holding a license issued prior to July 1, 2009, must renew the license pursuant to the provisions of this article.

CHAPTER 149

(S. B. 424 - By Senators D. Facemire, Klempa, Green, Yost and Tucker)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §30-27-10 of the Code of West Virginia, 1931, as amended, relating to the Board of Barbers and Cosmetologists; and exempting certain barbers from continuing education requirements.

Be it enacted by the Legislature of West Virginia:

That §30-27-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-10. Professional license and certificate renewal requirements.

(a) A professional licensee and certificate holder shall annually or biennially on or before January 1, renew his or her professional license or certificate by completing a form prescribed by the board, paying the renewal fee and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license or certificate, and a late fee for any renewal not paid by the due date.

(c) The board shall require as a condition of renewal of a professional license or certificate that each licensee or certificate holder complete continuing education: Provided, that a barber who has been licensed for twenty years or more is exempt from the continuing education requirement of this subsection.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license or certificate.
AN ACT to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating to requiring the disclosure of subcontractors within one business day of the opening of bids for certain public construction contracts by the apparent low bidder when any subcontractor is providing over $25,000 of services on the project; providing exceptions; providing what information is to be submitted to the Division of Purchasing; disqualifying bidders for failure to comply; obtaining approval from the division before substituting any subcontractor; providing circumstances when substitutions are permitted; and providing a sunset provision.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements set forth in this section may be referred to as the West Virginia Fairness In Competitive Bidding Act.
4 (b) As used in this section:

5 (1) “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder’s response to the bid solicitation. The bidder must certify that it:

10 (A) Is ready, able and willing to timely furnish the labor and materials required to complete the contract;

12 (B) Is in compliance with all applicable laws of the State of West Virginia; and

14 (C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

16 (2) “The state and its subdivisions” means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

19 (c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding $25,000 in total cost: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

30 (d) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.
(e) The apparent low bidder on a contract for the construction, alteration, decoration, painting or improvement of a new or existing building or structure with the Department of Administration, Division of Purchasing, valued at more than $500,000.00 shall submit a list of all subcontractors who will perform more than $25,000.00 of work on the project including labor and materials: Provided, that this section shall not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects. The list shall include the names of the bidders and the license numbers as required by article eleven, chapter twenty-one of this code. This information shall be provided to the Division of Purchasing within one business day of the opening of bids for review prior to the awarding of a construction contract. If no subcontractors are to be used to complete the project it will be so noted on the subcontractor list. Failure to submit the subcontractor list within one business day after the deadline for submitting bids shall result in disqualification of the bid.

(f) Written approval must be obtained from the Division of Purchasing before any subcontractor substitution is permitted. Substitutions are not permitted unless:

1. The subcontractor listed in the original bid has filed for bankruptcy;

2. The Division of Purchasing refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter five-a of this code or a suspension under section thirty-two, article three, chapter five-a of this code; or

3. The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable or refuses to perform his subcontract.
(g) The amendments to this section made during the 2012 regular session of the Legislature shall expire one year from the effective date of the amendments absent further action of the Legislature.

(h) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to any prospective low bidder which the contracting public entity determines not to have met any one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(i) Any public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the Code of West Virginia.

(j) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.
(k) All bids shall be open in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.

(l) Nothing in this section shall apply to:

1. Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

2. Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student’s training program;

3. Emergency repairs to building components and systems. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components and systems or cause danger to those persons using the building components and systems; and

4. Any situation where the state or a subdivision thereof reaches an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-29-1, §22-29-2, §22-29-3 and §22-29-4, all relating to requiring new building construction projects of public agencies and projects receiving state funds to be designed and constructed complying with the ICC International Energy Conservation Code and the ANSI/ASHRAE/IESNA Standard 90.1-2007; setting forth findings; defining terms; and setting standards for construction projects with federal funding.

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 §22-29-1, §22-29-2, §22-29-3 and §22-29-4, all to read as follows:

ARTICLE 29. GREEN BUILDINGS MINIMUM ENERGY STANDARDS.

§22-29-1. Short title and effective date.

1 This article is called the Green Buildings Act and is effective July 1, 2012.

§22-29-2. Findings and purpose.

1 (a) The Legislature finds that:
(1) Encouraging the construction of energy-efficient public buildings is in the public interest and promotes the general welfare of the people of the state.

(2) Efficient energy use by public buildings contributes substantially to improving the environment.

(3) Public buildings can be built in accordance with energy-efficient standards.

(b) This article is enacted to more efficiently spend public funds and protect the health and welfare of West Virginia residents.

§22-29-3. Definitions.

As used in this article:

(a) “ANSI” means the American National Standards Institute;

(b) “ASHRAE” means the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

(c) “IESNA” means the Illuminating Engineering Society of North America;

(d) “ICC” means the International Code Council; and

(e) “Public agency” means an agency of the state and political subdivisions, public institutions of higher education and boards of education.


All new building construction projects of public agencies that have not entered the schematic design phase prior to July 1,
2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this section shall only apply to the extent such standards are consistent with the federal standards.

CHAPTER 152

(S. B. 469 - By Senators Kessler, Mr. President, and Hall)

[Passed February 10, 2012; in effect from passage.] [Approved by the Governor on February 20, 2012.]

AN ACT to amend and reenact §5-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §5-16-5a and §5-16-5b; to amend said code by adding thereto a new section, designated §5-16D-7; to amend and reenact §11-21-96 of said code; and to amend and reenact §18-9A-24 of said code, all relating to other post-employment benefits generally; directing the Director of the Public Employees Insurance Agency to evaluate and administer programs that ensure the long-term effectiveness of the agency; requiring the director to issue annual progress reports to the Legislature; prohibiting the Public Employees Insurance Agency Finance Board from including in the financial plans any subsidy from the Retiree Health Benefit Trust for the cost of coverage for retired employees who were hired on or after July 1, 2010; creating the
Post-July 1, 2010 Employee Trust; allowing appointment of a joint committee; directing a certain amount of personal income tax into the West Virginia Retiree Health Benefit Trust Fund until Governor certifies that trust fund is fully funded or July 1, 2037, whichever date is later; directing an amount of personal income tax into the Post-July 1, 2010 Employee Trust Fund; and specifying that portions of the employer annual required contribution of county boards of education shall be billed to and be a responsibility of the state.

Be it enacted by the Legislature of West Virginia:

That §5-16-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto two new sections, designated §5-16-5a and §5-16-5b; that said code be amended by adding thereto a new section, designated §5-16D-7; that §11-21-96 of said code be amended and reenacted; and that §18-9A-24 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of Director of Agency; employees; civil service coverage.

(a) The Public Employees Insurance Agency consists of the Director, the Finance Board, the Advisory Board and any employees who may be authorized by law. The Director shall be appointed by the Governor, with the advice and consent of the Senate, and serves at the will and pleasure of
the Governor. The Director shall have at least three years' experience in health or governmental health benefit administration as his or her primary employment duty prior to appointment as director. The Director shall receive actual expenses incurred in the performance of official business. The Director shall employ any administrative, technical and clerical employees required for the proper administration of the programs provided in this article. The Director shall perform the duties that are required of him or her under the provisions of this article and is the Chief Administrative Officer of the Public Employees Insurance Agency. The Director may employ a deputy director.

(b) Except for the Director, his or her personal secretary, the Deputy Director and the Chief Financial Officer, all positions in the agency shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code.

(c) The Director is responsible for the administration and management of the Public Employees Insurance Agency as provided in this article and in connection with his or her responsibility may make all rules necessary to effectuate the provisions of this article. Nothing in section four or five of this article limits the Director’s ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation or any other actions which would serve to implement the plan or plans designed by the Finance Board. The Director is to function as a benefits management professional and should avoid political involvement in
managing the affairs of the Public Employees Insurance Agency.

(d) The Director should make every effort to evaluate and
administer programs to improve quality, improve health
status of members, develop innovative payment
methodologies, manage health care delivery costs, evaluate
effective benefit designs, evaluate cost sharing and benefit
based programs, and adopt effective industry programs that
can manage the long-term effectiveness and costs for the
programs at the Public Employees Insurance Agency to
include, but not be limited to:

(1) Increasing generic fill rates;

(2) Managing specialty pharmacy costs;

(3) Implementing and evaluating medical home models
and health care delivery;

(4) Coordinating with providers, private insurance
carriers and to the extent possible Medicare to encourage the
establishment of cost effective accountable care
organizations;

(5) Exploring and developing advanced payment
methodologies for care delivery such as case rates, capitation
and other potential risk-sharing models and partial risk-
sharing models for accountable care organizations and/or
medical homes;

(6) Adopting measures identified by the Centers for
Medicare and Medicaid Services to reduce cost and enhance
quality;

(7) Evaluating the expenditures to reduce excessive use
of emergency room visits, imaging services and other drivers
of the agency’s medical rate of inflation;
(8) Recommending cutting-edge benefit designs to the Finance Board to drive behavior and control costs for the plans;

(9) Implementing programs to encourage the use of the most efficient and high-quality providers by employees and retired employees;

(10) Identifying employees and retired employees who have multiple chronic illnesses and initiating programs to coordinate the care of these patients;

(11) Initiating steps by the agency to adjust payment by the agency for the treatment of hospital acquired infections and related events consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services. The agency shall protect employees and retired employees from any adjustment in payment for hospital acquired infections; and

(12) Initiating steps by the agency to reduce the number of employees and retired employees who experience avoidable readmissions to a hospital for the same diagnosis related group illness within thirty days of being discharged by a hospital in this state or another state consistent with the payment policies, operational guidelines and implementation timetable established by the Centers of Medicare and Medicaid Services.

(e) The Director shall issue an annual progress report to the Joint Committee on Government and Finance on the implementation of any reforms initiated pursuant to this section and other initiatives developed by the agency.

§5-16-5a. Retiree premium subsidy from Retiree Health Benefit Trust for hires prior to July 1, 2010.

The Finance Board may include in its financial plans a subsidy from the Retiree Health Benefit Trust Fund created
by article sixteen-d of this chapter for the cost of coverage
under the major health care benefits plans, only for retired
employees who were hired before July 1, 2010.

§5-16-5b. Creation of trust for retirees hired on or after July 1,
2010.

There is hereby created a special revenue account in the
State Treasury, designated the Post-July 1, 2010, Employee
Trust Fund, which shall be an interest-bearing account and
may be invested in accordance with the provisions of article
six, chapter twelve of this code, with the interest income a
proper credit to the fund. The fund shall consist of moneys
appropriated by the Legislature and moneys transferred
pursuant to section ninety-six, article twenty-one, chapter
eleven of this code. Expenditures from the fund shall be for
the purposes set forth by the Legislature in furtherance of an
incentive contingent on future legislative directives for
retirees who were hired on or after July 1, 2010, to be
received upon their retirement. Such incentive may be
determined by the Legislature in accordance with section
seven, article sixteen-d of this chapter.

ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST
FUND.

§5-16D-7. Select Committee on Other Post-Employment
Benefits.

(a) Pursuant to the authority contained in section one,
article one, chapter four of this code, the presiding officers of
each house of the Legislature may appoint a joint committee
to be known at the Select Committee on Other Post-
Employment Benefits to study other post-employment
benefits, including the effects of the amendments to this code
relating to other post-employment benefits made during the
2012 regular session of the Legislature.
1256 PUBLIC EMPLOYEES [Ch. 152

9 (b) The Select Committee on Other Post-Employment
10 Benefits in consultation with the Director of the Public
11 Employees Insurance Agency and the Finance Board of the
12 Public Employees Insurance Agency is also authorized to
13 study and propose to the Joint Committee on Government
14 and Finance an incentive for those retirees who were hired on
15 or after July 1, 2010. The committee shall consider the
16 funding available in the Post-July 1, 2010, Employee Trust
17 Fund created pursuant to section five-b, article sixteen of this
18 chapter.

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.

1 (a) There is hereby dedicated an annual amount of $45
2 million from annual collections of the tax imposed by this
3 article for payment of the unfunded liability of the current
4 Workers’ Compensation Fund. No portion of this amount
5 may be pledged for payment of debt service on revenue
6 bonds issued pursuant to article two-d, chapter twenty-three
7 of this code.

8 (b) Notwithstanding any other provision of this code to
9 the contrary, beginning in January of 2006, $45 million from
10 collections of the tax imposed by this article shall be
11 deposited each calendar year to the credit of the old fund
12 created in article two-c, chapter twenty-three of this code, in
13 accordance with the following schedule. Each calendar
14 month, except for July, August and September each year, $5
15 million shall be transferred, on or before the twenty-eighth
16 day of the month, to the Workers’ Compensation Debt
17 Reduction Fund created in article two-d, chapter twenty-three
18 of this code.
(c) The transfers required by subsection (b) of this section shall continue to be made until the Governor certifies to the Legislature that an independent actuarial study determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety. Thereafter, an annual amount of $35 million from annual collections of the tax imposed by this article and which were previously dedicated by this section for payment of the unfunded liability of the Workers Compensation Fund shall be dedicated for payment of the unfunded liability of the West Virginia Retiree Health Benefit Trust Fund and to provide funding for the Post-July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code. The $35 million transferred pursuant to this subsection shall be transferred in accordance with the following:

(1) The annual amount of $30 million shall be transferred into the West Virginia Retiree Health Benefit Trust Fund, by transferring $5 million each month for the following months of each year: October, November, December, January, February and March, until the Governor certifies to the Legislature that an independent actuarial study has determined that the unfunded liability of West Virginia Retiree Health Benefit Trust Fund, as created in section two, article sixteen-d, chapter five of this code, has been provided for in its entirety or July 1, 2037, whichever date is later. No transfer into the West Virginia Retiree Health Benefit Trust Fund pursuant to this subdivision shall be made thereafter; and

(2) An annual amount of $5 million shall be transferred into the Post-July 1, 2010, Employee Trust Fund created by section five-b, article sixteen, chapter five of this code in April of each year.
ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


(a) The allowance to the Public Employees Insurance Agency for school employees shall be made in accordance with the following: The number of individuals employed by county boards as professional educators pursuant to section four of this article, plus the number of individuals employed by county boards as service personnel pursuant to section five of this article, plus the number of individuals employed by county boards as professional student support personnel pursuant to section eight of this article, multiplied by the average premium rate for all county board of education employees established by the Public Employees Insurance Agency Finance Board. The average premium rate for all county board of education employees shall be incorporated into each financial plan developed by the Finance Board in accordance with section five, article sixteen, chapter five of this code. The premiums shall include any proportionate share of retirees subsidy established by the Finance Board and the difference, if any, between the previous year's actual premium costs and the previous year's appropriation, if the actual cost was greater than the appropriation. The amount of the allowance provided in this subsection shall be paid directly to the West Virginia Public Employees Insurance Agency. Each county board shall reflect its share of the payment as revenue on its financial statements to offset its expense for the employer annual required contribution, as defined in article sixteen-d, chapter five of this code.

(b) Notwithstanding any other provision of section six, article sixteen-d, chapter five of this code to the contrary, any amount of employer annual required contribution allocated
public employees

and billed to county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for employees who are employed as professional employees within the limits authorized by section four of this article, employees who are employed as service personnel within the limits authorized by section five of this article, and employees who are employed as professional student support personnel within the limits authorized by section eight of this article, shall be charged to the state: Provided, That nothing in this subsection requires any specific level of funding by the Legislature in any particular year: Provided, however, That charging specified amounts to the state pursuant to this section is not to be construed as creating an employer employee relationship between the State of West Virginia and any employee under the employ of a county board or as creating a liability of the state.

(c) County boards are liable for the employer annual required contribution allocated and billed to the county boards on or after July 1, 2012, and any amount of the employer annual required contribution allocated and billed to the county boards prior to that date for individuals who are employed as professional employees above and beyond those authorized by section four of this article, individuals who are employed as service personnel above and beyond those authorized by section five of this article and individuals who are employed as professional student support personnel above and beyond those authorized by section eight of this article. For each such employee, the county board shall forward to the Public Employees Insurance Agency an amount equal to the average premium rate established by the finance board in accordance with subsection (a) of this section: Provided, That the county board shall pay the actual employer premium costs for any county board employee paid from special revenues, federal or state grants, or sources other than state general revenue or county funds.
(d) Prior to July 1, 1995, nothing in this article shall be construed to limit the ability of county boards to use funds appropriated to county boards pursuant to this article to pay employer premiums to the Public Employees Insurance Agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards pursuant to this article shall not be used to pay employer premiums for employees of such boards whose positions are not, or will not be within twenty months, funded by funds appropriated pursuant to this article.

CHAPTER 153

(S. B. 365 - By Senators Laird, Plymale, Beach and Miller)

[Passed March 6, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §5-16-4 of the Code of West Virginia, 1931, as amended, relating to the Public Employees Insurance Agency Finance Board; increasing the membership of the board; and changing the composition of the board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee and ten members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than six members, including the Secretary of the Department of Administration, may be of the same political party.

(b)(1) Of the ten members appointed by the Governor with advice and consent of the Senate, one member shall represent the interests of education employees, one shall represent the interests of public employees, one shall represent the interests of retired employees, one shall represent the interests of organized labor, one shall represent the interests of a participating political subdivision and five shall be selected from the public at large. The Governor shall appoint the member representing the interests of education employees from a list of three names submitted by the largest organization of education employees in this state. The Governor shall appoint the member representing the interests of organized labor from a list of three names submitted by the state's largest organization representing labor affiliates. The five members appointed from the public shall each have experience in the financing, development or management of employee benefit programs.
(2) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article or gross immorality.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and places specified by the call of the chair or upon the written request to the chair of at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Six members constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.
CHAPTER 154

(Com. Sub. for S. B. 659 - By Senator Unger)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §15-2D-3 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the Director of the Division of Protective Services; requiring the director to require certain employees of service providers with the state to submit to a criminal background check under certain circumstances; requiring certain service providers provide employee names to comply with provisions of this section; requiring a clause in future contracts to give the state powers to prohibit certain persons from certain activities based on the results of the background check; defining “service provider”; requiring new employees working on capitol grounds to have employment eligibility confirmed through E-verify; and designating the Director of the Division of Protective Services as the person to whom criminal background check information is released.

Be it enacted by the Legislature of West Virginia:

That §15-2D-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-3. Duties and powers of the director and officers.

1 (a) The director is responsible for the control and supervision of the division. The director and any officer of the division specified by the director may carry designated
weapons and have the same powers of arrest and law
enforcement in Kanawha County as members of the West
Virginia State Police as set forth in subsections (b) and (d),
section twelve, article two of this chapter: Provided, That the
director and designated members shall have such powers
throughout the State of West Virginia in investigating and
performing law-enforcement duties for offenses committed
on the Capitol Complex or related to the division’s security
and protection duties at the Capitol Complex: Provided,
however, That the director and designated members shall
have said powers throughout the state relating to offenses and
activities occurring on any property owned, leased or
operated by the State of West Virginia when undertaken at
the request of the agency occupying the property: Provided
further, That nothing in this article shall be construed as to
obligate the director or the division to provide or be
responsible for providing security at state facilities outside
the Capitol Complex.

(b) Any officer of the division shall be certified as a law-
enforcement officer by the Governor's Committee on Crime,
Delinquency and Correction or may be conditionally
employed as a law-enforcement officer until certified in
accordance with the provisions of section five, article twenty-
ine, chapter thirty of this code.

(c) The director may:

(1) Employ necessary personnel, all of whom shall be
classified exempt, assign them the duties necessary for the
efficient management and operation of the division and
specify members who may carry, without license, weapons
designated by the director;

(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security
at the Capitol Complex and other state facilities as may be
37 determined by the Secretary of the Department of Military
38 Affairs and Public Safety;

39 (4) Establish and provide standard uniforms, arms, weapons and other enforcement equipment authorized for use
40 by members of the division and shall provide for the periodic
41 inspection of the uniforms and equipment. All uniforms, arms, weapons and other property furnished to members of
42 the division by the State of West Virginia is and remains the
43 property of the state;

44 (5) Appoint security officers to provide security on
45 premises owned or leased by the State of West Virginia;

46 (6) Upon request by the Superintendent of the West
47 Virginia State Police, provide security for the Speaker of the
48 West Virginia House of Delegates, the President of the West
49 Virginia Senate, the Governor or a justice of the West
50 Virginia Supreme Court of Appeals;

51 (7) Gather information from a broad base of employees
52 at and visitors to the Capitol Complex to determine their
53 security needs and develop a comprehensive plan to maintain
54 and improve security at the Capitol Complex based upon
55 those needs; and

56 (8) Assess safety and security needs and make
57 recommendations for safety and security at any proposed or
58 existing state facility as determined by the Secretary of the
59 Department of Military Affairs and Public Safety, upon
60 request of the secretary of the department to which the
61 facility is or will be assigned.

62 (d) The director shall:

63 (1) On or before July 1, 1999, propose legislative rules
64 for promulgation in accordance with the provisions of article
65 three, chapter twenty-nine-a of this code. The rules shall, at
a minimum, establish ranks and the duties of officers within
the membership of the division.

(2) On or before July 1, 1999, enter into an interagency
agreement with the Secretary of the Department of Military
Affairs and Public Safety and the Secretary of the
Department of Administration, which delineates their
respective rights and authorities under any contracts or
subcontracts for security personnel. A copy of the
interagency agreement shall be delivered to the Governor, the
President of the West Virginia Senate and the Speaker of the
West Virginia House of Delegates and a copy shall be filed
in the office of the Secretary of State and shall be a public
record.

(3) Deliver a monthly status report to the Speaker of the
West Virginia House of Delegates and the President of the
West Virginia Senate.

(e) Require any service provider whose employees are
regularly employed on the grounds or in the buildings of the
Capitol Complex or who have access to sensitive or critical
information submit to a fingerprint-based state and federal
background inquiry through the state repository, and require
a new employee who is employed to provide services on the
grounds or in the building of the Capitol Complex to submit
to an employment eligibility check through E-verify.

(1) After the contract for such services has been
approved, but before any such employees are permitted to be
on the grounds or in the buildings of the Capitol Complex or
have access to sensitive or critical information, the service
provider shall submit a list of all persons who will be
physically present and working at the Capitol Complex for
purposes of verifying compliance with this section.

(2) All current service providers shall, within ninety days
of the amendment and reenactment of this section by the
eightieth Legislature, ensure that all of its employees who are providing services on the grounds or in the buildings of the Capitol Complex or who have access to sensitive or critical information submit to a fingerprint-based state and federal background inquiry through the state repository.

(3) Any contract entered into, amended or renewed by an agency or entity of state government with a service provider shall contain a provision reserving the right to prohibit specific employees thereof from accessing sensitive or critical information or to be present at the Capitol Complex based upon results addressed from a criminal background check.

(4) For purposes of this section, the term “service provider” means any person or company that provides employees to a state agency or entity of state government to work on the grounds or in the buildings that make up the Capitol Complex or who have access to sensitive or critical information.

(5) In accordance with the provisions of Public Law 92-544 the criminal background check information will be released to the Director of the Division of Protective Services.

CHAPTER 155

(S. B. 387 - By Senators Unger and Beach)

[Passed March 7, 2012; to take effect ninety days from passage.] [Approved by the Governor on March 20, 2012.] AN ACT to amend and reenact §15-5-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding
Be it enacted by the Legislature of West Virginia:

That §15-5-20 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 §15-5-20a, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-20. Disaster prevention.

(a) In addition to disaster prevention measures as included in the state, local, regional and interjurisdictional disaster plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters. At his or her direction, and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with floodplain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning and construction standards, shall make studies of disaster prevention-related matters. The Governor, from time to time, shall make such recommendation to the Legislature, political subdivisions and other appropriate public and private entities as may facilitate measures for prevention or reduction of the harmful consequences of disasters.
(b) At the request of and in conjunction with the Office of Emergency Services, the divisions of energy, natural resources and highways and any state department insured by the Board of Risk and Insurance Management shall keep land use and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flooding or other catastrophic occurrences. Such studies shall concentrate on means of reducing or avoiding the dangers caused by such occurrences and the consequences thereof.

§15-5-20a. Floodplain manager training.

(a) Community participation in the National Flood Insurance Program is important to manage and mitigate the special flood hazard areas in West Virginia. Therefore, all state, county, municipality and local floodplain managers should be adequately trained in floodplain management.

(b) Commencing July 1, 2012, each floodplain manager in the state is required to complete six hours of training in floodplain management annually to maintain good standing with the West Virginia Division of Homeland Security.

(c) A governmental unit that has a floodplain manager who fails to obtain the required training shall suspend the floodplain manager from his or her floodplain management responsibilities until the training requirement is met.

(d) A governmental unit that has a floodplain manager who fails to obtain the required training shall transfer its floodplain management responsibilities and all associated fees to a governmental unit that has a floodplain manager in good standing.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-4f, relating to authorizing the Public Service Commission of West Virginia to consider and authorize the recovery of certain expanded net energy costs by certain electric utilities through the issuance of consumer rate relief bonds; providing definitions; providing application process for financing order authorizing the recovery of certain costs; requiring certain information in application for financing order; providing for issuance of financing order and information contained therein; allowing for disposition of consumer rate relief property; providing for term of financing order; providing for subsequent Public Service Commission proceedings and limits on commission authority; providing for duties of certain electric utilities; providing for application of adjustment mechanism and filing of schedules with commission; providing for nonbypassability of consumer rate relief changes; providing for utility default and successors to certain utilities; providing for security interest in consumer rate relief property and transfer and sale of same; providing for limitation on taxation of consumer rate relief charges and exemption therefrom; providing that consumer rate relief bonds are not debt of governmental entities or a pledge of taxing power; providing consumer rate relief bonds as legal investment; providing for certain pledge of state; providing for governing law; and providing for severability and non-utility status.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-4f, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4f. Consumer rate relief bonds.

(a) Legislative findings. - The Legislature hereby finds and declares as follows:

1 (1) That some electric utilities in the state have experienced expanded net energy costs of a magnitude problematic to recover from their customers through the commission’s traditional cost recovery mechanisms, which have resulted in unusually large under-recoveries;

2 (2) That the financing costs of carrying such under-recovery balances and projected costs can be considerable;

3 (3) That the use of traditional utility financing mechanisms to finance or refinance the recovery of such under-recovery balances and projected costs may result in considerable additional costs to be reflected in the approved rates of electric utility customers;

4 (4) That customers of electric utilities in the state have an interest in the electric utilities financing the costs of such under-recovery balances and projected costs at a lower cost than would be afforded by traditional utility financing mechanisms;

5 (5) That alternative financing mechanisms exist which can result in lower costs and mitigate rate impacts to
customers and the use of these mechanisms can prove highly beneficial to such customers; and

(6) That in order to use such alternative financing mechanisms, the commission must be empowered to adopt a financing order that advances these goals. The Legislature, therefore, determines that it is in the interest of the state and its citizens to encourage and facilitate the use of alternative financing mechanisms that will enable electric utilities to finance or refinance expanded net energy costs at the lowest reasonably practical cost under certain conditions and to empower the commission to review and approve alternative financing mechanisms when it determines that such approval is in the public interest, as set forth in this section.

(b) Definitions. - As used in this section:

(1) “Adjustment mechanism” means a formula-based mechanism for making adjustments to consumer rate relief charges to correct for over-collection or under-collection of such charges or otherwise to ensure the timely and complete payment and recovery of such charges and financing costs. The adjustment mechanism shall accommodate: (i) Standard adjustments to consumer rate relief charges that are limited to relatively stable conditions of operations; and (ii) nonstandard adjustments to consumer rate relief charges that are necessary to reflect significant changes from historical conditions of operations, such as the loss of significant electrical load. The adjustment mechanism is not to be used as a means to authorize the issuance of consumer rate relief bonds in a principal amount greater, or the payment or recovery of expanded net energy costs in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.

(2) “Ancillary agreement” means a bond insurance policy letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support
arrangement or other similar agreement or arrangement entered into in connection with the issuance of consumer rate relief bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(3) “Assignee” means a person, corporation, limited liability company, trust, partnership or other entity to which an interest in consumer rate relief property is assigned, sold or transferred, other than as security. The term also includes any entity to which an assignee assigns, sells or transfers, other than as security, the assignee’s interest in or right to consumer rate relief property.

(4) “Bond” includes debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an electric utility or an assignee under a final financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance expanded net energy costs and that are secured by or payable from revenues from consumer rate relief charges.

(5) “Bondholder” means any holder or owner of a consumer rate relief bond.

(6) “Commission” means the Public Service Commission of West Virginia, as it may be constituted from time to time, and any successor agency exercising functions similar in purpose thereto.

(7) “Consumer rate relief charges” means the amounts which are authorized by the commission in a financing order to be collected from a qualifying utility’s customers in order to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs.
(8) “Consumer rate relief costs” means those costs, including financing costs, which are to be defrayed through consumer rate relief charges.

(9) “Consumer rate relief property” means the property, rights, and interests of a qualifying utility or an assignee under a final financing order, including the right to impose, charge, and collect the consumer rate relief charges that shall be used to pay and secure the payment of consumer rate relief bonds and financing costs, and including the right to obtain adjustments to those charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created under the final financing order.

(10) “Expanded net energy costs” means historical and, if deemed appropriate by the commission, projected costs, inclusive of carrying charges on under-recovery balances authorized by the commission, including costs incurred prior to the effective date of this statute, adjudicated pursuant to the commission’s expanded net energy cost proceedings, which have been authorized for recovery by an order of the commission, whether or not subject to judicial appeal.

(11) “Financing costs” means any of the following:

(A) Principal, interest and redemption premiums that are payable on consumer rate relief bonds;

(B) A payment required under an ancillary agreement;

(C) An amount required to fund or replenish a reserve account or another account established under an indenture, ancillary agreement or other financing document relating to consumer rate relief bonds or the payment of any return on the capital contribution approved by the commission to be made by a qualifying utility to an assignee;
(D) Costs of retiring or refunding an existing debt and equity securities of a qualifying utility in connection with the issuance of consumer rate relief bonds but only to the extent the securities were issued for the purpose of financing expanded net energy costs;

(E) Costs incurred by a qualifying utility to obtain modifications of or amendments to an indenture, financing agreement, security agreement, or similar agreement or instrument relating to an existing secured or unsecured obligation of the utility in connection with the issuance of consumer rate relief bonds;

(F) Costs incurred by a qualifying utility to obtain a consent, release, waiver, or approval from a holder of an obligation described in subparagraph (E) of this subdivision that are necessary to be incurred for the utility to issue or cause the issuance of consumer rate relief bonds;

(G) Taxes, franchise fees or license fees imposed on consumer rate relief charges;

(H) Costs related to issuing or servicing consumer rate relief bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal fees and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity, rating-agency fees and other related costs authorized by the commission in a financing order; and

(I) Costs that are incurred by the commission for a financial adviser with respect to consumer rate relief bonds.

(12) “Financing order” means an order issued by the commission under subsection (e) of this section that authorizes a qualifying utility to issue consumer rate relief bonds and recover consumer rate relief charges. A financing order may set forth conditions or contingencies on the
effectiveness of the relief authorized therein and may grant relief that is different from that which was requested in the application.

(13) “Final financing order” means a financing order that has become final and has taken effect as provided in subdivision (10) of subsection (e) of this section.

(14) “Financing party” means either of the following:

(A) A trustee, collateral agent or other person acting for the benefit of any bondholder; or

(B) A party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of consumer rate relief property, the enforcement and priority of a security interest in consumer rate relief property, the timely collection and payment of consumer rate relief charges or a combination of these factors.

(15) “Financing statement” has the same meaning as in section one-hundred-two, article nine, chapter forty-six of this code.

(16) “Investment grade” means, with respect to the unsecured debt obligations of a utility at any given time of determination, a rating that is within the top four investment rating categories as published by at least one nationally recognized statistical rating organization as recognized by the United States Securities and Exchange Commission.

(17) “Nonbypassable” means that the payment of consumer rate relief charges may not be avoided by any West Virginia retail customer of a qualifying utility or its successors and must be paid by any such customer that receives electric delivery service from such utility or its successors for as long as the consumer rate relief bonds are outstanding.
(18) “Nonutility affiliate” means, with respect to any utility, a person that: (i) is an affiliate of the utility as defined in 42 U.S.C. §16451(1); and (ii) is not a public utility that provides retail utility service to customers in the state within the meaning of section two, article one of this chapter.

(19) “Parent” means, with respect to a utility, a registered holding company or other person that holds a majority ownership or membership interest in the utility.

(20) “Qualifying utility” means a public utility engaged in the sale of electric service to retail customers in West Virginia which has applied for and received from the commission a final financing order under this section, including an affiliated electric public utility which has applied jointly for and received such an order.

(21) “Registered holding company” means, with respect to a utility, a person that is: (i) A registered holding company as defined in 42 U.S.C. §16451(8); and (ii) an affiliate of the utility as defined in 42 U.S.C. §16451(1).

(22) “Regulatory sanctions” means, under the circumstances presented, a regulatory or ratemaking sanction or penalty that the commission is authorized to impose pursuant to this chapter or any proceeding for the enforcement of any provision of this chapter or any order of the commission that the commission is authorized to pursue or conduct pursuant to this chapter, including without limitation: (i) The initiation of any proceeding in which the utility is required to show cause why it should not be required to comply with the terms and conditions of a financing order or the requirements of this section; (ii) the imposition of penalties pursuant to article four of this chapter; and (iii) a proceeding by mandamus, injunction or other appropriate proceeding as provided in section two of this article.
(23) “Successor” means, with respect to an entity, another entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceeding, any merger, acquisition, or consolidation, or any sale or transfer of assets, regardless of whether any of these occur as a result of a restructuring of the electric power industry or otherwise.

(c) Application for financing order.

(1) If an electric utility or affiliate obtains from the commission an authorization or waiver required by any other provision of this chapter or by commission order with respect to the underlying expanded net energy costs proposed to be financed through the mechanism of consumer rate relief bonds, an electric utility, or two or more affiliated electric utilities engaged in the delivery of electric service to customers in this state, may apply to the commission for a financing order that authorizes the following:

(A) The issuance of consumer rate relief bonds, in one or more series, to recover only those expanded net energy costs that could result in an under-recovery;

(B) The imposition, charging, and collection of consumer rate relief charges, in accordance with the adjustment mechanism approved by the commission under subparagraph (E), subdivision (6), subsection (e) of this section to recover sufficient amounts to pay and secure the debt service payments of consumer rate relief bonds and associated financing costs; and

(C) The creation of consumer rate relief property under the financing order.

(2) The commission may only consider applications made pursuant to this subsection for the recovery of underlying
expanded net energy costs that would be reflected in schedules of rates filed in calendar year 2012.

(d) **Information required in application for financing order.**

The application shall include all of the following:

(1) A description and quantification of the uncollected expanded net energy costs that the electric utility seeks to recover through the issuance of consumer rate relief bonds;

(2) An estimate of the date each series of consumer rate relief bonds is expected to be issued;

(3) The expected term during which the consumer rate relief costs for each series of consumer rate relief bonds are expected to be recovered;

(4) An estimate of the financing costs associated with the issuance of each series of consumer rate relief bonds;

(5) An estimate of the amount of consumer rate relief charges necessary to recover the consumer rate relief costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of consumer rate relief bonds;

(6) A proposed methodology for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

(7) A description of a proposed adjustment mechanism, reflecting the allocation methodology in subdivision (6) of this subsection;
(8) A description of the benefits to the qualifying utility’s customers that are expected to result from the issuance of the consumer rate relief bonds, including a demonstration that the bonds and their financing costs are just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility; and

(9) Other information required by commission rules.

(e) Issuance of financing order.

(1) Except as otherwise provided in this section, proceedings on an application submitted by an electric utility under subsection (c) of this section are governed by the commission’s standard procedural rules. Any party that participated in a proceeding in which the subject expanded net energy costs were authorized or approved automatically has standing to participate in the financing order proceedings and the commission shall determine the standing or lack of standing of any other petitioner for party status.

(2) Within thirty days after the filing of an application under subsection (c) of this section, the commission shall issue a scheduling order for the proceeding.

(3) At the conclusion of proceedings on an application submitted by an electric utility under subsection (c) of this section, the commission shall issue either a financing order, granting the application, in whole or with modifications, or an order denying the application.

(4) The commission may issue a financing order under this subsection if the commission finds that the issuance of the consumer rate relief bonds and the consumer rate relief charges authorized by the order are just and reasonable and
are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility.

(5) The commission shall include all of the following in a financing order issued under this subsection:

(A) A determination of the maximum amount and a description of the expanded net energy costs that may be recovered through consumer rate relief bonds issued under the financing order;

(B) A description of consumer rate relief property, the creation of which is authorized by the financing order;

(C) A description of the financing costs that may be recovered through consumer rate relief charges and the period over which those costs may be recovered;

(D) A description of the methodology and calculation for allocating consumer rate relief charges between and within tariff schedules and to special contract customers;

(E) A description and approval of the adjustment mechanism for use in the imposition, charging, and collection of the consumer rate relief charges, including: (i) The allocation referred to in paragraph (D) of this subdivision and (ii) any specific requirements for adjusting and reconciling consumer rate relief charges for standard adjustments that are limited to relatively stable conditions of operations and nonstandard adjustments that are necessary to reflect significant changes from historical conditions of operations, such as the loss of substantial electrical load, so long as each and every application of the adjustment mechanism is designed to assure the full and timely payment of consumer rate relief bonds and associated financing costs.
(F) The maximum term of the consumer rate relief bonds;

(G) A finding that the issuance of the consumer rate relief bonds, including financing costs, is just and reasonable and are reasonably expected to achieve the lowest reasonably attainable cost in order to produce cost savings to customers and to mitigate rate impacts on customers, as compared to traditional financing mechanisms or traditional cost-recovery methods available to the electric utility; and

(H) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection and adjustment, pursuant to an approved adjustment mechanism, of the consumer rate relief charges.

(6) To the extent the commission deems appropriate and compatible with the issuance advice letter procedure under subdivision (9) of this subsection, the commission, in a financing order, shall afford the electric utility flexibility in establishing the terms and conditions for the consumer rate relief bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the qualifying utility, at its option, to effect a series of issuances of consumer rate relief bonds and correlated assignments, sales, pledges, or other transfers of consumer rate relief property. Any changes made under this subdivision to terms and conditions for the consumer rate relief bonds shall be in conformance with the financing order.

(7) A financing order shall provide that the creation of consumer rate relief property shall be simultaneous with the sale of that property to an assignee as provided in the application and the pledge of the property to secure consumer rate relief bonds.

(8) The commission, in a financing order, shall require that, after the final terms of each issuance of consumer rate
relief bonds have been established, and prior to the issuance of those bonds, the qualifying utility shall determine the resulting initial consumer rate relief charges in accordance with the adjustment mechanism described in the financing order. These consumer rate relief charges shall be final and effective upon the issuance of the consumer rate relief bonds, without further commission action.

(9) Because the actual structure and pricing of the consumer rate relief bonds will not be known at the time the financing order is issued, in the case of every securitization approved by the commission, the qualifying utility which intends to cause the issuance of such bonds will provide to the commission and the commission’s financial adviser, if any, prior to the issuance of the bonds, an issuance advice letter following the determination of the final terms of the bonds. The issuance advice letter shall indicate the final structure of the consumer rate relief bonds and provide the best available estimate of total ongoing costs. The issuance advice letter should report the initial consumer rate relief charges and other information specific to the consumer rate relief bonds to be issued, as the financing order may require. The qualifying utility may proceed with the issuance of the consumer rate relief bonds unless, prior to noon on the fourth business day after the commission receives the issuance advice letter, the commission issues a disapproval letter directing that the bonds as proposed shall not be issued and the basis for that disapproval. The financing order may provide such additional provisions relating to the issuance advice letter process as the commission deems appropriate.

(10) An order of the commission issued pursuant to this subsection is a final order of the commission. Any party aggrieved by the issuance of any such order may petition for suspension and review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter. In the case of a petition for suspension and review, the Supreme Court of Appeals shall proceed to hear and
determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(11) The financing order shall also provide for a procedure requiring the qualifying utility to adjust its rates or provide credits in a manner that would return to customers any overpayments resulting from the securitization for the expanded net energy costs in excess of actual prudently incurred costs as subsequently determined by the commission. The adjustment mechanism may not affect or impair the consumer rate relief property or the right to impose, collect, or adjust the consumer rate relief charges under this section.

(12) The commission may require, as a condition to the effectiveness of the financing order but in every circumstance subject to the limitations set forth in subdivision (3), subsection (g) of this section, that the qualifying utility give appropriate assurances to the commission that the qualifying utility and its parent will abide by the following conditions during any period in which any consumer rate relief bonds issued pursuant to the financing order are outstanding, in addition to any other obligation either may have under this code or federal law. Without first obtaining the prior consent and approval of the Commission, the qualifying utility will not:

(A) Lend money, directly or indirectly, to a registered holding company or a nonutility affiliate; or

(B) Guarantee the obligations of a registered holding company or a nonutility affiliate.

(13) A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of consumer rate relief bonds and consumer rate relief charges. A financing order may authorize the staff of the commission to review and audit
the books and records of the qualifying utility relating to the receipt and disbursement of such proceeds. The provisions of this subdivision do not limit the authority of the commission under this chapter to investigate the practices of the qualifying utility or to audit the books and records of the qualifying utility.

(14) In the case of two or more affiliated utilities that have jointly applied for a financing order as provided in subdivision (1), subsection (c) of this section, a financing order may authorize each affiliated utility to impose consumer rate relief charges on its customers and to cause to be issued consumer rate relief bonds and to receive and use the proceeds which it receives with respect thereto as provided in subdivision (1), subsection (j) of this section.

(15) The commission, in its discretion, may engage the services of a financial adviser for the purpose of assisting the commission in its consideration of an application for a financing order and a subsequent issuance of consumer rate relief bonds pursuant to a financing order.

(f) Allowed disposition of consumer rate relief property.

(1) The consumer rate relief property created in a final financing order may be transferred, sold, conveyed or assigned to any affiliate of the qualifying utility created for the limited purpose of acquiring, owning or administering that property, issuing consumer rate relief bonds under the final financing order or a combination of these purposes.

(2) All or any portion of the consumer rate relief property may be pledged to secure the payment of consumer rate relief bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement and other financing costs.
(3) A transfer, sale, conveyance, assignment, grant of a security interest in or pledge of consumer rate relief property by a qualifying utility to an affiliate of the utility, to the extent previously authorized in a financing order, does not require the prior consent and approval of the commission under section twelve of this article.

(4) The consumer rate relief property constitutes an existing, present property right, notwithstanding any requirement that the imposition, charging, and collection of consumer rate relief charges depend on the qualifying utility continuing to deliver retail electric service or continuing to perform its servicing functions relating to the billing and collection of consumer rate relief charges or on the level of future energy consumption. That property exists regardless of whether the consumer rate relief charges have been billed, have accrued or have been collected and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the qualifying utility.

(5) All such consumer rate relief property continues to exist until the consumer rate relief bonds issued under the final financing order are paid in full and all financing costs relating to the bonds have been paid in full.

(g) Final financing order to remain in effect.

(1) A final financing order remains in effect until the consumer rate relief bonds issued under the final financing order and all financing costs related to the bonds have been paid in full.

(2) A final financing order remains in effect and unabated, notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility, or any affiliate of the qualifying utility, or the commencement of any judicial or nonjudicial proceeding on the final financing order.
(3) A final financing order is irrevocable and the commission may not reduce, impair, postpone or terminate the consumer rate relief charges authorized in the final financing order or impair the property or the collection or recovery of consumer rate relief costs.

(h) *Subsequent commission proceeding.*

Upon petition, or upon its own motion, the commission may commence a proceeding and issue a subsequent financing order that provides for retiring and refunding consumer rate relief bonds issued under the final financing order if the commission finds that the subsequent financing order satisfies all of the requirements of subsection (e) of this section. Effective on retirement of the refunded consumer rate relief bonds and the issuance of new consumer rate relief bonds, the commission shall adjust the related consumer rate relief charges accordingly.

(i) *Limits on commission authority.*

(1) The commission, in exercising its powers and carrying out its duties regarding regulation and ratemaking, may not do any of the following:

(A) Consider consumer rate relief bonds issued under a final financing order to be the debt of the qualifying utility;

(B) Consider the consumer rate relief charges imposed, charged or collected under a final financing order to be revenue of the qualifying utility; or

(C) Consider the consumer rate relief costs or financing costs authorized under a final financing order to be costs of the qualifying utility.

(2) The commission may not order or otherwise require, directly or indirectly, an electric utility to use consumer rate
relief bonds to finance the recovery of expanded net energy costs.

(3) The commission may not refuse to allow the recovery of expanded net energy costs solely because an electric utility has elected or may elect to finance those costs through a financing mechanism other than the issuance of consumer rate relief bonds.

(4) If a qualifying utility elects not to finance such costs through the issuance of consumer rate relief bonds as authorized in a final financing order, those costs shall be recovered as authorized by the commission previously or in subsequent proceedings.

(j) Duties of qualifying utility.

(1) A qualifying utility shall cause the proceeds which it receives with respect to consumer rate relief bonds issued pursuant to a financing order to be used for the recovery of the expanded net energy costs which occasioned the issuance of the bonds, including the retirement of debt and/or equity of the qualifying utility which was incurred to finance or refinance such costs and for no other purpose.

(2) A qualifying utility shall annually provide a plain-English explanation of the consumer rate relief charges approved in the financing order, as modified by subsequent issuances of consumer rate relief bonds authorized under the financing order, if any, and by application of the adjustment mechanism as provided in subsection (k) of this section. These explanations may be made by bill inserts, website information or other appropriate means as required, or approved if proposed by the qualifying utility, by the commission.
(3) Collected consumer rate relief charges shall be applied solely to the repayment of consumer rate relief bonds and other financing costs.

(4) The failure of a qualifying utility to apply the proceeds which it receives with respect to an issuance of consumer rate relief bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section does not invalidate, impair or affect any financing order, consumer rate relief property, consumer rate relief charges or consumer rate relief bonds. Subject to the limitations set forth in subsection (g) of this section, nothing in this subdivision prevents or precludes the commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(k) Application of adjustment mechanism; filing of schedules with commission.

(1) A qualifying utility shall file with the commission, and the commission shall approve, with or without such modification as is allowed under this subsection, at least annually, or more frequently as provided in the final financing order, a schedule applying the approved adjustment mechanism to the consumer rate relief charges authorized under the final financing order, based on estimates of demand and consumption for each tariff schedule and special contract customer and other mathematical factors. The qualifying utility shall submit with the schedule a request for approval to make the adjustments to the consumer rate relief charges in accordance with the schedule.

(2) On the same day a qualifying utility files with the commission its calculation of the adjustment, it shall cause notice of the filing to be given, in the form specified in the financing order, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-
nine of this code in a newspaper of general circulation published each weekday in Kanawha County. This publication is only required if the calculation of the adjustment filed by the utility with the commission would result in an increase in the amount of the consumer rate relief charges.

(3) The commission’s review of a request for a standard adjustment is limited to a determination of whether there is a mathematical error in the application of the adjustment mechanism to the consumer rate relief charges. No hearing is required for such an adjustment. Each standard adjustment to the consumer rate relief charges, in an amount as calculated by the qualifying utility but incorporating any correction for a mathematical error as determined by the commission, automatically becomes effective fifteen days following the date on which the qualifying utility files with the commission its calculation of the standard adjustment.

(4) If the commission authorizes a nonstandard adjustment procedure in the financing order, and the qualifying utility files for such an adjustment, the commission shall allow interested parties thirty days from the date the qualifying utility filed the calculation of a nonstandard adjustment to make comments. The commission’s review of the total amount required for a nonstandard adjustment shall be limited to the mathematical accuracy of the total adjustment needed to assure the full and timely payment of all debt service costs and related financing costs of the consumer rate relief bonds. The commission may also determine the proper allocation of those costs within and between classes of customers and to special contract customers, the proper design of the consumer rate relief charges and the appropriate application of those charges under the methodology set forth in the formula-based adjustment mechanism approved in the financing order. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the comments within
forty days of the date the qualifying utility filed the calculation of the nonstandard adjustment. The nonstandard adjustment, as modified by the commission, if necessary, shall be approved by the commission within sixty days and the commission may shorten the filing and hearing periods above in the financing order to ensure this result. Any procedure for a nonstandard adjustment must be consistent with assuring the full and timely payment of debt service of the consumer rate relief bonds and associated financing costs.

(5) No adjustment approved or deemed approved under this section affects the irrevocability of the final financing order as specified in subdivision (3) of subsection (g) of this section.

(l) *Nonbypassability of consumer rate relief charges.*

(1) As long as consumer rate relief bonds issued under a final financing order are outstanding, the consumer rate relief charges authorized under the final financing order are nonbypassable and apply to all existing or future West Virginia retail customers of a qualifying utility or its successors and must be paid by any customer that receives electric delivery service from the utility or its successors.

(2) The consumer rate relief charges shall be collected by the qualifying utility or the qualifying utility’s successors or assignees, or a collection agent, in full through a charge that is separate and apart from the qualifying utility’s base rates.

(m) *Utility default.*

(1) If a qualifying utility defaults on a required payment of consumer rate relief charges collected, a court, upon application by an interested party, or the commission, upon application to the commission or upon its own motion, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the
664 consumer rate relief charges collected for the benefit of
665 bondholders, assignees and financing parties. The order
666 remains in full force and effect notwithstanding a bankruptcy,
667 reorganization or other insolvency proceedings with respect
668 to the qualifying utility or any affiliate thereof.

669 (2) Customers of a qualifying utility shall be held
670 harmless by the qualifying utility for its failure to remit any
671 required payment of consumer rate relief charges collected
672 but such failure does not affect the consumer rate relief
673 property or the rights to impose, collect and adjust the
674 consumer rate relief charges under this section.

675 (3) Consumer rate relief property under a final financing
676 order and the interests of an assignee, bondholder or
677 financing party in that property under a financing agreement
678 are not subject to set off, counterclaim, surcharge or defense
679 by the qualifying utility or other person, including as a result
680 of the qualifying utility's failure to provide past, present, or
681 future services, or in connection with the bankruptcy,
682 reorganization, or other insolvency proceeding of the
683 qualifying utility, any affiliate, or any other entity.

684 (n) Successors to qualifying utility.

685 A successor to a qualifying utility is bound by the
686 requirements of this section. The successor shall perform and
687 satisfy all obligations of the electric utility under the final
688 financing order in the same manner and to the same extent as
689 the qualifying utility including the obligation to collect and
690 pay consumer rate relief charges to the person(s) entitled to
691 receive them. The successor has the same rights as the
692 qualifying utility under the final financing order in the same
693 manner and to the same extent as the qualifying utility.

694 (o) Security interest in consumer rate relief property.
(1) Except as provided in subdivisions (3) through (5) of this subsection, the creation, perfection and enforcement of a security interest in consumer rate relief property under a final financing order to secure the repayment of the principal of and interest on consumer rate relief bonds, amounts payable under any ancillary agreement and other financing costs are governed by this section and not article nine of chapter forty-six of this code.

(2) The description of the consumer rate relief property in a transfer or security agreement and a financing statement is sufficient only if the description refers to this section and the final financing order creating the property. This section applies to all purported transfers of, and all purported grants of, liens on or security interests in that property, regardless of whether the related transfer or security agreement was entered into or the related financing statement was filed, before or after the effective date of this section.

(3) A security interest in consumer rate relief property under a final financing order is created, valid and binding at the latest of the date that the security agreement is executed and delivered or the date that value is received for the consumer rate relief bonds.

(4) The security interest attaches without any physical delivery of collateral or other act and upon the filing of the financing statement with the Office of the Secretary of State. The lien of the security interest is valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the consumer rate relief property is perfected against all parties having claims of any kind, including any judicial lien, or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security
interest, ownership interest or assignment in the property previously perfected in accordance with this subsection.

(5) The Secretary of State shall maintain any financing statement filed under this subsection in the same manner that the secretary maintains financing statements filed by utilities under article nine of chapter forty-six of this code. The filing of a financing statement under this subsection is governed by the provisions regarding the filing of financing statements in article nine of chapter forty-six of this code. However, a person filing a financing statement under this subsection is not required to file any continuation statements to preserve the perfected status of its security interest.

(6) A security interest in consumer rate relief property under a final financing order is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, that may subsequently attach to that property or those rights or interests unless the holder of any such lien has agreed in writing otherwise.

(7) The priority of a security interest in consumer rate relief property is not affected by the commingling of collected consumer rate relief charges with other amounts. Any pledged or secured party has a perfected security interest in the amount of all consumer rate relief charges collected that are deposited in a cash or deposit account of the qualifying utility in which such collected charges have been commingled with other funds. Any other security interest that may apply to those funds shall be terminated when the funds are transferred to a segregated account for an assignee or a financing party.

(8) No application of the adjustment mechanism as described in subsection (j) of this section affects the validity, perfection or priority of a security interest in or the transfer of consumer rate relief property under the final financing order.
(p) Transfer, sale, etc. of consumer rate relief property.

(1) A sale, assignment or transfer of consumer rate relief property under a final financing order is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the property, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in that property may be created only when all of the following have occurred:

(A) The financing order has become final and taken effect;

(B) The documents evidencing the transfer of the property have been executed and delivered to the assignee; and

(C) Value has been received for the property.

(2) The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser shall be effective and perfected against all third parties and is not affected or impaired by, among other things, the occurrence of any of the following:

(A) Commingling of collected consumer rate relief charges with other amounts;

(B) The retention by the seller of any of the following:

(i) A partial or residual interest, including an equity interest, in the consumer rate relief property, whether direct or indirect, or whether subordinate or otherwise;
(ii) The right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of consumer rate relief charges;

(iii) Any recourse that the purchaser or any assignee may have against the seller;

(iv) Any indemnification rights, obligations or repurchase rights made or provided by the seller;

(v) The obligation of the seller to collect consumer rate relief charges on behalf of an assignee;

(vi) The treatment of the sale, assignment or transfer for tax, financial reporting or other purposes; or

(vii) Any application of the adjustment mechanism under the final financing order.

(q) Taxation of consumer rate relief charges; consumer rate relief bonds not debt of governmental entities or a pledge of taxing powers.

(1) The imposition, billing, collection and receipt of consumer rate relief charges under this section are exempt from state income, sales, franchise, gross receipts, business and occupation and other taxes or similar charges: Provided, however, That neither this exemption nor any other provision of this subsection shall preclude any municipality from taxing consumer rate relief charges under the authority granted to municipalities pursuant to sections five and five-a of article thirteen in chapter eight of this code.

(2) Consumer rate relief bonds issued under a final financing order do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state. Bondholders have no right to have taxes levied by this state
or the taxing authority of any county, municipality or any
other political subdivision of this state for the payment of the
principal of or interest on the bonds. The issuance of
consumer rate relief bonds does not, directly, indirectly or
contingently, obligate this state or a county, municipality or
political subdivision of this state to levy a tax or make an
appropriation for payment of the principal of or interest on
the bonds.

(r) Consumer rate relief bonds as legal investments. Any
of the following may legally invest any sinking funds,
moneys or other funds belonging to them or under their
control in consumer rate relief bonds:

(1) The state, the West Virginia Investment Management
Board, the West Virginia Housing Development Fund,
municipal corporations, political subdivisions, public bodies
and public officers except for members of the Public Service
Commission;

(2) Banks and bankers, savings and loan associations,
credit unions, trust companies, building and loan
associations, savings banks and institutions, deposit
guarantee associations, investment companies, insurance
companies and associations and other persons carrying on a
banking or insurance business, including domestic for life
and domestic not for life insurance companies; and

(3) Personal representatives, guardians, trustees and other
fiduciaries.

(s) Pledge of state.

(1) The state pledges to and agrees with the bondholders,
assignees and financing parties under a final financing order
that the state will not take or permit any action that impairs
the value of consumer rate relief property under the final
financing order or revises the consumer rate relief costs for
which recovery is authorized under the final financing order
or, except as allowed under subsection (j) of this section,
reduce, alter or impair consumer rate relief charges that are
imposed, charged, collected or remitted for the benefit of the
bondholders, assignees and financing parties, until any
principal, interest and redemption premium in respect of
consumer rate relief bonds, all financing costs and all
amounts to be paid to an assignee or financing party under an
ancillary agreement are paid or performed in full.

(2) A person who issues consumer rate relief bonds is
permitted to include the pledge specified in subdivision (1) of
this subsection in the consumer rate relief bonds, ancillary
agreements and documentation related to the issuance and
marketing of the consumer rate relief bonds.

(t) West Virginia law governs; this section controls.

(1) The law governing the validity, enforceability,
attachment, perfection, priority and exercise of remedies with
respect to the transfer of consumer rate relief property under
a final financing order, the creation of a security interest in
any such property, consumer rate relief charges or final
financing order are the laws of this state as set forth in this
section.

(2) This section controls in the event of a conflict
between its provisions and any other law regarding the
attachment, assignment, or perfection, the effect of perfection
or priority of any security interest in or transfer of consumer
rate relief property under a final financing order.

(u) Severability.

If any provision of this section or the application thereof
to any person, circumstance or transaction is held by a court
of competent jurisdiction to be unconstitutional or invalid, the
unconstitutionality or invalidity does not affect the
constitutionality or validity of any other provision of this
section or its application or validity to any person,
circumstance or transaction, including, without limitation, the
irrevocability of a financing order issued pursuant to this
section, the validity of the issuance of consumer rate relief
bonds, the imposition of consumer rate relief charges, the
transfer or assignment of consumer rate relief property or the
collection and recovery of consumer rate relief charges. To
these ends, the Legislature hereby declares that the provisions
of this section are intended to be severable and that the
Legislature would have enacted this section even if any
 provision of this section held to be unconstitutional or invalid
had not been included in this section.

(v) Non-utility status.

An assignee or financing party is not an electric public
utility or person providing electric service by virtue of
engaging in the transactions with respect to consumer rate
relief bonds.

CHAPTER 157

(Com. Sub. for H. B. 4345 - By Delegates Boggs,
D. Campbell, Fragale, Diserio, Marcum,
Moore, R. Phillips and White)

[Passed March 7, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §31-2-17, relating
to the sale of company railroad scrap metal; defining terms;
requiring written authorization for sale; setting a minimum weight for railroad scrap metal sold; requiring purchaser to attempt to verify ownership; creating certain presumptions and other standards available in civil action; providing that certain presumptions are lost if a company does not follow this section; and allowing an award of costs and attorneys fees in certain circumstances.

*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 §31-2-17, to read as follows:

**ARTICLE 2. RAILROAD COMPANIES.**

§31-2-17. Selling railroad scrap metal.

1 (a) As used in this section:

2 (1) “Company” is a railroad carrier as defined in section twenty-eight, article three, chapter sixty-one;

3 (2) “Railroad scrap metal” means any materials derived from railroad track, railroad track material, worn or used links, pins, journal bearings, or other worn, used, or detached appendages of railroad equipment or railroad track;

4 (3) “Purchaser” means any person in the business of purchasing railroad scrap metal, any salvage yard owner or operator, any public or commercial recycling facility owner or operator and any agent or employee thereof, or other individual or entity who purchase any form of railroad scrap metal;

5 (4) “Confusion of goods” means the intended mixture of similar railroad scrap metal done purposely by the purchaser without authorization of right or title to the railroad scrap metal.
(b) Only a duly authorized individual, agent, officer or employee of a company may sell or dispose of railroad scrap metal owned by the company. Any sale or disposition of railroad scrap metal made by any unauthorized individual is void: Provided, That the purchaser knowingly purchased company railroad scrap metal.

(c) All sales or disposition of company railroad scrap metal must:

(1) Be in quantities equal to or greater than one ton;

(2) Be accompanied by a bill of sale or other written evidence of authorization to sell the railroad scrap metal, a copy of which shall be retained by the purchaser and the duly authorized seller of railroad scrap metal; and

(3) Comply with other lawful requirements regarding the sale and purchase of railroad scrap metal.

(d) If a duly authorized individual sells or disposes of railroad scrap metal in quantities less than one ton, or without delivering a bill of sale or other written evidence of authorization from the company for sale or disposition of railroad scrap metal to the purchaser, the company shall not thereafter be entitled to the benefit of subsections (g) through (i) of this section.

(e) Before knowingly acquiring railroad scrap metal the purchaser shall attempt to ascertain the lawful ownership thereof, whether by evidence of a bill of sale from the company, or other form of written authorization from the company for sale or disposition of railroad scrap metal to the purchaser.

(f) In any civil action where the company claims to be the rightful owner of railroad scrap metal in the possession of a purchaser, the company may, in addition to any other relief
to which the company may be entitled, seek an immediate
order from the court to physically preserve any railroad scrap
metal which is the subject of the suit, and any other metals
with which they may have been confused, while the suit is
pending.

(g) In a civil action regarding rightful possession and
ownership of railroad scrap metal, if the purchaser cannot
produce the bill of sale or other written evidence of
authorization to sell the railroad scrap metal, the court shall
presume that the subject railroad scrap metal was unlawfully
taken from the company.

(h) The purchaser claiming ownership of the railroad
scrap metal in controversy may rebut this presumption and
prove a lawful right or title to the subject railroad scrap
metal, but in the absence of adequate proof, the company
shall be held to be the general owner of the subject railroad
scrap metal, and shall be entitled to immediate possession of
the railroad scrap metal in controversy.

(i) If the court finds that any portion, or all of the railroad
scrap metal in controversy was unlawfully obtained by the
purchaser, and mixed or confused with other railroad scrap
metal, it shall be deemed a confusion of goods. In the case of
a confusion of goods, the purchaser loses any right in all
mixed railroad scrap metal unless the railroad scrap metal can
be identified and separated among the company and the
purchaser.

(j) In a civil action regarding rightful possession and
ownership of railroad scrap metal, if the court finds that the
purchaser knowingly purchased company railroad scrap
metal and failed to attempt to ascertain that the person selling
the railroad scrap metal had a legal right to do so, the court
shall award the company costs and attorneys fees related to
that action.
AN ACT to amend and reenact §37-6-11 of the Code of West Virginia, 1931, as amended, relating to termination of a residential lease upon the death of a tenant; permitting termination of a residential lease in certain situations; requiring notice and payment of certain rent; prohibiting waiver; and providing date for applicability of provisions.

Be it enacted by the Legislature of West Virginia:

That §37-6-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LANDLORD AND TENANT.

§37-6-11. Persons liable for rent; termination of lease upon death.

(a) Rent may be recovered from the lessee, or other person owing it, or the heir, personal representative, devisee or assignee, who has succeeded to the lessee's estate in the premises. But no assignee shall be liable for rent which became due before his or her interest began. Subject to the provisions of subsection (b), nothing herein shall change or impair the liability of heirs, personal representatives, or devisees, for rent, to the extent and in the manner in which they are liable for other debts of the ancestor or testator; nor shall the mere merger of the reversion to which a rent is incident affect the liability for such rent.
(b) (1) Notwithstanding any other provision of this code to the contrary, upon the death of a lessee of a residential premises, an heir, personal representative, devisee or assignee of the deceased lessee may terminate a lease prior to its expiration.

(2) Termination of a residential lease, as provided in this subsection, shall become effective on the last day of the calendar month that is two months after:

(A) The date on which the notice is hand-delivered to the other party of the lease, or

(B) The date on which the notice, addressed to the other party to the lease, is deposited in the United States mail, postage prepaid, evidenced by the postmark.

(3) Termination of a lease under this subsection does not relieve the lessee's estate from liability for either:

(A) The payment of rent or other sums owed prior to or during the two month written notice period, or

(B) For the payment of amounts necessary to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(4) The right of termination contained in this subsection may not be waived by a lessor, lessee or lessee's heir, personal representative, devisee or assignee, by contract or otherwise. Any lease provision or agreement requiring a longer notice period than that provided by this article, is void and unenforceable.

(5) The provisions of this subsection apply to residential property leases entered into or renewed on or after July 1, 2012.
AN ACT to amend and reenact §5-10D-6 of the Code of West Virginia, 1931, as amended, relating to voluntary deductions by the Consolidated Public Retirement Board from monthly benefits to pay retiree association dues; establishing the date when the increased dues will be deducted; requiring prior authorization of the increased deductions by the retirants; adding requirement of board provision of blind mailing services for retiree associations; providing that the board is not liable for the provision of services; establishing a termination date of July 1, 2022.

Be it enacted by the Legislature of West Virginia:

That §5-10D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-6. Voluntary deductions by the Consolidated Public Retirement Board from monthly benefits to retirees to pay association dues.

1 (a) Any recipient of monthly retirement benefits from any public retirement plan in this state may authorize that a deduction from his or her monthly benefits be made for the
payment of membership dues or fees to a retiree association. The deductions shall be authorized on a form provided by the Consolidated Public Retirement Board and shall include: (1) The identity and social security number of the retiree; (2) the amount and frequency of the deduction; (3) the identity and address of the association to which the dues or fees shall be paid; and (4) the signature of the retiree.

(b) Any retiree association authorized by recipients of monthly benefits from any public retirement plan in this state to receive dues or fees from deductions from retirants’ monthly benefits may notify the board of its monthly dues on a form provided by the board: Provided, That no increase in dues or fees will be deducted from any retirant’s monthly benefit until the retirant has completed an authorization form containing the information in subsection (a) and submitted this authorization to the board. The increased monthly retiree association dues or fees will be deducted commencing the month following the receipt of the authorization form to the board.

(c) Upon execution of the authorization and its receipt by the Consolidated Public Retirement Board, the deduction shall be made in the manner specified on the form and remitted to the designated association on the tenth day of each month: Provided, That the deduction may not be made more frequently than monthly.

(d) Deduction authorizations may be revoked at any time at least thirty days prior to the date on which the deduction is regularly made and on a form to be provided by the Consolidated Public Retirement Board.

(e) Notwithstanding the provisions of section twenty-one, article eight, chapter five-a of this code to the contrary, a retiree association representing only West Virginia public retirees may request the board to mail voluntary membership applications and dues deduction cards to any eligible retirees of any West Virginia public retirement plan administered by
the board: *Provided*, That the retiree association shall pay all
costs associated with these mailings, including, but not
limited to, copying, mailing, postage, record-keeping and
auditing: *Provided, however*, That the board may contract
with a third-party to provide mailing services that agrees to
maintain the confidentiality of the names, addresses and other
personally identifiable information of the retirants.

(f) The board is not liable to any retirant, beneficiary or
other annuitant for any action undertaken pursuant to this
section. Any retiree association agrees, by requesting the
board to deduct dues or fees or to provide mailings for it, to
be responsible for any errors or omissions by the board in
conducting these activities pursuant to this section.

(g) If any retiree association fails to timely pay to the board
all costs required by this section, the board is authorized to
thereafter refuse to provide the services in subsection (e).

(h) The provisions of this section shall expire July 1, 2022.

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**CHAPTER 160**

*(Com. Sub. for H. B. 4332 - By Delegates
Stowers, R. Phillips and Barker)*

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §16-5V-9 of the Code of West Virginia,
1931, as amended, relating to transfer of service credit from Public
Employees Retirement System to Emergency Medical Services
Retirement System.
Be it enacted by the Legislature of West Virginia:

That §16-5V-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-9. Transfer from Public Employees Retirement System.

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of the effective date of the transfer of an emergency medical services officer from the Public Employees Retirement System to the plan, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) Except as provided in subsection (e) of this section, the amount of assets to be transferred for each transferring emergency medical services officer shall be computed as of January 1, 2008, using July 1, 2007, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring emergency medical services officer in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2007, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2007, actuarial valuation date;
(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2007, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2007, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2007, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members’ actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2007, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members’ actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at seven and five-tenths percent for the period from the calculation date of July 1, 2007, through the first day of the month in which the asset transfer is to be completed.

(c) Once an emergency medical services officer has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section, or subsection (e) if
applicable, by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring emergency medical services officer forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

(d) Eligible emergency medical services officers that transfer from plans other than the Public Employees Retirement System shall have service recognized under this plan through the purchase of the service through payment by the member of sixty percent of the actuarial accrued liabilities which would result if the service is credited under the Emergency Medical Services Retirement System subject to the following:

(1) The service may be purchased in one-year increments of eligible service or for the total period of eligible service;

(2) Payment must begin within twelve months of the effective date of this article;

(3) Payment must be made in either a one-time lump sum payment received by the board no later than December 31, 2008, or in regular installment payments payable over sixty months with the initial installment received by the board on or before December 31, 2008;

(4) The rate of interest applicable to regular installment payments for the purchase of service shall be the actuarial interest rate assumption as approved by the board for completing the actuarial valuation for the plan year immediately preceding
(5) Once payments commence, selection of the period of service being purchased may not be amended; and

(6) Service will be credited only upon receipt by the board of all payments due.

(e) Notwithstanding any provision of this code to the contrary, any Emergency Medical Services director who: (1) Is an active member of the Public Employees Retirement System; and (2) has, or obtains within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature, basic or higher emergency management technician certification, is eligible to transfer service credit from the Public Employees Retirement System to the Emergency Medical Services Retirement System, upon payment of associated costs by the transferring director. The board shall compute the actuarially appropriate amount of any increased benefit cost of transfer to be borne by the transferring director to be paid according to terms established by the board. Any Emergency Medical Services director who transfers to the Emergency Medical Services Retirement System pursuant to the provisions of this subsection shall apply for the transfer to the board within one year of the effective date of the amendments to this section enacted during the 2012 regular session of the Legislature. Upon receipt of the total payment of all associated costs by the transferring director, the board shall compute the amount of assets to be transferred from the Public Employees Retirement System to the Emergency Medical Retirement System and shall transfer the assets within six months of the receipt of the application. Any director transferring into the retirement system as provided in this subsection is prohibited from retiring within three years of transfer.
AN ACT to amend and reenact §17-3A-1 of the Code of West Virginia, 1931, as amended, relating to funding of the Industrial Access Road Fund.

Be it enacted by the Legislature of West Virginia:

That §17-3A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§17-3A-1. Industrial Access Road Fund created; construction guarantees by municipalities and counties.

(a) Any other provision of this code notwithstanding, there is hereby continued in the State Treasury the Industrial Access Road Fund, referred to in this article as “the fund”. There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the State Road Fund or the percentage of those tax collections that will produce $3 million for each fiscal year. At the end of each fiscal year, all unobligated moneys in the fund revert to the State Road Fund.
(b) The moneys in the fund shall be expended by the Division of Highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing or other economic development activities, including publicly owned airports, are already constructed or are under firm contract to be constructed. In the event there is no industrial site already constructed or for which the construction is under firm contract, a county or municipality may guarantee to the Division of Highways an acceptable surety or a device in an amount equal to the estimated cost of the access road or that portion provided by the Division of Highways, that an industrial site will be constructed and if no industrial site acceptable to the Division of Highways is constructed within the time limits of the surety or device, the surety or device shall be forfeited.

CHAPTER 162

(S. B. 205 - By Senators Beach, Edgell, D. Facemire, Klempa and Wills)

[Passed March 2, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §17C-3-4b of the Code of West Virginia, 1931, as amended, relating to signage for construction zones; and other traffic restrictions.

Be it enacted by the Legislature of West Virginia:

That §17C-3-4b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in section one, article three, chapter seventeen-c of this code, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by less than fifteen miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200.

(c) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by fifteen miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 or confined in a regional jail not more than twenty days, or both.

(d) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

CHAPTER 163

(S. B. 204 - By Senators Beach, Edgell, D. Facemire, Unger, Klempa and Wills)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §17C-13-5 of the Code of West Virginia, 1931, as amended, relating to the removal of vehicles
from state highways in order to restore traffic movement in emergency situations; and liability.

Be it enacted by the Legislature of West Virginia:

That §17C-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-5. Removal of vehicles parked, etc., on highways in emergencies; liability for costs of removal and storage; liens for towing and storage.

Whenever a vehicle has been stopped, parked or left standing upon any part of a highway or constitutes an obstruction to the restoration of traffic flow as the result of an accident or other emergency, any police officer or employee of the Division of Highways, duly authorized by the commissioner, may remove or order the removal of the vehicle, by towing or otherwise, to the nearest available established garage or parking lot for storage until called for by the owner or his or her agent. The owner is liable for the reasonable cost of removal and storage, and until payment of the cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. The garage or parking lot operator may enforce his or her lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.
AN ACT to amend and reenact §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-7a of said code, all relating to school personnel; changing certain deadlines pertaining to termination of a continuing contract, resignation, retirement, transfer and rehiring of probationary employees; changing the number of days prior to the beginning of the instructional term for limiting the transfer of certain employees; and restricting application of certain provisions pertaining to limiting the transfer of certain employees.

Be it enacted by the Legislature of West Virginia:

That §18A-2-2, §18A-2-6, §18A-2-7 and §18A-2-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18A-4-7a of said code be amended and reenacted, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof; written notice bonus for teachers and professional personnel.

(a) Before entering upon their duties, all teachers shall execute a contract with their county boards, which shall state
the salary to be paid and shall be in the form prescribed by
the state superintendent. Each contract shall be signed by the
teacher and by the president and secretary of the county
board and shall be filed, together with the certificate of the
teacher, by the secretary of the office of the county board:

Provided, That when necessary to facilitate the employment
of employable professional personnel and prospective and
recent graduates of teacher education programs who have not
yet attained certification, the contract may be signed upon the
condition that the certificate is issued to the employee prior
to the beginning of the employment term in which the
employee enters upon his or her duties.

(b) Each teacher’s contract, under this section, shall be
designated as a probationary or continuing contract. A
probationary teacher’s contract shall be for a term of not less
than one nor more than three years, one of which shall be for
completion of a beginning teacher internship pursuant to the
provisions of section two-b, article three of this chapter, if
applicable. If, after three years of such employment, the
teacher who holds a professional certificate, based on at least
a bachelor’s degree, has met the qualifications for a
bachelor’s degree and the county board enter into a new
contract of employment, it shall be a continuing contract,
subject to the following:

(1) Any teacher holding a valid certificate with less than
a bachelor’s degree who is employed in a county beyond the
three-year probationary period shall upon qualifying for the
professional certificate based upon a bachelor’s degree, if
reemployed, be granted continuing contract status; and

(2) A teacher holding continuing contract status with one
county shall be granted continuing contract status with any
other county upon completion of one year of acceptable
employment if the employment is during the next succeeding
school year or immediately following an approved leave of absence extending no more than one year.

(c) The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated, subject to the following:

(1) A continuing contract may not be terminated except:

   (A) By a majority vote of the full membership of the county board on or before March 1 of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes and an opportunity to be heard at a meeting of the board prior to the board’s action on the termination issue; or

   (B) By written resignation of the teacher on or before March 1 to initiate termination of a continuing contract;

(2) The termination shall take effect at the close of the school year in which the contract is terminated;

(3) The contract may be terminated at any time by mutual consent of the school board and the teacher;

(4) This section does not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article;

(5) A continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year 1984-1985 shall remain in full force and effect;

(6) A continuing contract does not operate to prevent a teacher’s dismissal based upon the lack of need for the
teacher’s services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. The written notification of teachers being considered for dismissal for lack of need shall be limited to only those teachers whose consideration for dismissal is based upon known or expected circumstances which will require dismissal for lack of need. An employee who was not provided notice and an opportunity for a hearing pursuant to this subsection may not be included on the list. In case of dismissal for lack of need, a dismissed teacher shall be placed upon a preferred list in the order of their length of service with that board. No teacher may be employed by the board until each qualified teacher upon the preferred list, in order, has been offered the opportunity for reemployment in a position for which he or she is qualified, not including a teacher who has accepted a teaching position elsewhere. The reemployment shall be upon a teacher’s preexisting continuing contract and has the same effect as though the contract had been suspended during the time the teacher was not employed.

(d) In the assignment of position or duties of a teacher under a continuing contract, the board may provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of the teacher or any other rights, privileges or benefits under the provisions of this chapter. Released time shall be provided for any professional educator while serving as a member of the Legislature during any duly constituted session of that body and its interim and statutory committees and commissions without jeopardizing his or her contractual rights or any other rights, privileges, benefits or accrual of experience for placement on the state minimum salary schedule in the following school year under the provisions of this chapter, board policy and law.

(e) Any teacher who fails to fulfill his or her contract with the board, unless prevented from doing so by personal illness
or other just cause or unless released from his or her contract by the board, or who violates any lawful provision of the contract, is disqualified to teach in any other public school in the state for a period of the next ensuing school year and the State Department of Education or board may hold all papers and credentials of the teacher on file for a period of one year for the violation: Provided, That marriage of a teacher is not considered a failure to fulfill, or violation of, the contract.

(f) Any classroom teacher, as defined in section one, article one of this chapter, who desires to resign employment with a county board or request a leave of absence, the resignation or leave of absence to become effective on or before July 15 of the same year and after completion of the employment term, may do so at any time during the school year by written notification of the resignation or leave of absence and any notification received by a county board shall automatically extend the teacher’s public employee insurance coverage until August 31 of the same year.

(g) (1) A classroom teacher who gives written notice to the county board on or before January 15 of the school year of his or her retirement from employment with the board at the conclusion of the school year shall be paid $500 from the Early Notification of Retirement line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, the priority of payment is for teachers who give written notice the earliest. This payment shall not be counted as part of the final average salary for the purpose of calculating retirement.
(2) The position of a classroom teacher providing written notice of retirement pursuant to this subsection may be considered vacant and the county board may immediately post the position as an opening to be filled at the conclusion of the school year. If a teacher has been hired to fill the position of a retiring classroom teacher prior to the start of the next school year, the retiring classroom teacher is disqualified from continuing his or her employment in that position. However, the retiring classroom teacher may be permitted to continue his or her employment in that position and forfeit the early retirement notification payment if, after giving notice of retirement in accordance with this subsection, he or she becomes subject to a significant unforeseen financial hardship, including a hardship caused by the death or illness of an immediate family member or loss of employment of a spouse. Other significant unforeseen financial hardships shall be determined by the county superintendent on a case-by-case basis. This subsection does not prohibit a county school board from eliminating the position of a retiring classroom teacher.

§18A-2-6. **Continuing contract status for service personnel; termination.**

After three years of acceptable employment, each service personnel employee who enters into a new contract of employment with the board shall be granted continuing contract status: *Provided, That a service personnel employee holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year. The continuing contract of any such employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes,
to the employee, by a majority vote of the full membership of
the board before March 1 of the then current year, or by written
resignation of the employee on or before that date. The affected
employee has the right of a hearing before the board, if
requested, before final action is taken by the board upon the
termination of such employment.

Those employees who have completed three years of
acceptable employment as of the effective date of this
legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension
and recommendation of dismissal of school personnel
by superintendent; preliminary notice of transfer;
hearing on the transfer; proof required.

(a) The superintendent, subject only to approval of the
board, may assign, transfer, promote, demote or suspend school
personnel and recommend their dismissal pursuant to
provisions of this chapter. However, an employee shall be
notified in writing by the superintendent on or before March 1
if he or she is being considered for transfer or to be transferred.
Only those employees whose consideration for transfer or
intended transfer is based upon known or expected
circumstances which will require the transfer of employees
shall be considered for transfer or intended for transfer and the
notification shall be limited to only those employees. Any
teacher or employee who desires to protest the proposed
transfer may request in writing a statement of the reasons for
the proposed transfer. The statement of reasons shall be
delivered to the teacher or employee within ten days of the
receipt of the request. Within ten days of the receipt of the
statement of the reasons, the teacher or employee may make
written demand upon the superintendent for a hearing on the
proposed transfer before the county board of education. The
hearing on the proposed transfer shall be held on or before
April 15. At the hearing, the reasons for the proposed transfer
must be shown.
(b) The superintendent at a meeting of the board on or before April 15 shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. An employee who was not provided notice and an opportunity for a hearing pursuant to subsection (a) of this section may not be included on the list. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of the meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to the persons’ last known addresses within ten days following the board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor.

(c) The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and the period of suspension may not exceed thirty days unless extended by order of the board.

(d) The provisions of this section respecting hearing upon notice of transfer is not applicable in emergency situations where the school building becomes damaged or destroyed through an unforeseeable act and which act necessitates a transfer of the school personnel because of the aforementioned condition of the building.

§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.

The superintendent at a meeting of the board on or before April 15 of each year shall provide in writing to the board a list of all probationary teachers that he or she recommends to be rehired for the next ensuing school year. The board shall act
upon the superintendent’s recommendations at that meeting in accordance with section one of this article. The board at this same meeting shall also act upon the retention of other probationary employees as provided in sections two and five of this article. Any such probationary teacher or other probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he or she has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. The hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

(a) A county board of education shall make decisions affecting the hiring of professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications.

(b) The county board shall make decisions affecting the hiring of new classroom teachers on the basis of the applicant with the highest qualifications.

(c) In judging qualifications for hiring employees pursuant to subsections (a) and (b) of this section, consideration shall be given to each of the following:
(1) Appropriate certification, licensure or both;

(2) Amount of experience relevant to the position; or, in the case of a classroom teaching position, the amount of teaching experience in the subject area;

(3) The amount of course work, degree level or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) Relevant specialized training;

(6) Past performance evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged.

(d) If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make a decision affecting the filling of the position on the basis of the following criteria:

(1) Appropriate certification, licensure or both;

(2) Total amount of teaching experience;

(3) The existence of teaching experience in the required certification area;

(4) Degree level in the required certification area;

(5) Specialized training directly related to the performance of the job as stated in the job description;
(6) Receiving an overall rating of satisfactory in the previous two evaluations conducted pursuant to section twelve, article two of this chapter; and

(7) Seniority.

(e) In filling positions pursuant to subsection (d) of this section, consideration shall be given to each criterion with each criterion being given equal weight. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant’s qualifications.

(f) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(g) Upon completion of one hundred thirty-three days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(h) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the
basis of the length of time the employee has been employed by the county board of education in that area: *Provided, That* if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

(i) Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided, That* when two or more principals have accumulated identical seniority, decisions on reductions in force shall be based on qualifications.

(j) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter. The provisions of this subsection are subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both, if the
employee’s seniority is greater than the seniority of any other employee in that area of certification, licensure or both;

(3) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee’s seniority is greater than the seniority of any other employee in one or more of those areas of certification, licensure or both, the employee subject to release shall be employed in the professional position held by the employee with the least seniority in any of those areas of certification, licensure or both; and

(4) If, prior to August 1, of the year a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and higher seniority, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(k) For the purpose of this article, all positions which meet the definition of “classroom teacher” as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. The board shall submit a copy of its policy to the state board within thirty days of adoption or any modification, and the state
board shall compile a report and submit the report to the Legislative Oversight Commission on Education Accountability by December 31, 1993, and by that date in any succeeding year in which any county board submits a modification of its policy relating to lateral positions. In adopting the policy, the board shall give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; certification, licensure or both; and days in the period of employment.

(l) After the twentieth day prior to the beginning of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that instructional term unless the person holding that position does not have valid certification. The provisions of this subsection are subject to the following:

(1) The person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next instructional term;

(2) Professional personnel who have been on an approved leave of absence may fill these vacancies upon their return from the approved leave of absence;

(3) The county board, upon recommendation of the superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students. The county superintendent shall notify the state board of each transfer of a person employed in a professional position to another professional position after the twentieth day prior to the beginning of the instructional term;

(4) The provisions of this subsection do not apply to the filling of a position vacated because of resignation or
retirement that became effective on or before the twentieth
day prior to the beginning of the instructional term, but not
posted until after that date; and

(5) The Legislature finds that it is not in the best interest of the
students particularly in the elementary grades to have multiple
teachers for any one grade level or course during the instructional
term. It is the intent of the Legislature that the filling of positions
through transfers of personnel from one professional position to
another after the twentieth day prior to the beginning of the
instructional term should be kept to a minimum.

(m) All professional personnel whose seniority with the
county board is insufficient to allow their retention by the
county board during a reduction in work force shall be placed
upon a preferred recall list. As to any professional position
opening within the area where they had previously been
employed or to any lateral area for which they have
certification, licensure or both, the employee shall be recalled
on the basis of seniority if no regular, full-time professional
personnel, or those returning from leaves of absence with
greater seniority, are qualified, apply for and accept the
position.

(n) Before position openings that are known or expected
to extend for twenty consecutive employment days or longer
for professional personnel may be filled by the board, the
board shall be required to notify all qualified professional
personnel on the preferred list and give them an opportunity
to apply, but failure to apply shall not cause the employee to
forfeit any right to recall. The notice shall be sent by
certified mail to the last known address of the employee, and
it shall be the duty of each professional personnel to notify
the board of continued availability annually, of any change in
address or of any change in certification, licensure or both.
Ch. 164] SCHOOL PERSONNEL 1331

(o) Openings in established, existing or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices which shall be subject to the following:

(A) The notices shall be posted in conspicuous working places for all professional personnel to observe for at least five working days;

(B) The notice shall be posted within twenty working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy shall be filled until after the five-day minimum posting period;

(3) If one or more applicants meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within thirty working days of the end of the posting period;

(4) A position held by a teacher who is certified, licensed or both, who has been issued a permit for full-time employment and is working toward certification in the permit
area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein shall prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: Provided, That the employee and the county board of education mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority with the least senior classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior employee in the school is not in that grade level, the least senior classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the least senior classroom teacher in the school without that position being posted: Provided, That the employee is certified, licensed or both and agrees to the reassignment.

(r) Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall
be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

CHAPTER 165

(Com. Sub. for H. B. 4236 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 10, 2012; in effect ninety days from passage.] [Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §18A-2-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all relating to establishing a new system of performance evaluations of classroom teachers, principals and assistant principals; exclusions from the definition of professional personnel for certain evaluation purposes; providing findings, purposes, definitions and intent of new provisions; providing for
phased implementation and legislative oversight; requiring state board rules and submissions of draft rules to legislative oversight commission; providing minimum provisions of evaluation processes for teachers and principals and specific percentages of evaluation score to be based standards and student performance; providing for evaluations to serve certain purposes, including plans of improvement and personnel actions for unsatisfactory performance; requiring certain employee training prior to implementation of new evaluation processes; providing intent of new comprehensive system of support; requiring the state board to publish guidelines for county boards on design and implementation of comprehensive system of support; restricting certain funding subject to adoption of comprehensive system plan by county that is verified by state board as meeting certain requirements; specifying contents of plan; and providing for transition of appropriations to support execution of plans and use of funds.

Be it enacted by the Legislature of West Virginia:

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18A-3C-1, §18A-3C-2 and §18A-3C-3, all to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

(a) The state board shall adopt a written system for the evaluation of the employment performance of personnel, which system shall be applied uniformly by county boards in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the state board for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section.
(c) For purposes of this section, “professional personnel”, “professional” or “professionals”, means professional personnel as defined in section one, article one of this chapter but does not include classroom teachers, principals and assistant principals subject to the evaluation processes established pursuant to the provisions of section two, article three-c of this chapter when the school at which these professional personnel are employed is selected to participate in those evaluation processes as part of the multi-step implementation leading to full statewide implementation by school year 2013-2014.

(d) In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the Center for Professional Development created in article three-a of this chapter. The center shall participate actively with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional meets those standards.

(e) The performance evaluation system shall contain, but not be limited to, the following information:

(1) The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals or others;

(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn. For school personnel with five or more years of experience who have not received an unsatisfactory rating, evaluations shall be conducted no more than once every three years unless the principal determines an evaluation for a particular school employee is needed more frequently. Until the school or school system at which they are employed is subject to the provisions of article three-c of this chapter, for classroom teachers with five or more years of experience who have not received an unsatisfactory
rating, an evaluation shall be conducted or professional growth
and development plan required only when the principal
determines it is necessary for a particular classroom teacher or
when a classroom teacher exercises the option of being
evaluated at more frequent intervals;

(3) The evaluation shall serve the following purposes:

(A) Serve as a basis for the improvement of the
performance of the personnel in their assigned duties;

(B) Provide an indicator of satisfactory performance for
individual professionals;

(C) Serve as documentation for a dismissal on the grounds
of unsatisfactory performance; and

(D) Serve as a basis for programs to increase the
professional growth and development of professional personnel;

(4) The standards for satisfactory performance for
professional personnel and the criteria to be used to determine
whether the performance of each professional meets those
standards and other criteria for evaluation for each professional
position evaluated. Professional personnel, as appropriate, shall
demonstrate competency in the knowledge and implementation
of the technology standards adopted by the state board. If a
professional fails to demonstrate competency in the knowledge
and implementation of these standards, he or she will be subject
to an improvement plan to correct the deficiencies; and

(5) Provisions for a written improvement plan, which shall
be specific as to what improvements, if any, are needed in the
performance of the professional and shall clearly set forth
recommendations for improvements, including
recommendations for additional education and training during
the professional’s recertification process.

(f) A professional whose performance is considered to be
unsatisfactory shall be given notice of deficiencies. A
remediation plan to correct deficiencies shall be developed by
the employing county board and the professional. The
professional shall be given a reasonable period of time for
remediation of the deficiencies and shall receive a statement of
the resources and assistance available for the purposes of
correcting the deficiencies.

(g) No person may evaluate professional personnel for the
purposes of this section unless the person has an administrative
certificate issued by the state superintendent and has successfully
completed education and training in evaluation skills through the
center for professional development, or equivalent education
training approved by the state board, which will enable the
person to make fair, professional, and credible evaluations of the
personnel whom the person is responsible for evaluating. After
July 1, 1994, no person may be issued an administrative
certificate or have an administrative certificate renewed unless
the state board determines that the person has successfully
completed education and training in evaluation skills through the
center for professional development or equivalent education and
training approved by the state board.

(h) Any professional whose performance evaluation
includes a written improvement plan shall be given an
opportunity to improve his or her performance through the
implementation of the plan. If the next performance evaluation
shows that the professional is now performing satisfactorily, no
further action may be taken concerning the original performance
evaluation. If the evaluation shows that the professional is still
not performing satisfactorily, the evaluator either shall make
additional recommendations for improvement or may
recommend the dismissal of the professional in accordance with
the provisions of section eight of this article.

(i) Lesson plans are intended to serve as a daily guide for
teachers and substitutes for the orderly presentation of the
curriculum. Lesson plans may not be used as a substitute for
observations by an administrator in the performance evaluation
process. A classroom teacher, as defined in section one, article
of this chapter, may not be required to post his or her lesson plans on the Internet or otherwise make them available to students and parents or to include in his or her lesson plans any of the following:

(1) Teach and reteach strategies;

(2) Write to learn activities;

(3) Cultural diversity;

(4) Color coding; or

(5) Any other similar items which are not required to serve as a guide to the teacher or substitute for daily instruction; and

(j) The Legislature finds that classroom teachers must be free of unnecessary paperwork so that they can focus their time on instruction. Therefore, classroom teachers may not be required to keep records or logs of routine contacts with parents or guardians.

(k) Nothing in this section may be construed to prohibit classroom teachers from voluntarily posting material on the Internet. Nothing in article three-c of this chapter may be construed to negate the provisions of subsections (i) and (j) of this section.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

§18A-3C-1. Findings; purposes and definition.

(a) The Legislature makes the following findings:

(1) Processes set forth in this article for evaluation, teacher induction and professional growth is not intended to make up for substandard initial preparation of teachers, but instead is intended to build on a solid foundation created by the teacher preparation programs. Therefore, the Legislature expects the teacher preparation programs to graduate teachers who can
perform at a level that increases student achievement. The Legislature expects that the processes set forth in this article will allow a teacher to excel beyond that level in the classroom;

(2) The comprehensive system of support provided for in this article should be implemented in a way that, as compared with the beginning teacher internship system, much more effectively provides for the professional growth of teachers;

(3) In order for the comprehensive system of support to much more effectively provide for professional growth for teachers, funding should be greatly increased over and above what has been provided for the beginning teacher internship system; and

(4) Although the quality of the teacher in the classroom is extremely important to the academic achievement of students, students cannot learn if they are not in the classroom. Therefore, attending school on a regular basis is of utmost importance to the academic success of students.

(b) The purpose of this article is to create a comprehensive infrastructure that routinely supports a continuous process for improving teaching and learning. Its focus is on developing strong teaching and school leadership, without which effective learning does not occur. The general components of this infrastructure include the following:

(1) High-quality teacher preparation, induction and evaluation;

(2) Universal support for emerging teachers including comprehensive new teacher induction and support for student teachers, teachers teaching in assignments for which they have less than a full professional credential and teacher candidates pursuing certification through an alternative route;

(3) Evaluation of the performance of teachers and leaders in demonstrating high quality professional practice, leadership and collaboration and the resulting growth in student learning;
(4) Focused improvement in teaching and learning through the use of evaluation data to inform the delivery of professional development and additional supports to improve teaching based on the evaluation results and to inform the need for improvements in teacher preparation programs; and

(5) The creation of a leadership culture that seeks and builds powerful alliances among all stakeholders focused on continuous growth in student learning.

(c) For purposes of this article “professional personnel” includes classroom teachers, assistant principals and principals as defined in section one, article one chapter eighteen-a of this code.

§18A-3C-2. Performance evaluations of professional personnel.

(a) The intent of the Legislature is to allow for a multi-step statewide implementation of performance evaluations for professional personnel pursuant to this section consistent with sound educational practices and resources available resulting in full state-wide implementation by no later than the school year 2013-2014. Beginning with the schools included in the evaluation processes for professional personnel piloted by the Department of Education during the 2011-2012 school year, additional schools or school systems shall be subject to the provisions of this article in accordance with a plan established by the state board to achieve full statewide implementation by no later than the school year 2013-2014. For schools and school systems subject to the provisions of this article, the provisions of this article shall govern when they are in conflict with other provisions of this chapter and chapter eighteen of this code. Specifically, the provisions of this article govern for the performance evaluation of classroom teachers, principals and assistant principals employed in these schools and school systems. To the extent that this article conflicts with the provisions of section twelve, article two of this chapter relating to professional personnel performance evaluations, this article shall govern. The state board shall submit a report on its plan for
the phased implementation of this article to the Legislative Oversight Commission on Education Accountability at the Commission’s July interim meeting in each year of the phased implementation. The report shall include an update on the implementation of this article including, but not limited to the evaluation process and a list of the schools and school systems subject to the provisions of this article. To assist the Legislative Oversight Commission on Education Accountability in monitoring the implementation of this article, the state board shall report to the Commission upon its request throughout the implementation process, including but not limited to, reports on the results of surveys of teachers and principals on the implementation and use of the new evaluation system, the adequacy of the professional development given to employees on the purposes, instruments and procedures of the evaluation process, the time consumed by the evaluation process and the various tasks required for employees of different levels of experience, the aggregate results of the evaluations and any recommendations for changes in the process or other aspects of the duties of affected employees to improve the focus on the core mission of schools of teaching and learning.

(b) Before July 1, 2013, the state board shall adopt a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, for evaluating the performance of each professional person each year. The state board shall submit a draft of the proposed rule to the Legislative Oversight Commission on Education Accountability by February 15, 2013, and a final draft proposed rule prior to adoption. The rule shall provide for performance evaluations of professional personnel to be conducted in accordance with this section in each school and school system beginning with the 2013-14 school year.

(c)(1) The process adopted by the state board for evaluating the performance of classroom teachers shall incorporate at least the following:

(A) Alignment with the West Virginia professional teaching standards adopted by the state board that establish the
foundation for educator preparation, teacher assessment and professional development throughout the state;

(B) Employment of the professional teaching standards to provide explicit and extensive measures of the work of teaching and what teachers must know and be able to do and provide evaluative measures of educator performance;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate student learning as an indicator of educator performance; and

(D) The use of school’s school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the educator’s ability to perform the critical standard elements of the professional teaching standards. The appraisal shall include conferences with the evaluator reinforced through observation. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the educator in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

(d) (1) The process adopted by the state board for evaluating the performance of principals and assistant principals shall include at least the following:

(A) Alignment with the West Virginia professional leadership standards adopted by the state board establishing the responsibility of principals for the collective success of their school including the learning, growth and achievement of students, staff and self;
(B) Employment of the professional leadership standards to provide explicit and extensive measures of the work of school leadership focused on the continuous improvement of teaching and learning. The process shall include conferences and goal setting with the superintendent or his or her designee and the use of a survey of stakeholders to assist in identifying the needs and establishing the goals for the school and the principal. The survey shall be distributed to at least the following stakeholders: Students, parents, teachers and service personnel. The evaluative measures shall include the use of data, evidence and artifacts to confirm the principal’s performance on achieving the goals established by the principal and superintendent;

(C) The use of two pieces of evidence at two points in time over the instructional term to demonstrate the growth in student learning at the school; and

(D) The use of the school’s school-wide student learning growth as measured by the state-wide summative assessment as an evaluative measure of all educators employed in the school.

(2) Eighty percent of the evaluation shall be based on an appraisal of the principal’s or the assistant principal’s ability to perform the critical standard elements of the professional leadership standards and achieve the goals established for the principal and the school. Fifteen percent of the evaluation shall be based on evidence of the learning of the students assigned to the school in accordance with paragraph (C), subdivision (1) of this subsection, and five percent of the evaluation shall be based on student learning growth measured by the school-wide score on the state summative assessment in accordance with paragraph (D), subdivision (1) of this subsection.

(e) Evaluations of the performance of professional personnel shall serve the following purposes:

(1) Serve as a basis for the improvement of the performance of the professional personnel in their assigned duties;
(2) Serve as the basis for providing professional
development specifically targeted on the area or areas identified
through the evaluation process as needing improvement. If
possible, this targeted professional development should be
delivered at the school-site using collaborative processes,
mentoring or coaching or other approaches that maximize use of
the instructional setting;

(3) Serve as the basis for establishing priorities for the
provision of county-level professional development when
aggregate evaluation data from the county’s schools indicates an
area or areas of needed improvement;

(4) Serve as a basis for informing the teacher preparation
programs in this state of an area or areas of needed improvement
in the programs, or informing a specific program of needed
improvement, when state-level aggregate evaluation data
indicates that beginning teachers who have graduated from the
program have specific weaknesses;

(5) Provide an indicator of level of performance of the
professional personnel;

(6) Serve as a basis for programs to increase the
professional growth and development of professional personnel;
and

(7) Serve as documentation for a dismissal on the grounds of
unsatisfactory performance.

(f) The rule adopted by the state board shall include
standards for performance of professional personnel and the
criteria to be used to determine whether their performance meets
the standards. The rule also shall include guidance on best
practices for providing time within the school day for teachers
subject to performance evaluations under this section to
participate in the collaborative mentoring or coaching and
planning processes necessary for execution of the performance
evaluation process and achieving advanced levels of performance.

(g) The rule adopted by the state board shall include provisions for written improvement plans when necessary to improve the performance of the professional personnel. The written improvement plan shall be specific as to what improvements are needed in the performance of the professional personnel and shall clearly set forth recommendations for improvements including recommendations for additional education and training of professionals subject to recertification. Professional personnel whose performance evaluation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan.

(h) A professional person whose performance is considered to be unsatisfactory shall be given written notice of his or her deficiencies. A written improvement plan to correct these deficiencies shall be developed by the employing county board and the employee. The professional person shall be given a reasonable period of time, not exceeding twelve months, to accomplish the requirements of the improvement plan and shall receive a written statement of the resources and assistance available for the purposes of correcting the deficiencies. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action may be taken concerning the original performance evaluation. If the evaluation shows that the professional is still not performing satisfactorily, the evaluator either shall make additional written recommendations for improvement or may recommend the dismissal of the professional personnel in accordance with the provisions of section eight, article two of this chapter.

(i) No person may evaluate professional personnel for the purposes of this section unless the person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education
training approved by the state board, which will enable the
person to make fair, professional, and credible evaluations of the
personnel whom the person is responsible for evaluating.

(j) Prior to implementation of the evaluation process
pursuant to this section at a school, each affected employee shall
be given training to ensure that the employees have a full
understanding of the purposes, instruments and procedures used
in evaluating their performance. Thereafter, this training shall be
held annually at the beginning of the employment term.

§18A-3C-3. Comprehensive system for teacher induction and
professional growth.

(a) The intent of the Legislature is to allow for a multistep
statewide implementation of a comprehensive system of support
for building professional practice of beginning teachers,
specifically those on the initial and intermediate progressions,
consistent with sound educational practices and resources
available. In this regard, it is the intent of the Legislature that the
transition of schools and school systems to a comprehensive
system of support that includes support for improved
professional performance targeted on deficiencies identified
through the evaluation process will be implemented concurrent
with the first year that a school or system receives final
evaluation results from the performance evaluation process
pursuant to section two of this article. Further, because of
significant variability among the counties, not only in the size of
their teaching force, distribution of facilities and available
resources, but also because of their varying needs, the
Legislature intends for the implementation of this section to be
accomplished in a manner that provides adequate flexibility to
the counties to design and implement a comprehensive system
of support for improving professional performance that best
achieves the goals of this section within the county. Finally,
because of the critical importance of ensuring that all teachers
perform at the accomplished level or higher in the delivery of
instruction that at least meets the West Virginia professional
teaching standards and because achieving this objective at a
minimum entails providing assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-assessed needs of the teachers themselves, the Legislature expects the highest priority for county, regional and state professional development will be on meeting these needs and that the transition to a comprehensive system of support for improving professional practice will reflect substantial redirection of existing professional development resources toward this highest priority.

(b) On or before July 1, 2012, the state board shall publish guidelines on the design and implementation of a comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system.

(c) For schools and school systems subject to the provisions of this article, the provisions of this article govern when they are in conflict with section two-b, article three of this chapter relating to beginning teacher internships, or in conflict with other provisions of this chapter and chapter eighteen of this code.

(d) Effective for the school year beginning July 1, 2013, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher internships and mentor teachers unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

1. The manner in which the county will provide the strong school-based support and supervision that will assist beginning teachers in developing instructional and management strategies,
procedural and policy expertise, and other professional practices
they need to be successful in the classroom and perform at the
accomplished level. Nothing in this subdivision prohibits a
school or school system that was granted an exception or waiver
from section two-c, article three of this chapter prior to the
effective date of this section from continuing implementation of
the program in accordance with the exception or waiver;

(2) The manner in which the county in cooperation with the
teacher preparation programs in this state will provide strong
school-based support and assistance necessary to make student
teaching a productive learning experience;

(3) The manner in which the county will use the data from
the educator performance evaluation system to serve as the basis
for providing professional development specifically targeted on
the area or areas identified through the evaluation process as
needing improvement. If possible, this targeted professional
development should be delivered at the school-site using
collaborative processes, mentoring or coaching or other
approaches that maximize use of the instructional setting;

(4) The manner in which the county will use the data from
the educator performance evaluation system to serve as the basis
for establishing priorities for the provision of county-level
professional development when aggregate evaluation data from
the county’s schools indicates an area or areas of needed
improvement;

(5) If a county uses master teachers, mentors, academic
coaches or any other approaches using individual employees to
provide support, supervision or other professional development
or training to other employees for the purpose of improving their
professional practice, the manner in which the county will select
each of these individual employees based on demonstrated
superior performance and competence as well as the manner in
which the county will coordinate support for these employees:
Provided, That the employment of persons for these positions
shall adhere to the posting and other provisions of section seven-
a, article four of this chapter utilizing subsection (c) of said
section seven-a to judge the qualifications of the applicants. If
the duties of the position are to provide mentoring to an
individual teacher at only one school, then priority shall being
given to applicants employed at the school at which those duties
will be performed;

(6) The manner in which the county will use local resources
available including, but not limited to, funds for professional
development and academic coaches, to focus on the priority
professional development goals of this section;

(7) The manner in which the county will adjust its
scheduling, use of substitutes, collaborative planning time,
calendar or other measures as may be necessary to provide
sufficient time for professional personnel to accomplish the
goals of this section as set forth in the county’s plan; and

(8) The manner in which the county will monitor and
evaluate the effectiveness of implementation and outcomes of the
county system of support for improving professional practice.

(e) Effective the school year beginning July 1, 2013, and
thereafter, appropriations for beginning teacher mentors and any
new appropriation which may be made for the purposes of this
section shall be expended by county boards only to accomplish
the activities as set forth in their county plan pursuant to this
section. Effective the school year beginning July 1, 2013, and
thereafter, no specific level of compensation is guaranteed for
any employee service or employment as a mentor and such
service or employment is not subject to the provisions of this
code governing extra duty contracts except as provided in
subdivision (5), subsection (c) of this section.

(f) The Legislative Oversight Commission on Education
Accountability shall review the progress of the implementation
of this article and may make any recommendations it considers
necessary to the Legislature during the 2013 regular legislative
session.
CHAPTER 166

(Com. Sub. for H. B. 4101 - By Delegates Perry, Shaver, D. Campbell, Lawrence, Pethtel, Armstead, Duke, Savilla, Sigler, Paxton and M. Poling)

[Passed March 10, 2012; in effect ninety days from passage.] [Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §18A-3-1 and 18A-3-2a of the Code of West Virginia, 1931, as amended, all relating to teacher preparation and certification; authorizing teacher-in-residence programs for certain prospective teachers in lieu of student teaching; defining teacher-in-residence programs and providing minimum requirements; providing use of certain funds for program support and student stipend; specifying formula for calculating stipend; creating teacher-in-residence permit and specifying conditions; authorizing counties with comprehensive induction programs to use consistent structure for supervision and training of student teachers; conforming sections to other provisions of law; removing duplicative and obsolete language; and making technical corrections throughout.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1 and 18A-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state is under the general direction and control of the state board after consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education who shall represent the interests of educator preparation programs within the institutions of higher education in this state as defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

(1) Programs in all institutions of higher education, including student teaching and teacher-in-residence programs as provided in this section;

(2) Beginning teacher internship and induction programs;

(3) Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section; and

(5) Continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.
(b) After consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, the state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to the following:

(1) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles;

(2) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including societal factors and their impact on student behavior; and

(3) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to section ten of this article, if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education;

(C) Possesses the minimum of a bachelor’s degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to
demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching;

(4) Assurance that the student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher; and

(5) A provision requiring any higher education institution with an educator preparation program to document that the student teacher’s field-based and clinical experiences include participation and instruction with multicultural, at-risk and exceptional children at each programmatic level for which the student teacher seeks certification;

(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program, to enter into an agreement that provides for the training
and supervision of student teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) *Teacher-in-residence programs.* --

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators in the state approved by the state board may enter into an agreement with county boards for the use of teacher-in-residence programs in the public schools.

(2) A “teacher-in-residence program” means an intensively supervised and mentored residency program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a teacher-in-residence program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a teacher-in-residence program shall have completed the content area preparation courses and shall have passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the teacher-in-residence serve only in a teaching position in the county which has been
posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the teacher-in-residence setting forth the responsibilities for supervision and mentoring by the higher education institution’s educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the teacher-in-residence to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate.

(D) A requirement that the teacher-in-residence hold a teacher-in-residence permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the teacher-in-residence is assigned shall be used only for program support and to pay a stipend to the teacher-in-residence as specified in the agreement, subject to the following:

(i) The teacher-in-residence is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The teacher-in-residence is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state aid funding due to the county board for the teacher-in-residence shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement,
including costs associated with instruction and supervision as
set forth in paragraph (C) of this subdivision;

(iv) The teacher-in-residence is provided the same
liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the teacher-
in-residence and not required for support of the program shall
be paid as a stipend to the teacher-in-residence: Provided,
That the stipend paid to the teacher-in-residence shall be no
less than sixty-five percent of all state aid funding due the
county for the teacher-in-residence.

(4) Other provisions that may be required by the state
board.

(f) In lieu of the student teaching experience in a public
school setting required by this section, an institution of higher
education may provide an alternate student teaching
experience in a nonpublic school setting if the institution of
higher education meets the following criteria:

(1) Complies with the provisions of this section;

(2) Has a state board approved educator preparation
program; and

(3) Enters into an agreement pursuant to subdivisions (g)
and (h) of this section.

(g) At the discretion of the higher education institution,
an agreement for an alternate student teaching experience
between an institution of higher education and a nonpublic
school shall require one of the following:

(1) The student teacher shall complete at least one half of
the clinical experience in a public school; or
(2) The educator preparation program shall include a requirement that any student performing student teaching in a nonpublic school shall complete the following:

(A) At least two hundred clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution’s state board approved educator preparation program, that provides information to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching experience between an institution of higher education and a nonpublic school shall include the following:
(1) A requirement that the higher education institution
with an educator preparation program shall document that the
student teacher’s field-based and clinical experiences include
participation and instruction with multicultural, at-risk and
exceptional children at each programmatic level for which the
student teacher seeks certification; and

(2) The minimum qualifications for the employment of
school teachers selected as supervising teachers, including
the requirement that field-based and clinical experiences be
supervised by a teacher fully certified in the state in which
that teacher is supervising.

(i) The state superintendent may issue certificates as
provided in section two-a of this article to graduates of
educator preparation programs and alternative educator
preparation programs approved by the state board. The
certificates are issued in accordance with this section and
rules adopted by the state board after consultation with the
Secretary of Education and the Arts and the Chancellor for
Higher Education.

(1) A certificate to teach may be granted only to a person
who meets the following criteria:

(A) Is a citizen of the United States, except as provided
in subdivision (2) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally and emotionally qualified to
perform the duties of a teacher; and

(D) Is at least eighteen years of age on or before October
1, of the year in which his or her certificate is issued.
(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country or an alien person who meets the requirements to teach.

(j) In consultation with the Secretary of Education and the Arts and the Chancellor for Higher Education, institutions of higher education approved for educator preparation may cooperate with each other, with the center for professional development and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to the following:

(1) Student teaching and teacher-in-residence programs;

(2) Beginning teacher internship and induction programs;

(3) Instruction in methodology; and

(4) Seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

By mutual agreement, the institutions of higher education, the center for professional development and county boards may budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

(k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(l) All institutions of higher education approved for educator preparation in the 1962-63 school year continue to
hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) Definitions. -- For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) “Nonpublic school” means a private school, parochial school, church school, school operated by a religious order or other nonpublic school that elects to meet the following conditions:

(A) Comply with the provisions of article twenty-eight, chapter eighteen of this code;

(B) Participate on a voluntary basis in a state operated or state sponsored program provided to this type school pursuant to this section; and

(C) Comply with the provisions of this section;

(2) “At-risk” means a student who has the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent activity or poverty as indicated by free or reduced lunch status; and

(3) “Exceptional child” or “exceptional children” has the meaning ascribed to these terms pursuant to section one, article twenty, chapter eighteen of this code, but, as used in this section, the terms do not include gifted students.

§18A-3-2a. Certificates valid in the public schools that may be issued by the state superintendent.

In accordance with state board rules for the education of professional educators adopted pursuant to section one of this
article and subject to the limitations and conditions of that section, the state superintendent may issue the following certificates valid in the public schools of the state:

(a) *Professional teaching certificates.* --

(1) A professional teaching certificate for teaching in the public schools may be issued to a person who meets the following conditions:

(A) Holds at least a bachelor's degree from an accredited institution of higher education in this state, and

(i) Has completed a program for the education of teachers which meets the requirements approved by the state board; or

(ii) Has met equivalent standards at institutions in other states and has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful experience within the last seven years in the area for which licensure is being sought; or

(B) Holds at least a bachelor’s degree in a discipline taught in the public schools from an accredited institution of higher education, and

(i) Has passed appropriate state board approved basic skills and subject matter tests; or

(ii) Has completed three years of successful experience within the last seven years in the area for which licensure is being sought; and

(I) Has completed an alternative program for teacher education approved by the state board,
(II) Is recommended for a certificate in accordance with the provisions of sections one-a and one-b of this article relating to the program, or

(III) Is recommended by the state superintendent based on documentation submitted.

(2) The certificate shall be endorsed to indicate the grade level or levels or areas of specialization in which the person is certified to teach or to serve in the public schools.

(3) The initial professional certificate is issued provisionally for a period of three years from the date of issuance:

(A) The certificate may be converted to a professional certificate valid for five years subject to successful completion of a beginning teacher internship or induction program, if applicable; or

(B) The certificate may be renewed subject to rules adopted by the state board.

(b) Alternative program teacher certificate. -- An alternative program teacher certificate may be issued to a candidate who is enrolled in an alternative program for the education of teachers in accordance with the provisions of section one-a of this article.

(1) The certificate is valid only for the alternative program position in which the candidate is employed and is subject to enrollment in the program.

(2) The certificate is valid for one year and may be renewed for each of the following two consecutive years only.
(c) *Professional administrative certificate.* --

1. A professional administrative certificate, endorsed for serving in the public schools, with specific endorsement as a principal, vocational administrator, supervisor of instructions or superintendent, may be issued to a person who has completed requirements all to be approved by the state board as follows:

   (A) Holds at least a master’s degree from an institution of higher education accredited to offer a master’s degree; and

   (i) Has successfully completed an approved program for administrative certification developed by the state board in cooperation with the chancellor for higher education, and

   (ii) Has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the state board, and

   (iii) Possesses three years of management level experience.

2. Any person serving in the position of dean of students on June 4, 1992, is not required to hold a professional administrative certificate.

3. The initial professional administrative certificate is issued provisionally for a period of five years. This certificate may be converted to a professional administrative certificate valid for five years or renewed, subject to the regulations of the state board.

(d) *Paraprofessional certificate.* -- A paraprofessional certificate may be issued to a person who meets the following conditions:
(1) Has completed thirty-six semester hours of post-secondary education or its equivalent in subjects directly related to performance of the job, all approved by the state board; and

(2) Demonstrates the proficiencies to perform duties as required of a paraprofessional as defined in section eight, article four of this chapter.

(e) Other certificates; permits. --

(1) Other certificates and permits may be issued, subject to the approval of the state board, to persons who do not qualify for the professional or paraprofessional certificate.

(2) A certificate or permit may not be given permanent status and a person holding one of these credentials shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

(3) Within the category of other certificates and permits, the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or coaches of other extracurricular activities, whose duties may include the supervision of students, subject to the following limitations:

(A) The person is employed under a contract with the county board of education.

(i) The contract specifies the duties to be performed, specifies a rate of pay that is equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments, and provides for liability insurance associated with the activity; and

(ii) The person holding this certificate is not considered an employee of the board for salary and benefit purposes other than as specified in the contract.
(B) A currently employed certified professional educator has not applied for the position; and

(C) The person completes an orientation program designed and approved in accordance with state board rules.

(f) *Teacher-In-Residence Permit.* --

(1) A teacher-in-residence permit may be issued to a candidate who is enrolled in a teacher-in-residence program in accordance with an agreement between an institution of higher education and a county board. The agreement is developed pursuant to subsection (f), section one of this article and requires approval by the state board.

(2) The permit is valid only for the teacher-in-residence program position in which the candidate is enrolled and is subject to enrollment in the program. The permit is valid for no more than one school year and may not be renewed.

**CHAPTER 167**


[Passed March 2, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 12, 2012.]

AN ACT to amend and reenact reenact §18A-3-1a and §18A-3-1b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-3-12, all relating to alternative programs for teacher education;
providing definitions; including entity affiliated with approved teacher education programs to be a partner in offering programs; defining approved education provider; modifying definition of area of critical need and shortage; generally reorganizing section, updating terms and eliminating duplicative language; modifying alternative program teacher certificate requirements; eliminating requirement to post position of alternative program teacher each year prior to rehiring; authorizing alternative methods of instructional delivery and candidate supervision and modifying existing methods; modifying professional support team provisions; modifying reporting and recommendation requirements; requiring certain legislative rules; and requiring teacher education programs to cooperate with the state board to ensure that certain assistance is provided to help students pursuing a teaching degree and certified teachers attain the required hours to earn a Technology Integration Specialist Advanced Credential.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1a and §18A-3-1b 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 §18A-3-12, all to read as follows:

ARTICLE 3.  TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1a.  Alternative programs for the education of teachers; legislative rules required.

1   (a) Definitions. -- For the purposes of this section, the following terms have the meaning ascribed to them, unless the context in which a term is used clearly requires a different meaning:
(1) “Alternative program teacher certificate” means a certificate issued for one year to a candidate who does not meet the standard educational requirements for teacher certification;

(2) “Approved education provider” means a partnership between one or more schools, school districts or regional educational service agencies and an institution of higher education in this state with a regionally accredited program for the education of professional educators approved by the state board or an entity affiliated with such an institution’s approved program, that has submitted to the state board a plan and agreement between the organizations for the delivery of an alternative program in accordance with this section, and the state board has approved the plan and agreement; and

(3) “Area of critical need and shortage” means an opening in an established, existing or newly-created position which has been posted at least two times in accordance with section seven-a, article four of this chapter and for which no fully-qualified applicant has been employed.

(b) Establishment of alternative teacher education programs. -- After consultation with the Secretary of Education and the Arts and the Chancellor of the Higher Education Policy Commission, the state board shall promulgate a legislative rule or rules in accordance with article three-b, chapter twenty-nine-a of this code to implement the provisions of this section. The proposed rule or rules shall be submitted to the Legislative Oversight Commission on Education Accountability for review prior to adoption. The rule or rules shall include, but are not limited to, the following issues:

(1) Separate procedures for the approval and operation of each of the alternative teacher education programs as provided in this section:
(A) These programs are an alternative to the regular college
or university programs for the education of teachers and may
only be offered by approved education providers; and

(B) Each program is separate from other programs
established by this section;

(2) Procedures for approving an approved education
provider as defined in this section. Approval is required prior to
implementation of the provider’s program leading to
certification to teach in the public schools of this state;

(3) An alternative program teacher may not be employed in
a school, school district or regional educational service agency
unless the school, school district or regional educational service
agency is a part of a partnership that qualifies as an approved
education provider as defined in subsection (a) of this section;

(4) Provisions for setting tuition charges to offset program
costs;

(5) The recommendation to rehire an alternative education
program teacher is subject to satisfactory progress in the
applicable alternative education program by the holder of the
alternative program certificate; and

(6) When making decisions affecting the hiring of a teacher
authorized to teach under an alternative program certificate as
provided in this section, a county board shall give preference to
applicants who hold a valid West Virginia professional teaching
certificate.

(c) Alternative teacher education program.--

(1) To participate in an approved alternative teacher
education program, the candidate must hold an alternative
program teacher certificate issued by the state superintendent
and endorsed for the instructional field in which the candidate seeks certification.

(2) The certificate may be renewed twice and no individual may hold an alternative program teacher certificate for a period exceeding three years. The alternative program teacher certificate is equivalent to a professional teaching certificate for the purpose of issuing a continuing contract.

(3) To be eligible for an alternative program teacher certificate, an applicant shall meet the following criteria:

(A) Possess at least a bachelor’s degree from a regionally accredited institution of higher education in a discipline taught in the public schools.

(B) Pass the same basic skills and subject matter test or tests required by the state board for traditional program candidates to become certified in the area for which licensure is being sought;

(C) Hold United States citizenship; be of good moral character and be physically, mentally and emotionally qualified to perform the duties of a teacher;

(D) Attain the age of eighteen years on or before October 1 of the year in which the alternative program teacher certificate is issued;

(E) Receive a formal offer of employment in an area of critical need and shortage from a county superintendent;

(F) Qualify for employment following a criminal history check pursuant to section ten of this article;

(G) In the case of an applicant pursuing certification to teach American Sign Language, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall possess at least a bachelor’s
degree from a regionally accredited institution of higher education and pass an appropriate state board approved test or tests demonstrating the applicant’s proficiency in American Sign Language; and

(H) In the case of applicants who have at least four years of experience in the subject field and are pursuing certification to teach in selected vocational and technical areas, in lieu of paragraphs (A) and (B) of this subdivision, the applicant shall pass an appropriate state board approved test or tests demonstrating the applicant’s proficiency in the basic skills and occupational content areas.

(4) A person who satisfies the requirements set forth in subdivision (3) of this subsection shall be granted a formal document authorizing him or her to work in a public school in West Virginia.

(5) An approved alternative program provides essential knowledge and skills to alternative program teachers through the following phases of training:

(A) **Instruction.** -- The alternative preparation program shall provide a minimum of eighteen semester hours of instruction in the areas of student assessment; development and learning; curriculum; classroom management; the use of educational computers and other technology; and special education and diversity. All programs shall contain a minimum of three semester hours of instruction in special education and diversity out of the minimum eighteen required semester hours. Subject to the approval of the state board, an approved education provider may provide instruction equivalent to the eighteen semester hours required by this paragraph through nontraditional methods, including, but not limited to, methods such as a series of modules covering the various topics, electronically delivered instruction, summer sessions, professional development and job-embedded mentoring.
(B) Phase I. -- Phase I consists of a period of intensive, on-the-job supervision by an assigned mentor and the school administrator for a period of not fewer than two weeks. The assigned mentor shall meet the requirements for a beginning teacher internship mentor set forth in section two-b of this article and shall be paid the stipend authorized pursuant to that section. The state board shall provide, in its rule for the approval and operation of this program, requirements for the frequency and duration of time periods for the person holding an alternative certificate to observe in the classroom of the mentor. The person holding an alternative certificate shall be observed daily by the mentor or the school administrator during this phase. This phase includes an orientation to the policies, organization and curriculum of the employing district. The alternative program teacher shall receive formal instruction in those areas listed in paragraph (A) of this subdivision.

(C) Phase II. -- Phase II consists of a period of intensive, on-the-job supervision beginning the first day following the completion of Phase I and continuing for a period of at least ten weeks. During Phase II, the alternative program teacher is visited and critiqued at least one time per week by members of a professional support team, as defined in subdivision (6) of this subsection, and is observed by the appropriately certified members of the team at the end of five weeks and again at five-week intervals until the completion of this phase. At the completion of this phase, the alternative program teacher shall receive a formal evaluation by the principal. The alternative program teacher shall continue to receive formal instruction in those areas listed in paragraph (A), of this subdivision.

(D) Phase III. -- Phase III consists of an additional period of continued supervision and evaluation of no fewer than twenty weeks duration. The professional support team determines the requirements of this phase, but those requirements shall include at least one formal evaluation conducted at the completion of the phase by the principal. The alternative program teacher shall
continue to receive formal instruction in those areas listed in paragraph (A) of this subdivision, and shall be given opportunities to observe the teaching of experienced colleagues.

(6) **Professional support team.** --

(A) Training and supervision of alternative program teachers are provided by a professional support team comprised of a school principal, or his or her designee, an experienced classroom teacher who satisfies the requirements for mentor for the Beginning Educator Internship pursuant to section two-b of this article, a representative of the institution of higher education that is a part of the partnership that qualifies as an approved education provider as defined in subsection (a) of this section or an entity affiliated with that institution, and a curriculum supervisor or other central office administrator with certification and training relevant to the training and supervision of the alternative program candidate.

(B) Districts or schools which have been unable to establish a relationship with a college or university shall provide for comparable expertise on the team.

(C) The school principal, or his or her designee, serves as chairperson of the team.

(D) The duration of each of the three phases of the program specified in paragraphs (B), (C) and (D), subdivision (5) of this subsection, in excess of the minimum durations provided in those paragraphs, shall be determined by the professional support team within guidelines provided by the state board in its rule for the approval and operation of this program.

(E) In addition to other duties assigned to it under this section and section one-b of this article, the approved education provider shall submit a written evaluation of the alternative program teacher to the county superintendent. The written
evaluation shall be in a form specified by the county superintendent and submitted on a date specified by the county superintendent that is prior to the first Monday of May. The evaluation shall report the progress of the alternative program teacher toward meeting the academic and performance requirements of the program.

(F) The training for professional support team members may be coordinated and provided by the Center for Professional Development in coordination with the approved education provider as set forth in the plan approved by the state board pursuant to subdivision (8) of this subsection.

(7) In lieu of and as an alternative to the professional support team specified in subdivision (6) of this subsection and its specific duties throughout the program phases as set forth in subdivision (5) of this section, a school or school district that has implemented a comprehensive beginning teacher induction program may, subject to the approval of the state board, provide for the training and supervision of alternative program teachers using a structure consistent with the structure implemented for the support, supervision and mentoring of beginning teachers: Provided, That all final decisions on the progress of the alternative program teacher and recommendations upon program completion shall rest with the principal.

(8) An approved education provider seeking approval for an alternative certification program shall submit a plan to the state board.

(A) No alternative certification program may be implemented prior to receiving state board approval.

(B) Each plan shall describe how the proposed training program will accomplish the key elements of an alternative program for the education of teachers as set forth in this section.
(d) Alternative highly qualified special education teacher education program. --

(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to teachers who have at least a bachelor’s degree in a program for the preparation of teachers from a regionally accredited institution of higher education.

(2) These programs are subject to the other provisions of this section only to the extent specifically provided in the rule.

(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers.

(4) The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation.

(5) Participation in an alternative education program pursuant to this subsection may not affect any rights, privileges or benefits to which the participant otherwise would be entitled as a regular employee and may not alter any rights, privileges or benefits of participants on continuing contract status.

(e) Additional alternative education program to prepare highly qualified special education teachers. --

(1) These programs are separate from the programs established under the other provisions of this section and are applicable only to persons who hold a bachelor’s degree from a regionally accredited institution of higher education.
(2) These programs are subject to the other provisions of this section only to the extent specifically provided in the rule.

(3) These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of these persons.

§18A-3-1b. Recommendation for certification of alternative program teachers.

At the conclusion of an alternative teacher education program, the approved education provider shall prepare a comprehensive evaluation report on the alternative program teacher’s performance. This report shall be submitted directly to the State Superintendent of Schools and shall contain a recommendation as to whether or not a professional certificate should be issued to the alternative program teacher. The report shall be made on standard forms developed by the State Superintendent.

The comprehensive evaluation report shall include one of the following recommendations:

(1) Approved: Recommends issuance of a professional certificate;

(2) Insufficient: Recommends that a professional certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future into an approved alternative teacher education program; or

(3) Disapproved: Recommends that a professional certificate not be issued and that the candidate not be allowed to enter into another approved alternative teacher education program in this state, but shall not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.
The approved education provider shall provide the alternative program teacher with a copy of the alternative program teacher’s written evaluation report and certification recommendation before submitting it to the state superintendent. If the alternative program teacher disagrees with the provider’s recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the State Board of Education.

§18A-3-12. Technology integration specialists.

The Legislature finds that technology integration specialists are becoming more crucial as technology plays a continuously increasing role in the education of students. In order to address the need for more technology integration specialists, the teacher preparation programs in this state shall cooperate with the state board to ensure that:

(1) A portion of the technology integration hours required to apply for the Advanced Credential endorsed for Technology Integration Specialist is offered at each teacher preparation program while students are still working toward their teaching degree;

(2) Teacher education program students are aware of the option of attaining a Technology Integration Specialist Advanced Credential and Temporary Authorization early enough so that they can take advantage of the hours offered; and

(3) Alternative education programs are established by the teacher preparation programs to assist teachers who have already received their teaching certification attain the required hours necessary to earn a Technology Integration Specialist Advanced Credential. These alternative education programs are separate from programs required to be established by section one-a of this article.
AN ACT to amend and reenact §18A-3A-2 of the Code of West Virginia, 1931, as amended, relating to requiring the Center for Professional Development to provide for the routine education of all professional educators and certain service personnel on warning signs and resources to assist in suicide prevention.

Be it enacted by the Legislature of West Virginia:

That §18A-3A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-2. Professional development project.

1 Subject to the provisions of section twenty-three-a, article two, chapter eighteen of this code, through this project the Center for Professional Development shall:

4 (1) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help professional educators acquire the knowledge, skills, attitudes, practices and other such pertinent complements considered essential for an individual to demonstrate appropriate performance as a professional person in the public schools of West Virginia. The basis for
the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto. The center also may permit and encourage school personnel such as classroom aides, higher education teacher education faculty and higher education faculty in programs such as articulated tech prep associate degree and other programs to participate in appropriate professional development programs and activities with public school professional educators;

(2) Identify, coordinate, arrange and otherwise assist in the delivery of professional development programs and activities that help principals and administrators acquire knowledge, skills, attitudes and practices in academic leadership and management principles for principals and administrators and such other pertinent complements considered essential for principals and administrators to demonstrate appropriate performance in the public schools of West Virginia. The basis for the performance shall be the laws, policies and regulations adopted for the public schools of West Virginia, and amendments thereto;

(3) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel, including, but not limited to, advising the teacher education programs of major statutory and policy changes in the public schools which affect the job performance requirements of professional educators, including principals and administrators;

(4) Provide for the routine updating of professional skills of professional educators, including principals and administrators, through in-service and other programs. The routine updating may be provided by the center through
(5) Provide for the routine education of all professional educators, including principals and administrators, and those service personnel having direct contact with students on warning signs and resources to assist in suicide prevention under guidelines established by the state board. The education may be accomplished through self review of suicide prevention materials and resources approved by the state board. The provisions of this paragraph may be known and cited as the “Jason Flatt Act of 2012”;

(6) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in planning, designing, coordinating, arranging for and delivering professional development programs to meet the needs of the professional educators of their district. From legislative appropriations to the center, exclusive of the amounts required for the expenses of the principals academy, the center shall, unless otherwise directed by the Legislature, provide assistance in the delivery of programs and activities to meet the expressed needs of the school districts for professional development to help teachers, principals and administrators demonstrate appropriate performance based on the laws, policies and regulations adopted for the public schools of West Virginia; and

(7) Cooperate and coordinate with the institutions of higher education to provide professional staff development programs that satisfy some or all of the criteria necessary for currently certified professional educators to meet the requirements for an additional endorsement in an area of certification and for certification to teach in the middle school grades.
If the center is not able to reach agreement with the representatives of the institutions providing teacher education programs on which courses will be approved for credit toward additional endorsements, the state board may certify certain professional staff development courses to meet criteria required by the state board. This certification shall be done on a course by course basis.

CHAPTER 169

(Com. Sub. for S. B. 186 - By Senators Plymale, Wells, Browning, Edgell, Boley, Stollings, Jenkins, Foster, Yost and Beach)

[Passed March 8, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §18A-4-2, §18A-4-5 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to providing salary equity supplement payments to teachers and service personnel in order to achieve salary equity among the counties; specifying the amounts of those equity supplements; changing the methods of calculating the difference in salary potential of school employees among the counties; requiring the Department of Education to request additional funds if it determines the equity objective is not being met; clarifying the amount of equity supplement to be paid from state funds; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2, §18A-4-5 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) Beginning July 1, 2011, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

STATE MINIMUM SALARY SCHEDULE

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(b) $600 shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed
in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) To meet the objective of salary equity among the counties as set forth in section five of this article, each teacher shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For “4th Class” at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including thirty-five years of experience;

(2) For “3rd Class” at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including thirty-five years of experience;

(3) For “2nd Class” at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(4) For “A. B.” at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(5) For “A. B. + 15” at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(6) For “M. A.” at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(7) For “M. A. + 15” at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;
(8) For “M. A. + 30” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(9) For “M. A. + 45” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience; and

(10) For “Doctorate” at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-a of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-5. Salary equity among the counties; state salary supplement.

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated using the average of the professional educator salary schedules, degree classifications B. A. through doctorate and the years of experience provided in the most recent state minimum salary schedule for teachers, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades A
through H and the years of experience provided in the most recent state minimum pay scale pay grade for service personnel, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties.

(b) To meet the objective of salary equity among the counties, as defined in subsection (a) of this section, on and after July 1, 1984, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive an equity supplement amount as specified in sections two and eight-a, respectively, of this article in addition to the amount from the state minimum salary schedules provided in those sections.

(c) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four, five and eight, article nine-a, chapter eighteen of this code. In the event the Department of Education determines that the objective of salary equity among the counties has not been met, it shall include in its budget request for the public school support plan for the next school year a request for funding sufficient to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.

(d) Pursuant to this section, each teacher and service person shall receive from state funds the equity supplement amount indicated in subsection (c), section two and subsection (f), section eight-a of this article, as applicable, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on January 1, 1984.
(e) The amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after January 1, 1984: Provided, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose. No county may reduce any salary supplement that was in effect on January 1, 1984, except as permitted by sections five-a and five-b of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2011, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

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**Ch. 169]  School Personnel**  

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<td>36</td>
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<td>3,051</td>
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<tr>
<td>I</td>
<td>37</td>
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<td>2,989</td>
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<tr>
<td>J</td>
<td>38</td>
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<td>2,915</td>
<td>2,968</td>
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<tr>
<td>K</td>
<td>39</td>
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<td>3,054</td>
<td>3,117</td>
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<tr>
<td>L</td>
<td>40</td>
<td>2,917</td>
<td>2,939</td>
<td>2,980</td>
<td>3,033</td>
<td>3,087</td>
<td>3,150</td>
<td>3,181</td>
<td>3,256</td>
</tr>
</tbody>
</table>

(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

<table>
<thead>
<tr>
<th>CLASS TITLE</th>
<th>PAY GRADE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountant I</td>
<td>D</td>
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<tr>
<td>Accountant II</td>
<td>E</td>
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<tr>
<td>Accountant III</td>
<td>F</td>
</tr>
<tr>
<td>Accounts Payable Supervisor</td>
<td>G</td>
</tr>
<tr>
<td>Aide I</td>
<td>A</td>
</tr>
<tr>
<td>Aide II</td>
<td>B</td>
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<tr>
<td>Aide III</td>
<td>C</td>
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</tr>
<tr>
<td>74</td>
<td>Aide IV</td>
</tr>
<tr>
<td>75</td>
<td>Audiovisual Technician</td>
</tr>
<tr>
<td>76</td>
<td>Auditor</td>
</tr>
<tr>
<td>77</td>
<td>Autism Mentor</td>
</tr>
<tr>
<td>78</td>
<td>Braille or Sign Language Specialist</td>
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<tr>
<td>79</td>
<td>Bus Operator</td>
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<tr>
<td>80</td>
<td>Buyer</td>
</tr>
<tr>
<td>81</td>
<td>Cabinetmaker</td>
</tr>
<tr>
<td>82</td>
<td>Cafeteria Manager</td>
</tr>
<tr>
<td>83</td>
<td>Carpenter I</td>
</tr>
<tr>
<td>84</td>
<td>Carpenter II</td>
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<tr>
<td>85</td>
<td>Chief Mechanic</td>
</tr>
<tr>
<td>86</td>
<td>Clerk I</td>
</tr>
<tr>
<td>87</td>
<td>Clerk II</td>
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<tr>
<td>88</td>
<td>Computer Operator</td>
</tr>
<tr>
<td>89</td>
<td>Cook I</td>
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<tr>
<td>90</td>
<td>Cook II</td>
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<td>91</td>
<td>Cook III</td>
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<tr>
<td>92</td>
<td>Crew Leader</td>
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<tr>
<td>93</td>
<td>Custodian I</td>
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<tr>
<td>94</td>
<td>Custodian II</td>
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<tr>
<td>95</td>
<td>Custodian III</td>
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<tr>
<td>96</td>
<td>Custodian IV</td>
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<tr>
<td>97</td>
<td>Director or Coordinator of Services</td>
</tr>
<tr>
<td>98</td>
<td>Draftsman</td>
</tr>
<tr>
<td>99</td>
<td>Electrician I</td>
</tr>
<tr>
<td>100</td>
<td>Electrician II</td>
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<tr>
<td>101</td>
<td>Electronic Technician I</td>
</tr>
<tr>
<td>102</td>
<td>Electronic Technician II</td>
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<tr>
<td>103</td>
<td>Executive Secretary</td>
</tr>
<tr>
<td>104</td>
<td>Food Services Supervisor</td>
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<tr>
<td>105</td>
<td>Foreman</td>
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<tr>
<td>106</td>
<td>General Maintenance</td>
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<tr>
<td>107</td>
<td>Glazier</td>
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<tr>
<td>108</td>
<td>Graphic Artist</td>
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<tr>
<td>109</td>
<td>Groundsman</td>
</tr>
<tr>
<td>110</td>
<td>Handyman</td>
</tr>
<tr>
<td>Code</td>
<td>Job Title</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>111</td>
<td>Heating and Air Conditioning Mechanic I</td>
</tr>
<tr>
<td>112</td>
<td>Heating and Air Conditioning Mechanic II</td>
</tr>
<tr>
<td>113</td>
<td>Heavy Equipment Operator</td>
</tr>
<tr>
<td>114</td>
<td>Inventory Supervisor</td>
</tr>
<tr>
<td>115</td>
<td>Key Punch Operator</td>
</tr>
<tr>
<td>116</td>
<td>Licensed Practical Nurse</td>
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<tr>
<td>117</td>
<td>Locksmith</td>
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<tr>
<td>118</td>
<td>Lubrication Man</td>
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<tr>
<td>119</td>
<td>Machinist</td>
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<tr>
<td>120</td>
<td>Mail Clerk</td>
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<tr>
<td>121</td>
<td>Maintenance Clerk</td>
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<tr>
<td>122</td>
<td>Mason</td>
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<tr>
<td>123</td>
<td>Mechanic</td>
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<tr>
<td>124</td>
<td>Mechanic Assistant</td>
</tr>
<tr>
<td>125</td>
<td>Office Equipment Repairman I</td>
</tr>
<tr>
<td>126</td>
<td>Office Equipment Repairman II</td>
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<tr>
<td>127</td>
<td>Painter</td>
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<tr>
<td>128</td>
<td>Paraprofessional</td>
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<tr>
<td>129</td>
<td>Payroll Supervisor</td>
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<tr>
<td>130</td>
<td>Plumber I</td>
</tr>
<tr>
<td>131</td>
<td>Plumber II</td>
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<tr>
<td>132</td>
<td>Printing Operator</td>
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<tr>
<td>133</td>
<td>Printing Supervisor</td>
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<tr>
<td>134</td>
<td>Programmer</td>
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<tr>
<td>135</td>
<td>Roofing/Sheet Metal Mechanic</td>
</tr>
<tr>
<td>136</td>
<td>Sanitation Plant Operator</td>
</tr>
<tr>
<td>137</td>
<td>School Bus Supervisor</td>
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<tr>
<td>138</td>
<td>Secretary I</td>
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<td>139</td>
<td>Secretary II</td>
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<td>140</td>
<td>Secretary III</td>
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<td>141</td>
<td>Supervisor of Maintenance</td>
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<td>142</td>
<td>Supervisor of Transportation</td>
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<tr>
<td>143</td>
<td>Switchboard Operator-Receptionist</td>
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<tr>
<td>144</td>
<td>Truck Driver</td>
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<tr>
<td>145</td>
<td>Warehouse Clerk</td>
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<td>146</td>
<td>Watchman</td>
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<tr>
<td>147</td>
<td>Welder</td>
</tr>
<tr>
<td>148</td>
<td>WVEIS Data Entry and Administrative Clerk</td>
</tr>
</tbody>
</table>
(b) An additional $12 per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(c) An additional $11 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

1. A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

2. A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

3. A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

4. A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

5. A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

6. A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

7. A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(8) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(d) An additional $40 per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds an associate’s degree;

(2) A service employee who holds a bachelor’s degree;

(3) A service employee who holds a master’s degree;

(4) A service employee who holds a doctorate degree.

(e) An additional $11 per month shall be added to the minimum monthly pay of each service employee for each of the following:

(1) A service employee who holds a bachelor’s degree plus fifteen college hours;

(2) A service employee who holds a master’s degree plus fifteen college hours;

(3) A service employee who holds a master’s degree plus thirty college hours;
(4) A service employee who holds a master’s degree plus forty-five college hours; and

(5) A service employee who holds a master’s degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service employee shall be paid an equity supplement, as set forth in section five of this article, of $152 per month, subject to the provisions of that section. These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service employee’s daily shift of work is performed between the hours of six o’clock p. m. and five o’clock a. m. the following day, the employee shall be paid no less than an additional $10 per month and one half of the pay shall be paid with local funds.

(h) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee’s usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) No service employee may have his or her daily work schedule changed during the school year without the
employee’s written consent and the employee’s required
daily work hours may not be changed to prevent the payment
of time and one-half wages or the employment of another
employee.

(k) The minimum hourly rate of pay for extra duty
assignments as defined in section eight-b of this article shall
be no less than one seventh of the employee’s daily total
salary for each hour the employee is involved in performing
the assignment and paid entirely from local funds: Provided,
That an alternative minimum hourly rate of pay for
performing extra duty assignments within a particular
category of employment may be used if the alternate hourly
rate of pay is approved both by the county board and by the
affirmative vote of a two-thirds majority of the regular full-
time employees within that classification category of
employment within that county: Provided, however, That the
vote shall be by secret ballot if requested by a service person
within that classification category within that county. The
salary for any fraction of an hour the employee is involved in
performing the assignment shall be prorated accordingly.
When performing extra duty assignments, employees who are
regularly employed on a one-half day salary basis shall
receive the same hourly extra duty assignment pay computed
as though the employee were employed on a full-day salary
basis.

(l) The minimum pay for any service personnel
employees engaged in the removal of asbestos material or
related duties required for asbestos removal shall be their
regular total daily rate of pay and no less than an additional
$3 per hour or no less than $5 per hour for service personnel
supervising asbestos removal responsibilities for each hour
these employees are involved in asbestos-related duties.
Related duties required for asbestos removal include, but are
not limited to, travel, preparation of the work site, removal of
asbestos decontamination of the work site, placing and
removal of equipment and removal of structures from the site.

If any member of an asbestos crew is engaged in asbestos
related duties outside of the employee’s regular employment
county, the daily rate of pay shall be no less than the
minimum amount as established in the employee’s regular
employment county for asbestos removal and an additional
$30 per each day the employee is engaged in asbestos
removal and related duties. The additional pay for asbestos
removal and related duties shall be payable entirely from
county funds. Before service personnel employees may be
used in the removal of asbestos material or related duties,
they shall have completed a federal Environmental Protection
Act approved training program and be licensed. The
employer shall provide all necessary protective equipment
and maintain all records required by the Environmental
Protection Act.

(m) For the purpose of qualifying for additional pay as
provided in section eight, article five of this chapter, an aide
shall be considered to be exercising the authority of a
supervisory aide and control over pupils if the aide is
required to supervise, control, direct, monitor, escort or
render service to a child or children when not under the direct
supervision of a certified professional person within the
classroom, library, hallway, lunchroom, gymnasium, school
building, school grounds or wherever supervision is required.
For purposes of this section, “under the direct supervision of
a certified professional person” means that certified
professional person is present, with and accompanying the aide.
CHAPTER 170

(H. B. 4655 - By Delegates M. Poling and Paxton)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to school service personnel certification; establishing criteria for certain certificate issuance, denial and revocation; establishing certification review panel; requiring reporting of certain acts; providing for certificate recall and correction under certain circumstance; and requiring State Board rule.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

1 (a) The State Board shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.
(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service personnel who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both. Applicants may take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally.

(1) The performance test for all classifications and categories other than bus operator is administered by an employee of the county board or an employee of a multicounty vocational school that serves the county at a location designated by the superintendent and approved by the board. The location may be a vocational school that serves the county.

(2) A standard passing score is established by the state Department of Education for each test and is used by county boards.
(3) The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when applying for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards are responsible for scheduling competency tests, notifying applicants of the date and time of the one day of training prior to taking the test, and the date and time of the test. County boards may not use a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee is excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.
(h) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is considered qualified for the classification title even though that employee no longer holds that classification.

(j) The requirements of this section do not alter the definitions of class titles as provided in section eight of this article or the procedure and requirements of section eight-b of this article.

(k) Notwithstanding any other provision of this code to the contrary and notwithstanding any rules of the School Board concerning school bus operator certification, the certification test for school bus operators shall be required as follows, and school bus operators may not be required to take the certification test more frequently:

(1) For substitute school bus operators and for school bus operators with regular employee status but on a probationary contract, the certification test shall be administered annually;

(2) For school bus operators with regular employee status and continuing contract status, the certification test shall be administered triennially; and

(3) For substitute school bus operators who are retired from a county board and who at the time of retirement had ten years of experience as a regular full-time bus operator, the certification test shall be administered triennially.

(4) School bus operator certificate. —
(A) A school bus operator certificate may be issued to a person who has attained the age of twenty-one, completed the required training set forth in State Board rule, and met the physical requirements and other criteria to operate a school bus set forth in State Board rule.

(B) The State Superintendent may, after ten days' notice and upon proper evidence, revoke the certificate of any bus operator for any of the following causes:

(i) Intemperance, untruthfulness, cruelty or immorality;

(ii) Conviction of or guilty plea or plea of no contest to a felony charge;

(iii) Conviction of or guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student;

(iv) Just and sufficient cause for revocation as specified by State Board rule; and

(v) Using fraudulent, unapproved or insufficient credit to obtain the certificates.

(vi) Of the causes for certificate revocation listed in this paragraph (B), the following causes constitute grounds for revocation only if there is a rational nexus between the conduct of the bus operator and the performance of the job:

(I) Intemperance, untruthfulness, cruelty or immorality;

(II) Just and sufficient cause for revocation as specified by State Board rule; and

(III) Using fraudulent, unapproved or insufficient credit to obtain the certificate.
(C) The certificate of a bus operator may not be revoked for either of the following unless it can be proven by clear and convincing evidence that the bus operator has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to operate a school bus:

(i) Any matter for which the bus operator was disciplined, less than dismissal, by the employing county board; or

(ii) Any matter for which the bus operator is meeting or has met an improvement plan determined by the county board.

(D) The State Superintendent shall designate a review panel to conduct hearings on certificate revocations or denials and make recommendations for action by the State Superintendent. The State Board, after consultation with employee organizations representing school service personnel, shall promulgate a rule to establish the review panel membership and composition, method of appointment, governing principles and meeting schedule.

(E) It is the duty of any county superintendent who knows of any acts on the part of a bus operator for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the State Superintendent for such action as in the State Superintendent’s judgment may be proper.

(F) If a certificate has been granted through an error, oversight or misinformation, the State Superintendent may recall the certificate and make such corrections as will conform to the requirements of law and State Board rules.

(5) The State Board shall promulgate in accordance with article three-b, chapter twenty-nine-a of this code, revised rules in compliance with this subsection.
AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to scrap metal; providing definitions; requiring scrap metal dealers to obtain business licenses; requiring scrap metal dealers to register scales with the Division of Labor; requiring scrap metal dealers to provide a notice of recycling activity to the Department of Environmental Protection; requiring scrap metal dealers to register with the Secretary of State; requiring the Secretary of State to maintain a list of scrap metal dealers and make the list publically available; requiring documentation of transactions involving five or more catalytic converters; requiring print of index finger or thumb on documentation of transactions involving five or more catalytic converters; prohibiting the possession, sale or purchase of stolen or unlawfully obtained scrap metal; prohibiting purchase of certain items of scrap metal without proof of lawful possession; and establishing criminal offenses.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

(a) For the purposes of this section, the following terms have the following meanings.

(1) “Business registration certificate” has the same meaning ascribed to it in section two, article twelve, chapter eleven of this code.

(2) “Purchaser” means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

(3) “Scrap metal” means any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, a catalytic converter or any materials derived from a catalytic converter, or steel railroad track and track material.

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures office;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and
(4) Register as a scrap metal dealer with the Secretary of State, who is hereby directed to maintain a list of scrap metal dealers and make it publically available. The list shall include the dealer’s business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

(c) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan or taken on consignment.

(d) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell said scrap metal; and

(2) A photocopy of a valid driver’s license or identification card issued by the West Virginia Division of
Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid photo identification of the seller issued by any other state or the federal government:  
*Provided, That, if the purchaser has a copy of the seller’s valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.*

(e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (c) and (d) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: *Provided, That the purchaser retains and makes available for review consistent with subsection (g) of this section the contract, bill of sale or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: Provided, however, That the purchaser may redact any pricing or other commercially sensitive information from said contract, bill of sale or similar documentation before making it available for inspection.*

(f) No purchaser of scrap metal may knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(g) Using a form provided by the West Virginia State Police, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser’s place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser’s regular
business hours, by any investigator employed by a public
utility or railroad to investigate the theft of public utility or
railroad property: Provided, That in lieu of the purchaser
keeping the records at their place of business, the purchaser
shall file the records with the local detachment of the State
Police and with the chief of police of the municipality or the
sheriff of the county wherein he or she is transacting business
within seventy-two hours of completion of the purchase. The
records shall be retained by the State Police and the chief of
police of the municipality or the sheriff for a period of not
less than three years.

(h) To the extent otherwise permitted by law, any
investigator employed by a public utility or railroad to
investigate the theft of public utility or railroad property may
accompany a law-enforcement officer upon the premises of
a purchaser in the execution of a valid warrant or assist law
enforcement in the review of records required to be retained
pursuant to this section.

(i) Upon the entry of a final determination and order by
a court of competent jurisdiction, scrap metal found to have
been misappropriated, stolen or taken under false pretenses
may be returned to the proper owner of such material.

(j) Nothing in this section applies to scrap purchases by
manufacturing facilities that melt, or otherwise alter the form
of scrap metal and transform it into a new product or to the
purchase or transportation of food and beverage containers or
other nonindustrial materials having a marginal value per
individual unit.

(k) (1) Nothing in this section applies to a purchaser of a
vehicle on which a catalytic converter is installed, a
purchaser of a catalytic converter intended for installation on
a vehicle owned or leased by the purchaser, or any person
who purchases, other than for purposes of resale, a catalytic
converter or a motor vehicle on which a catalytic converter is installed, for personal, family, household or business use.

(2) In transactions not exempted by subdivision (1) of this subsection, any person delivering five or more automobile catalytic converters to a scrap metal dealer shall, in addition to the requirements set forth in subsection (c) of this section, execute a document stating he or she is the lawful owner of the catalytic converters, or authorized by the lawful owner to sell the catalytic converters. Next to his or her signature he or she shall place a clear impression of his or her index finger or thumb that is in ink and free of smearing. This documentation shall be maintained consistent with subsection (c) of this section.

(l) Any person who knowingly or with fraudulent intent violates any provision of this section for which no penalty is specifically set forth, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense thereof, shall be fined not less than $1,000 nor more than $3,000; upon conviction of a second offense thereof, shall be fined not less than $2,000 and not more than $4,000 and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense thereof shall be fined not less than $3,000 and not more than $5,000 and, notwithstanding the provisions of section five, article twelve, chapter eleven of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held by that person and state the date said cancellation shall take effect.
(m) No person may have or take possession of any scrap metal that he or she knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection is guilty of larceny.

(n) No scrap metal dealer may purchase, possess or receive scrap metal that the scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller. Any person violating this subsection is guilty of larceny.

(o) No scrap metal dealer may purchase, possess or receive any of the following items of scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation which reflects that the seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item of scrap metal:

(1) Utility access covers;

(2) Street light poles or fixtures;

(3) Road or bridge guard rails;

(4) Water meter covers;

(5) Highway or street signs;

(6) Traffic directional or traffic control signs;

(7) Traffic light signals;

(8) Any metal marked with any form of the name or initials of a governmental entity;

(9) Property marked as or readily identifiable as owned by a telephone, cable, electric, water or other utility provider;
(10) Property owned and marked by a railroad;  
(11) Cemetery markers or vases;  
(12) Historical markers;  
(13) Utility manhole covers and storm water grates; and  
(14) Fire hydrant or fire hydrant caps; or  
(15) Twisted pair copper telecommunications wiring of twenty-five pair or greater in nineteen, twenty-two, twenty-four or twenty-six gauge.  
(p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession of scrap metal knowing or have reason to know that it is stolen or obtained illegally if it is done pursuant to a written agreement with law-enforcement officials.
authority to the bureau; and specifying certain requirements to be provided in the legislative rule.

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 §16-5P-15, to read as follows:

ARTICLE 5P. SENIOR SERVICES.

§16-5P-15. Establishment of In-home Care Registry.

(a) There is established within the Bureau of Senior Services an in-home care worker registry which is to be maintained by the bureau. The purpose of the registry is to provide the public a list of in-home care workers, along with their qualifications, who voluntarily agree to be included and who have passed a criminal background check.

(b) “In-home care worker” means an unlicensed person who provides personal care or other services and supports to persons with disabilities or to the elderly in order to enhance their well-being and which involves face-to-face direct contact with the person. Functions performed may include but are not limited to assistance and training in activities of daily living, personal care services, and job-related supports.

(c) The bureau shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to establish the following:

(1) The registry of in-home care workers;

(2) The requirements for inclusion on the registry as an ‘in-home care worker’, including educational attainment;

(3) A fee schedule of proposed rates for those services and supports provided by the in-home care worker based
upon qualifications of the in-home care workers, such as educational attainment;

(4) Requirement of completion and passage of a criminal background check, consisting of checking the National Instant Criminal Background Check System and the West Virginia criminal history record responses. If an in-home care worker is included on the list with a criminal history indicated on his or her criminal background check, that information shall be noted on the registry. The bureau may not remove a person from the registry if the criminal background check reveals any negative information;

(5) How a person obtains information from the registry; and

(6) Any other requirement necessary to implement the provisions of this section.

CHAPTER 173

(Com. Sub. for S. B. 382 - By Senator Unger)

[Passed March 5, 2012; in effect ninety days from passage.] [Approved by the Governor on March 14, 2012.]

AN ACT to amend and reenact §15-12-2, §15-12-3, §15-12-5 and §15-12-10 of the Code of West Virginia, 1931, as amended, all relating to the sex offender registration generally; requiring persons convicted of offenses relating to distributing obscene matter to minors to register; requiring offenders to provide palm prints; and requiring registration and updating of information only at the State Police detachment covering the offender’s county of residence.
Be it enacted by the Legislature of West Virginia:

That §15-12-2, §15-12-3, §15-12-5 and §15-12-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or an attempted offense or has been found not guilty by reason of mental illness, mental retardation or addiction of an offense under any of the following provisions of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:

(1) Article eight-a;

(2) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during the year 2000 legislative session;

(3) Article eight-c;

(4) Sections five and six, article eight-d;

(5) Section fourteen, article two;
(6) Sections six, seven, twelve and thirteen, article eight; or

(7) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection.

(c) Any person who has been convicted of a criminal offense and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) Persons required to register under the provisions of this article shall register in person at the West Virginia State Police detachment responsible for covering the county of his or her residence, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:

(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: Provided, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant's employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

(3) The registrant’s Social Security number;

(4) A full-face photograph of the registrant at the time of registration;
(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints and palm prints;

(7) Information related to any motor vehicle, trailer or motor home owned or regularly operated by a registrant, including vehicle make, model, color and license plate number: Provided, That for the purposes of this article, the term “trailer” shall mean travel trailer, fold-down camping trailer and house trailer as those terms are defined in section one, article one, chapter seventeen-a of this code;

(8) Information relating to any Internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the Internet; and

(9) Information related to any telephone or electronic paging device numbers that the registrant has or uses, including, but not limited to, residential, work and mobile telephone numbers.

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information
required by subsection (d) of this section prior to the release
of the person, inform the person of his or her duty to register
and send written notice of the release of the person to the
State Police within three business days of receiving the
information. The notice must include the information
required by said subsection. Any person having a duty to
register for a qualifying offense shall register upon
conviction, unless that person is confined or incarcerated, in
which case he or she shall register within three business days
of release, transfer or other change in disposition status. Any
person currently registered who is incarcerated for any
offense shall re-register within three business days of his or
her release.

(2) Notwithstanding any provision of this article to the
contrary, a court of this state shall, upon presiding over a
criminal matter resulting in conviction or a finding of not
guilty by reason of mental illness, mental retardation or
addiction of a qualifying offense, cause, within seventy-two
hours of entry of the commitment or sentencing order, the
transmittal to the sex offender registry for inclusion in the
registry all information required for registration by a
registrant as well as the following nonidentifying information
regarding the victim or victims:

(A) His or her sex;

(B) His or her age at the time of the offense; and

(C) The relationship between the victim and the
perpetrator.

The provisions of this paragraph do not relieve a person
required to register pursuant to this section from complying
with any provision of this article.
(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(h) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information required to be made public by the State Police by subdivision (2), subsection (b), section five of this article is to be
accessible through the Internet. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released through the Internet.

(I) For the purpose of this article, "sexually violent offense" means:

(1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the 2000 legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.

(j) For purposes of this article, the term "sexually motivated" means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from
a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term “predatory act” means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term “business days” means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-12-3. Change in registry information.

When any person required to register under this article changes his or her residence, address, place of employment or occupation, motor vehicle, trailer or motor home information required by section two of this article, or school or training facility which he or she is attending, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police of the changes in the manner prescribed by the Superintendent of State Police in procedural rules promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: Provided, That when any person required to register under this article changes his or her residence, place of employment or occupation or school or training facility he or she is attending
§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and State Police; petition to circuit court.

(a) Within five business days after receiving any notification as described in this article, the State Police shall distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(2) The county superintendent of schools in each county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(3) The child protective services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, owns or leases
(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility; and

(6) The Federal Bureau of Investigation (FBI).

(7) The State Police detachments in the county of the offender’s occupation, employment, owned or leased habitable real property and school or training.

(b) Information concerning persons whose names are contained in the sex offender registry is not subject to the requirements of the West Virginia Freedom of Information Act, as set forth in chapter twenty-nine-b of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the State Police shall notify the prosecuting attorney of the county in which the person resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the State Police in conducting a community notification program which is to include publication of the offender’s name, photograph, place of residence, location of regularly visited habitable real property owned or leased by the offender, county of employment and place at which the offender attends school or a training facility, as well as information concerning the
legal rights and obligations of both the offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the State Police consider it necessary to best educate the public as to the nature of sexual offenses: Provided, That no victim’s name may be released in any public notification pursuant to this subsection. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and State Police may conduct a community notification program in the county where a person who is required to register for life under the terms of subdivision (2), subsection (a), section four of this article resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. Community notification may be repeated when determined to be appropriate by the prosecuting attorney;

(2) The State Police shall maintain and make available to the public at least quarterly the list of all persons who are required to register for life according to the terms of subdivision (2), subsection (a), section four of this article. No information concerning the identity of a victim of an offense requiring registration or telephone or electronic paging device numbers a registrant has or uses may be released with this list. The method of publication and access to this list are to be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for an order requiring the State Police to release information about persons that reside or own or lease habitable real property that the persons regularly visit in that county and who are required to register under section two of this article. The court shall determine whether information contained on the list is relevant to public safety and whether its relevance outweighs the importance of confidentiality. If the court
orders information to be released, it may further order
limitations upon secondary dissemination by the resident
seeking the information. In no event may information
concerning the identity of a victim of an offense requiring
registration or information relating to telephone or electronic
paging device numbers a registrant has or uses be released.

(c) The State Police may furnish information and
documentation required in connection with the registration to
authorized law-enforcement, campus police and
governmental agencies of the United States and its territories,
of foreign countries duly authorized to receive the same, of
other states within the United States and of the State of West
Virginia upon proper request stating that the records will be
used solely for law-enforcement-related purposes. The State
Police may disclose information collected under this article
to federal, state and local governmental agencies responsible
for conducting preemployment checks. The State Police also
may disclose information collected under this article to the
Division of Motor Vehicles pursuant to the provisions of
section three, article two, chapter seventeen-b of this code.

(d) An elected public official, public employee or public
agency is immune from civil liability for damages arising out
of any action relating to the provisions of this section except
when the official, employee or agency acted with gross
negligence or in bad faith.

§15-12-10. Address and online information verification.

All registrants, including those for whom there has been
no change in registration information since their initial
registration or previous address verification, must report, in
the month of their birth, or in the case of a sexually violent
predator in the months of January, April, July and October,
to the State Police detachment responsible for covering their
county of registration and must respond to all verification
inquiries and informational requests, including, but not limited to, requests for online information made by the State Police pursuant to this section. The State Police shall verify addresses of those persons registered as sexually violent predators every ninety days and all other registered persons once a year. As used in this section, the term “online information” shall mean all information required by subdivision (8), subsection (d), section two, article twelve, chapter fifteen of this code. The State Police may require registrants to periodically submit to new fingerprints and photographs as part of the verification process. The method of verification shall be in accordance with internal management rules pertaining thereto promulgated by the superintendent under authority of section twenty-five, article two, chapter fifteen of this code.

CHAPTER 174


[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-19, relating to housing associations making covenants and other restrictions that restrict the installation or use of solar energy systems unenforceable after effective date of section; defining terms; and providing exceptions thereto.

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 §36-4-19, to read as follows:

ARTICLE 4. COVENANTS.

§36-4-19. Solar energy covenants unenforceable; penalty.

(a) It is the policy of the state to promote and encourage the residential and commercial use of solar energy systems and to remove obstacles thereto to promote energy efficiency and pollution reduction. Therefore, any covenant, restriction, or condition contained in any governing document of a housing association executed or recorded after the effective date of this section that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable: Provided, That a housing association may, by vote of its members, establish or remove a restriction that prohibits or restricts the installation or use of a solar energy system.

(b) For the purposes of this section:

(1) “Solar energy system” means a system affixed to a building or buildings that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy; and

(2) “Reasonable restriction” means those restrictions that do not effectually result in a prohibition of their use by eliminating the system’s energy conservation benefits or economic practicality.

(c) This section does not apply to provisions that impose reasonable restrictions on solar energy systems including restrictions for historical preservation, architectural significance, religious or cultural importance to a given
Nothing in this section precludes the regulation of solar energy systems by state and local authorities which may establish land use, health and safety standards. Nothing in this section precludes housing associations from restricting or limiting the installation of solar energy systems installed in common areas and common structures.

CHAPTER 175

(Com. Sub. for S. B. 362 - By Senators Snyder, Plymale, Unger, Stollings, Kirkendoll, Helmick, Jenkins, Laird, Barnes, Beach, Edgell and D. Facemire)

[Passed March 9, 2012; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-18e; and to amend said code by adding thereto a new section, designated §31-15-16b, all relating to authorizing the issuance of $52.5 million in bonds for capital improvements for Cacapon Resort State Park and Beech Fork State Park beginning in fiscal year 2013; providing that the debt service on the bonds is payable from an additional allocation from the State Excess Lottery Revenue Fund; providing that the Economic Development Authority may issue the bonds under certain circumstances; and creating the Cacapon and Beech Fork State Parks Lottery Revenue Debt Service 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 §29-22-18e; and that said code be amended by adding thereto a new section, designated §31-15-16b, all to read as follows:
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18e. Increase in allocation to State Park Improvement Fund from State Excess Lottery Revenue Fund to permit the issuance of bonds for improvements to Cacapon Resort State Park and Beech Fork State Park.

Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $5 million into the State Park Improvement Fund set forth in section eighteen-a of this article is for the fiscal year beginning July 1, 2012, only. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, in lieu of the deposits required under subdivision (7), subsection (d), section eighteen-a of this article, the commission shall deposit an amount equal to the certified debt service requirement for the following fiscal year, not to exceed $3 million in any one fiscal year, into the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund created in section sixteen-b, article fifteen, chapter thirty-one of this code, to be used in accordance with the provisions of that section, and second, deposit $5 million into the State Park Improvement Fund, established in subsection (d), section eighteen-a of this article, to be used in accordance with the provisions of that section.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


(a)(1) The economic development authority shall, in accordance with the provisions of this article, issue revenue
bonds, in one or more series, from time to time, to pay for all
or a portion of the cost of constructing, equipping, improving
or maintaining capital improvement projects under this
section or to refund the bonds, at the discretion of the
authority. The principal amount of the bonds issued under
this section shall not exceed, in the aggregate principal
amount of $52.5 million. Any revenue bonds issued on or
after the effective date of this section which are secured by
lottery proceeds shall mature at a time or times not exceeding
thirty years from their respective dates. The principal of, and
the interest and redemption premium, if any, on the bonds
shall be payable solely from the Cacapon and Beech Fork
State Parks Lottery Revenue Debt Service Fund established
in this section.

(2) There is hereby created in the State Treasury a special
revenue fund named the “Cacapon and Beech Fork State
Parks Lottery Revenue Service Fund” into which shall be
deposited those amounts specified in section eighteen-e,
article twenty-two, chapter twenty-nine of this code. All
amounts deposited in the fund shall be pledged to the
repayment of the principal, interest and redemption premium,
if any, on any revenue bonds or refunding revenue bonds
authorized by this section. The authority may further provide
in the trust agreement for priorities on the revenues paid into
the Cacapon and Beech Fork State Parks Lottery Revenue
Debt Service Fund as may be necessary for the protection of
the prior rights of the holders of bonds issued at different
times under the provisions of this section. The Cacapon and
Beech Fork State Parks Lottery Revenue Debt Service Fund
shall be pledged solely for the repayment of bonds issued
pursuant to this section. On or prior to May 1 of each year,
commencing May 1, 2014, the authority shall certify to the
state lottery director the principal and interest and coverage
ratio requirements for the following fiscal year on any
revenue bonds or refunding revenue bonds issued pursuant to
this section, and for which moneys deposited in the Cacapon
and Beech Fork State Parks Lottery Revenue Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the Cacapon and Beech Fork State Parks Lottery Revenue Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(b) The authority shall expend the bond proceeds, net of issuance costs, reserve funds and refunding costs, for certified capital improvement projects at Cacapon Resort State Park and Beech Fork State Park. The Division of Natural Resources shall submit a proposed list of capital improvement projects to the Governor on or before January 1, 2013. Thereafter, the Governor shall certify to the authority on or before February 1, 2013, a list of those capital improvement projects at Cacapon Resort State Park and Beech Fork State Park that will receive funds from the proceeds of bonds issued pursuant to this section.

At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at Cacapon Resort State Park and Beech Fork State Park that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the Division of Natural Resources prior to certifying a revised list of capital improvement projects to the authority.
(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues or other sources of or available to the authority pledged therefor.

(d) The bonds and the notes shall be authorized by the authority pursuant to this section, and shall be secured, be in such denominations, may bear interest at such rate or rates, taxable or tax-exempt, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by manual or facsimile signature by the chairman of the board, and the official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond and note and attested, manually or by facsimile signature, by the secretary of the board, and any coupons attached to any bond or note shall bear the manual or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.
CHAPTER 176

(Com. Sub. for S. B. 373 - By Senators Unger, Kessler, Mr. President, and Snyder)

[Passed March 9, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §15-2-3 of the Code of West Virginia, 1931, as amended, relating to training at the West Virginia State Police Training Academy; requiring entry-level training to be provided without a fee; authorizing advanced training to be provided for a fee; creating a special revenue account to be known as the Academy Training and Professional Development Fund; and authorizing expenditures from the fund for specific training-related expenses.

Be it enacted by the Legislature of West Virginia:

That §15-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-3. State Police structure; how established; training; special revenue account.

1 (a) The superintendent shall create, appoint and equip the State Police which shall consist of the number of troops, districts and detachments required for the proper administration of the State Police. Each troop, district or detachment shall be composed of the number of officers and members the superintendent determines are necessary to meet operational needs and are required for the efficient operation
of the State Police. The superintendent shall establish the
genital organizational structure of the State Police by
interpretive rule in accordance with the provisions of article
three, chapter twenty-nine-a of this code. The superintendent
shall provide adequate facilities for the training of all
members of the State Police and shall prescribe basic training
requirements for newly enlisted members. He or she shall
also provide advanced or in-service training from time to
time for all members of the State Police. The superintendent
shall hold entry-level training classes for other law-
enforcement officers in the state without cost to those
officers, except actual expenses for food, lodging and school
supplies. The superintendent may hold advanced levels of
training classes for other law enforcement officers in the state
for a reasonable daily fee per student not to exceed $100.

(b) There is hereby created in the State Treasury a special
revenue account, which shall be an interest bearing account,
to be known as the Academy Training and Professional
Development Fund. The special revenue account shall
consist of training fees, any appropriations that may be made
by the Legislature, income from the investment of moneys
held in the special revenue account and all other sums
available for deposit to the special revenue account from any
source, public or private. No expenditures for purposes of
this section are authorized from collections except in
accordance with the provisions of article three, chapter
twelve of this code and upon fulfillment of the provisions set
forth in article two, chapter eleven-b of this code. Any
balance remaining in the special revenue account at the end
of any state fiscal year does not revert to the General
Revenue Fund but remains in the special revenue account and
shall be used solely in a manner consistent with this article.
The superintendent is authorized to expend funds from the
account to offset operational and training costs; for building
maintenance and repair, for purchases and for equipment
repair or replacement for the West Virginia State Police
Academy; and to defray necessary expenses incidental to those and other activities associated with law-enforcement training.

CHAPTER 177

(H. B. 4626 - By Delegates Miley, Morgan, Swartzmiller, Lawrence and Snuffer)

[Passed March 10, 2012; in ninety days from passage.]  
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §15-2-4 of the Code of West Virginia, 1931, as amended, relating to the State Police appointment of commissioned officers, noncommissioned officers, other members; increasing principle supervisors to nineteen.

Be it enacted by the Legislature of West Virginia:

That §15-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the State Police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the State Police, the
number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the State Police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal, trooper first class, senior trooper, trooper or cadet trooper. Each member while in uniform shall wear the insignia of rank as provided by law and written State Police policies. Members assigned to the forensic laboratory shall hold the title of trooper, be classified as criminalists and wear the insignia of classification as provided by written State Police policies.

The superintendent may appoint from the membership of the State Police nineteen principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. The superintendent may also appoint from the membership of the executive protection section of the State Police two additional supervisors who shall receive the compensation and hold the temporary rank of first lieutenant and serve at the will and pleasure of the superintendent. Appointments are exempt from any eligibility requirements established by the career progression system: Provided, That any member appointed from within the executive protection section of the State Police to the temporary rank of first lieutenant must have completed a minimum of two years service within the executive protection section prior to becoming eligible for such appointment. Any person appointed to a temporary rank under the provisions of this article remains eligible for promotion or reclassification under the provisions of the career progression system if his or
her permanent rank is below that of first lieutenant. Upon the
termination of a temporary appointment by the
superintendent, the member may not be reduced to a rank or
classification below his or her permanent rank or
classification, unless the reduction results from disciplinary
action, and remains eligible for subsequent appointment to a
temporary rank.

CHAPTER 178

(Com. Sub. for H. B. 4281 - By Delegates White, Miley,
Hunt, Poore, Skaff, Moore, Fleischauer and Sobonya)

[Passed March 9, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §15-2-5 of the Code of West
Virginia, 1931, as amended, relating to the supplemental pay of
members of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from
wages and hour law, with supplemental payment;
bond; leave time for members called to duty in
guard or reserves.

(a) The superintendent shall establish within the West
Virginia State Police a system to provide for: The promotion
of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

d) Beginning on July 1, 2008, through June 30, 2011, members shall receive annual salaries as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPERVISORY AND NONSUPERVISORY RANKS**

28. Cadet During Training $ 2,752 Mo. $ 33,024

29. Cadet Trooper After Training 3,357.33 Mo. 40,288

30. Trooper Second Year 41,296
<table>
<thead>
<tr>
<th></th>
<th>STATE POLICE</th>
<th>[Ch. 178]</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>Trooper Third Year</td>
<td>41,679</td>
</tr>
<tr>
<td>32</td>
<td>Senior Trooper</td>
<td>42,078</td>
</tr>
<tr>
<td>33</td>
<td>Trooper First Class</td>
<td>42,684</td>
</tr>
<tr>
<td>34</td>
<td>Corporal</td>
<td>43,290</td>
</tr>
<tr>
<td>35</td>
<td>Sergeant</td>
<td>47,591</td>
</tr>
<tr>
<td>36</td>
<td>First Sergeant</td>
<td>49,742</td>
</tr>
<tr>
<td>37</td>
<td>Second Lieutenant</td>
<td>51,892</td>
</tr>
<tr>
<td>38</td>
<td>First Lieutenant</td>
<td>54,043</td>
</tr>
<tr>
<td>39</td>
<td>Captain</td>
<td>56,194</td>
</tr>
<tr>
<td>40</td>
<td>Major</td>
<td>58,344</td>
</tr>
<tr>
<td>41</td>
<td>Lieutenant Colonel</td>
<td>60,495</td>
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**ANNUAL SALARY SCHEDULE (BASE PAY)**

<table>
<thead>
<tr>
<th></th>
<th>ADMINISTRATION SUPPORT SPECIALIST</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>CLASSIFICATION</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>I</td>
<td>$41,679</td>
</tr>
<tr>
<td>46</td>
<td>II</td>
<td>42,078</td>
</tr>
<tr>
<td>47</td>
<td>III</td>
<td>42,684</td>
</tr>
<tr>
<td>48</td>
<td>IV</td>
<td>43,290</td>
</tr>
<tr>
<td>49</td>
<td>V</td>
<td>47,591</td>
</tr>
</tbody>
</table>
### ANNUAL SALARY SCHEDULE (BASE PAY)

#### CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$41,679</td>
</tr>
<tr>
<td>II</td>
<td>42,078</td>
</tr>
<tr>
<td>III</td>
<td>42,684</td>
</tr>
<tr>
<td>IV</td>
<td>43,290</td>
</tr>
<tr>
<td>V</td>
<td>47,591</td>
</tr>
<tr>
<td>VI</td>
<td>49,742</td>
</tr>
<tr>
<td>VII</td>
<td>51,892</td>
</tr>
<tr>
<td>VIII</td>
<td>54,043</td>
</tr>
</tbody>
</table>

Beginning on July 1, 2011, and continuing thereafter, members shall receive annual salaries as follows:

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### SUPERVISORY AND NONSUPERVISORY RANKS

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,833 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>3,438 Mo.</td>
</tr>
<tr>
<td>Rank</td>
<td>Salary</td>
</tr>
<tr>
<td>----------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>42,266</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>42,649</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td>43,048</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td>43,654</td>
</tr>
<tr>
<td>Corporal</td>
<td>44,260</td>
</tr>
<tr>
<td>Sergeant</td>
<td>48,561</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>50,712</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>52,862</td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>55,013</td>
</tr>
<tr>
<td>Captain</td>
<td>57,164</td>
</tr>
<tr>
<td>Major</td>
<td>59,314</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>61,465</td>
</tr>
<tr>
<td><strong>ANNUAL SALARY SCHEDULE (BASE PAY)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION</strong></td>
<td></td>
</tr>
<tr>
<td><strong>I</strong></td>
<td>42,266</td>
</tr>
<tr>
<td><strong>II</strong></td>
<td>43,048</td>
</tr>
<tr>
<td><strong>III</strong></td>
<td>43,654</td>
</tr>
<tr>
<td><strong>IV</strong></td>
<td>44,260</td>
</tr>
</tbody>
</table>
Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set
forth in subsection (d) of this section for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: At the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $400 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the number of hours per month which
constitute the standard work month for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The superintendent shall certify monthly to the West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $400 monthly. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to section eight, article twenty-nine, chapter thirty of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.
(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the Armed Forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 179

(S. B. 497 - By Senators Beach, D. Facemire, Kirkendoll and Miller)

[Passed March 10, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-3-33, relating to the award of attorney fees and costs by the Surface Mine Board and 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 §22-3-33, to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-33. Attorney fees and costs.

(a) As a result of any administrative proceeding under this article, at the request of any person, a sum equal to the
aggregate amount of all costs and expenses, including attorney fees, as determined by the court or the Surface Mine Board to have been reasonably incurred by the requesting person for or in connection with his or her participation in the administrative proceeding, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the Surface Mine Board, resulting from administrative proceedings, considers proper.

(b) On a finding that a claim was brought in bad faith or for the purposes of harassment, the Surface Mine Board or the court, whichever is appropriate, may award to the defendant or respondent, however designated, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined to have been reasonably incurred.

(c) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code that are necessary to implement the provisions of this section.

CHAPTER 180

(S. B. 579 - By Senators Kessler, Mr. President, Beach, D. Facemire, Palumbo, Helmick, Hall, Foster and Browning)

[Passed March 9, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 30, 2012.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to the special reclamation
tax and funds of the Surface Coal Mining and Reclamation Act; continuing and reimposing the special reclamation tax on clean coal mined at an increased rate; and dedicating portion of special reclamation tax to Special Reclamation Water Trust Fund.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than $1000 nor more than $5000 for each acre or fraction of an acre: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be $10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with
this section: *Provided, however,* That once the operator has
chosen to proceed with bonding either the entire permit area
or with incremental bonding, the operator shall continue
bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with
issuance of a permit and continues for the full term of the
permit plus any additional period necessary to achieve
compliance with the requirements in the reclamation plan of
the permit.

(c) (1) The form of the bond shall be approved by the
secretary and may include, at the option of the operator,
surety bonding, collateral bonding (including cash and
securities), establishment of an escrow account, self bonding
or a combination of these methods. If collateral bonding is
used, the operator may elect to deposit cash or collateral
securities or certificates as follows: Bonds of the United
States or its possessions of the Federal Land Bank or of the
Homeowners’ Loan Corporation; full faith and credit general
obligation bonds of the State of West Virginia or other states
and of any county, district or municipality of the State of
West Virginia or other states; or certificates of deposit in a
bank in this state, which certificates shall be in favor of the
department. The cash deposit or market value of the
securities or certificates shall be equal to or greater than the
penal sum of the bond. The secretary shall, upon receipt of
any deposit of cash, securities or certificates, promptly place
the same with the Treasurer of the State of West Virginia
whose duty it is to receive and hold the deposit in the name
of the state in trust for the purpose for which the deposit is
made when the permit is issued. The operator making the
deposit is entitled, from time to time, to receive from the
State Treasurer, upon the written approval of the secretary,
the whole or any portion of any cash, securities or certificates
so deposited, upon depositing with him or her in lieu thereof
cash or other securities or certificates of the classes specified
in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The funds shall be administered by the secretary who is authorized to expend the moneys in
both funds for the reclamation and rehabilitation of lands
which were subjected to permitted surface mining operations
and abandoned after August 3, 1977, where the amount of the
bond posted and forfeited on the land is less than the actual
cost of reclamation, and where the land is not eligible for
abandoned mine land reclamation funds under article two of
this chapter. The secretary shall develop a long-range
planning process for selection and prioritization of sites to be
reclaimed so as to avoid inordinate short-term obligations of
the assets in both funds of such magnitude that the solvency
of either is jeopardized. The secretary may use both funds
for the purpose of designing, constructing and maintaining
water treatment systems when they are required for a
complete reclamation of the affected lands described in this
subsection. The secretary may also expend an amount not to
exceed ten percent of the total annual assets in both funds to
implement and administer the provisions of this article and,
as they apply to the Surface Mine Board, articles one and
four, chapter twenty-two-b of this code.

(h) (1) Rate, deposits and review.

(A) For tax periods commencing on and after July 1, 2009,
every person conducting coal surface mining shall remit a
special reclamation tax of fourteen and four-tenths cents per ton
of clean coal mined, the proceeds of which shall be allocated by
the secretary for deposit in the Special Reclamation Fund and
the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1,
2012, the rate of tax specified in paragraph (A) of this
subdivision is discontinued and is replaced by the rate of tax
specified in this paragraph (B). For tax periods
commencing on and after July 1, 2012, every person
conducting coal surface mining shall remit a special
reclamation tax of twenty-seven and nine-tenths cents per
ton of clean coal mined, the proceeds of which shall be
allocated by the secretary for deposit in the Special
Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether the tax should be continued: Provided, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the Special Reclamation Program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation
bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(i) This special reclamation tax shall be collected by the State Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(k) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may
(l) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(m) At the beginning of each quarter, the secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

CHAPTER 181

(Com. Sub. for H. B. 4396 - By Delegates Swartzmiller and D. Poling)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 3, 2012.]

AN ACT to amend and reenact §5H-1-1, §5H-1-2 and §5H-1-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing a death benefit to the surviving spouse or
designated beneficiary or contingent beneficiaries of law-enforcement officers who die in the performance of their duties; requiring agencies to notify employees of the possible benefit; encouraging departments to obtain and preserve written designations of beneficiaries; and establishing an effective date of January 1, 2012.

Be it enacted by the Legislature of West Virginia:

That §5H-1-1, §5H-1-2 and §5H-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. WEST VIRGINIA FIRE, EMS AND LAW-ENFORCEMENT OFFICER SURVIVOR BENEFIT ACT.

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the “West Virginia Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.”

3 (b) It is the intent of the Legislature to provide for the payment of death benefits to the surviving spouse, designated beneficiary, children or parents of firefighters, EMS and law-enforcement personnel killed in the performance of their duties.

§5H-1-2. Death benefit for survivors.

1 (a) In the event a firefighter, EMS or law-enforcement provider is killed in the performance of his or her duties, the department chief, within thirty days from the date of death shall submit certification of the death to the Governor’s office.
(b) This act includes both paid and volunteer fire, EMS and law-enforcement personnel acting in the performance of his or her duties of any fire, EMS or law-enforcement department certified by the State of West Virginia.

(c) A firefighter, EMS or law-enforcement provider is considered to be acting in the performance of his or her duties for the purposes of this act when he or she is participating in any role of a fire, EMS or law-enforcement department function. This includes training, administration meetings, fire, EMS or law-enforcement incidents, service calls, apparatus, equipment or station maintenance, fundraisers and travel to or from such functions.

(d) Travel includes riding upon or in any apparatus or vehicle which is owned or used by the fire, EMS or law-enforcement department, or any other vehicle going to or directly returning from a firefighter’s home, place of business or other place where he or she shall have been prior to participating in a fire, EMS or law-enforcement department function or upon the authorization of the chief of the department, agency head or other person in charge.

(e) Certification shall include the name of the certified fire, EMS or law-enforcement program, the name of the deceased firefighter, EMS or law-enforcement provider, the name and address of the beneficiary, any documentation designating a beneficiary or beneficiaries and setting forth the circumstances that qualify the deceased individual for death benefits under this act. Upon receipt of the certification from the certified fire, EMS or law-enforcement program, the state shall, from moneys from the State Treasury, General Fund, pay to the certified fire, EMS or law-enforcement program the sum of $50,000 in the name of the beneficiary of the death benefit. Within five days of receipt of this sum from the state, the fire, EMS or law-enforcement program certified by the
state shall pay the sum as a benefit to the surviving spouse or
designated beneficiary. If there is no surviving spouse or
designated beneficiary, then to the minor children of the
firefighter, EMS or law-enforcement provider killed in the
performance of duty. When no spouse, designated
beneficiary, or minor children survive, the benefit shall be
paid to the parent or parents of the firefighter, EMS or law-
enforcement provider. It is the responsibility of the certified
fire or EMS program to document the surviving spouse or
beneficiary for purposes of reporting to the Governor’s office.

(f) Any death ruled by a physician to be a result of an
injury sustained during any of the above mentioned
performance of fire department, EMS or law-enforcement
duties will be eligible for this benefit, even if this death
occurs at a later time.

(g) Those individuals who are covered by this article are
eligible for only one death benefit payment.

(h) Every department or agency head employing persons
to which this article applies shall provide notice of the benefit
provided hereby to such employees and encourage covered
employees to provide a written designation of beneficiary to
be maintained in the employee’s personnel file.

§5H-1-3. Effective date.

The effective date for this act is January 1, 2007. The
operation of the amendments to this article enacted during the
year 2012 shall be effective retroactively to January 1, 2012.
CHAPTER 182

(Com. Sub. for H. B. 4086 -
By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]

[Passed January 25, 2012; in effect July 1, 2012.]
[Approved by the Governor on January 26, 2012.]

AN ACT to amend and reenact §11-6F-2 and §11-6F-4 of the Code of West Virginia, 1931, as amended, all relating to designating certain property as a qualified capital addition to a manufacturing facility and extending that property special valuation to the twenty-fifth year succeeding the year in which the qualified capital addition is first placed in service.

Be it enacted by the Legislature of West Virginia:

That §11-6F-2 and §11-6F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) “Certified capital addition property” means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with section four of this article:
Provided, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no event constitute certified capital addition property.

(b) “Manufacturing” means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(c) “Manufacturing facility” means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(d) “Personal property” means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(e) “Qualified capital addition to a manufacturing facility” means either:

(1) All real property and personal property, the combined original cost of which exceeds $50 million to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may for purposes of satisfying the requirements of
this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process or produce raw materials for the manufacturing facility, consists of a facility used to store, handle or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility’s use in heating, manufacturing or generation of electricity. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or is a manufacturing facility that uses product produced at a facility with code number 211112, then wherever the term “100 million” is used in this subsection, the term “20 million” shall be substituted and where the term “50 million” is used, the term “10 million” shall be substituted; or

(2) (A) All real property and personal property, the combined original cost of which exceeds $2 billion to be constructed, located or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that:

(i) Is or will be classified under the North American Industry Classification System with a six digit code number 211112; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility with code number 211112; or
(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) No preexisting investment made, or in place before the capital addition shall be required for property specified in this subdivision (2). The requirements set forth in subdivision (1) of this subsection shall not apply to property specified in this subdivision (2) relating to:

(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least $100 million or $20 million; or

(iii) Multiparty projects.

(f) “Real property” means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements: Provided, That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

§11-6F-4. Application and certification.

Any person seeking designation of property as certified capital addition property shall first make a sworn application to the State Tax Commissioner on forms prescribed by the State Tax Commissioner on or before the date the property is first required to be reported on an annual return for ad valorem property tax purposes. The State Tax Commissioner shall within ninety days of the application determine in writing whether the property is or will be part of a qualified capital addition to a
manufacturing facility as defined in section two of this article and shall provide a copy of the written determination to the applicant and the assessor or assessors in the county or counties in which the manufacturing facility is located. The applicant may file an appeal with the State Tax Commissioner to have a formal hearing for a review and redetermination on qualified capital additions to a manufacturing facility which have been disallowed by the State Tax Commissioner within thirty days of the official written notification from the State Tax Commissioner. After the State Tax Commissioner determines that property is or will be part of a qualified capital addition to a manufacturing facility, the property is and remains certified capital addition property for purposes of this article until the earlier of: (a) The disposition of the property to an unrelated third party other than a transferee who continues to operate the manufacturing facility; (b) the cessation of all business at the manufacturing facility; or (c) with regard to: (1) Property described in subdivision (1), subsection (e), section two of this article, the tenth year succeeding the year in which the qualified capital addition to a manufacturing facility to which the property relates is first placed in service; or (2) property described in subdivision (2), subsection (e), section two of this article, the twenty-fifth year succeeding the year in which the qualified capital addition to a manufacturing facility to which the property relates is first placed in service.

All applications and determinations under this section constitute return information and are subject to section twenty-three, article one-a of this chapter. The State Tax Commissioner shall report annually the number of applications filed, certified, denied and pending pursuant to this section for the preceding year along with recommendations regarding the structure, benefits and costs of the valuation method specified in this article to the Joint Committee on Government and Finance and to the Governor: Provided, That identifying characteristics and facts about applicants may not in any event be disclosed under this section.

Be it enacted by the Legislature of West Virginia:

That §11-13B-1, §11-13B-2, §11-13B-3, §11-13B-4, §11-13B-5, §11-13B-6, §11-13B-7, §11-13B-8, §11-13B-9, §11-13B-10, §11-13B-10a, §11-13B-11, §11-13B-12, §11-13B-13, §11-13B-14, §11-13B-15, §11-13B-16, §11-13B-17, §11-13B-18 and §11-13B-19, of the Code of West Virginia, 1931, as amended, are hereby repealed; and that said code be amended by adding thereto a new section, designated §11-10-5aa, all to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5aa. Confidentiality of information obtained during telecommunications tax study.
(a) Section nineteen, article thirteen-b of this chapter was enacted in 2010, and required the Tax Commissioner to study the business of telecommunications service and related businesses. The Tax Commissioner completed the study and reported to the Legislature July 1, 2011. Notwithstanding the repeal of section nineteen, article thirteen-b of this chapter in 2012, the provisions of that section under which information obtained by the Tax Commissioner during the study of the business of telecommunications service and related businesses conducted pursuant to that statute is confidential and exempt from disclosure shall remain in full force and effect, as if fully set forth herein and as more fully set forth herein:

(1) Financial information and other data disclosed to the Tax Commissioner under the provisions of that section shall be considered confidential and exempt from article one, chapter twenty-nine-b of this code.

(2) Any information disclosed to the Tax Commissioner pursuant to the requirements of that section shall have all of the confidentiality protections given to a “return” under section five-d of article ten of this chapter and any disclosure not authorized by that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure of a “return”. It is unlawful for the Tax Commissioner or any person conducting the study, including any consultant under contract with the Tax Commissioner to assist in conducting the study, to disclose to any person not conducting the study any financial information or other data disclosed under that section. Such disclosure shall be a violation of the tax information confidentiality provisions of section five-d, article ten of this chapter.

(3) Nothing in this section may be construed as prohibiting the publication or release of statistics so classified as to prevent the identification of a particular person or entity.

(b) Any rules promulgated by the Tax Commissioner to implement the provisions of that section relating to confidentiality or exemptions under that section shall remain in full force and effect until amended or repealed pursuant to article three, chapter twenty-nine-a of this code.
AN ACT to amend and reenact §11-13A-3b of the Code of West Virginia, 1931, as amended, relating to the severance and business privilege tax; and continuing the discontinuance of the severance and business privilege tax on the privilege of severing timber.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

§11-13A-3b. Imposition of tax on privilege of severing timber.

(a) *Imposition of tax.* -- For the privilege of engaging or continuing within this state in the business of severing timber for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be three and twenty-two hundredths percent of the gross value of the timber produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article:

Provided, That as to timber produced after December 31,
2006 the rate of the tax imposed in subsection (a) of this
section shall be one and twenty-two hundredths percent of
the gross value of the timber produced, as shown by the gross
proceeds derived from the sale thereof by the producer,
except as otherwise provided in this article.

(c) *Tax in addition to other taxes.* -- The tax imposed by this
section shall apply to all persons severing timber in this state and
shall be in addition to all other taxes imposed by law.

(d) *Elimination of tax.* -- Beginning in the tax year 2010
and continuing until the imposition of the additional tax on
the privilege of severing timber imposed by subsection (c),
section four, article thirteen-v of this chapter expires under
the authority of subsection (g), section four, article thirteen-v
of this chapter, the tax imposed by this section is
discontinued. On and after expiration of the additional tax on
the privilege of severing timber imposed by subsection (c),
section four, article thirteen-v of this chapter, the tax imposed
by this section resumes, and shall apply to all persons
severing timber in this state at the rate of one and twenty-two
hundredths percent of the gross value of the timber produced,
as shown by the gross proceeds derived from the sale thereof
by the producer, except as otherwise provided in this article.

CHAPTER 185

(Com. Sub. for S. B. 487 - By Senators Browning,
Kessler, Mr. President, Klempa, Chafin and Beach)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]
Methane Gas Distribution Fund in the State Treasurer’s Office; defining “county economic development entity”; authorizing the Tax Commissioner to deposit coalbed methane severance tax moneys into the Coalbed Methane Gas Distribution Fund; directing the State Treasurer to distribute coalbed methane severance tax moneys to county commissions or county economic development entities; authorizing distribution by the State Treasurer of accumulated moneys from fiscal years 2009, 2010, 2011 and 2012 to county economic development entities; specifying the permissible uses of Coalbed Methane Gas Distribution Fund moneys received by county economic development entities; eliminating the requirement of Development Office approval for use of funds; requiring certain reporting to the Joint Committee on Government and Finance; and authorizing certain audits.

Be it enacted by the Legislature of West Virginia:

That §11-13A-20a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the State Treasurer’s Office and known as the Medicaid State Share Fund. Said fund shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code.
(b) Notwithstanding the provisions of subsection (a) of this section, for the remainder of fiscal year 1993 and for each succeeding fiscal year, no expenditures from taxes collected from providers of health care items or services are authorized except in accordance with appropriations by the Legislature.

(c) The amount of taxes on the privilege of severing timber collected under section three-b of this article, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be paid into a special revenue account in the State Treasury to be appropriated by the Legislature for purposes of the Division of Forestry.

(d) Notwithstanding any other provision of this code to the contrary, beginning January 1, 2009, there is hereby dedicated an annual amount not to exceed $4 million from annual collections of the tax imposed by section three-d of this article to be deposited into the West Virginia Infrastructure Fund, created in section nine, article fifteen-a, chapter thirty-one of this code.

(e) Beginning with the fiscal year ending June 30, 2009, and each fiscal year thereafter, the Tax Commissioner shall pay from the taxes imposed in section three-d of this article, on October 1, of each year, to the county economic development entities, as this term is defined in this subsection, or county commissions as provided in subsections (f) through (h) of this section, an amount in the aggregate not to exceed $4 million per fiscal year: Provided, That on July 1, 2012, the Tax Commissioner shall deposit the taxes imposed in section three-d of this article into a special revenue fund, which is hereby created in the State Treasurer’s Office and known as the Coalbed Methane Gas Distribution Fund: Provided, however, That such deposit of taxes shall not
exceed in the aggregate $4 million per fiscal year and moneys therein shall be distributed by the State Treasurer pursuant to this section. Prior to making any such payment the commissioner shall deduct the amount of refunds lawfully paid and administrative costs authorized by this code. All moneys distributed to the West Virginia Infrastructure Fund pursuant to this section prior to July 1, 2011, shall be returned to the Tax Commissioner and distributed to the county economic development entities, as this term is defined in this subsection, or county commissions as provided in this section. For purposes of this section, the term “county economic development entity” refers to a county economic development authority established pursuant to article twelve, chapter seven of this code or if a county does not have a county economic development authority established pursuant to article twelve, chapter seven of this code, an entity designated by resolution of the county commission of the county as the lead entity for economic development activities for the purpose of encouraging economic development in the county which entity may be, but is not limited to being, redevelopment authorities created pursuant to article eighteen, chapter sixteen of this code; county economic development corporations; regional economic development councils, corporations or partnerships.

(f) Notwithstanding any provision of this article to the contrary, prior to the deposit of the proceeds of the tax on coalbed methane with each, county economic development entity or county commission pursuant to subsection (e) of this section, the Tax Commissioner shall undertake the following calculations:

(1) Seventy-five percent of the moneys to be deposited shall be provisionally allocated for the various counties of this state in which the coalbed methane was produced; and

(2) The remaining twenty-five percent of the moneys to be deposited shall be provisionally allocated to the various
(3) Moneys shall be provisionally allocated to each coalbed methane producing county in direct proportion to the amount of tax revenues derived from coalbed methane production in the county.

(4) Moneys shall be provisionally allocated to each coalbed methane nonproducing county equally.

(5) Proportional adjustments.

(A) If, for any year, a coalbed methane producing county’s share of money provisionally allocated to that county is computed to be an amount that is less than the amount provisionally allocated to each of the coalbed methane nonproducing counties, then for purposes of the computations set forth in this subsection, that coalbed methane producing county shall be redesignated a coalbed methane nonproducing county. The money that has been provisionally allocated to that coalbed methane producing county out of the seventy-five percent portion specified in subdivision (1) of this subsection shall be subtracted out of the seventy-five percent portion specified in that subdivision and added to the twenty-five percent portion specified in subdivision (2) of this subsection.

(B) When the adjustment specified in paragraph (A), of this subdivision has been made for each coalbed methane producing county that has been redesignated as a coalbed methane nonproducing county, then the Tax Department shall finalize the calculations of the amounts to be made available for distribution to the respective county economic development entity or county commission of the coalbed methane producing counties that have not been redesignated as coalbed methane nonproducing counties under paragraph
(A) of this subdivision as follows: The amount remaining in
the provisional seventy-five percent portion specified in
subdivision (1) of this subsection, as adjusted in accordance
with paragraph (A) of this subdivision, shall be allocated, in
direct proportion to the amount that tax revenues derived
from coalbed methane production in each such county not
redesignated as a coalbed methane nonproducing county
bears to the total amount of tax revenues derived from
coalbed methane production in all coalbed methane
producing counties that have not been redesignated as a
coalbed methane nonproducing county.

(C) The Tax Commissioner shall then finalize the
calculation of the total amount in the twenty-five percent
portion specified in subdivision (2) of this subsection, as
adjusted in accordance with paragraph (A) of this subdivision
equally among the coalbed methane nonproducing counties.

(D) The Tax Commissioner, upon completing the
calculation of the total amount of tax to be distributed to all
coalbed methane producing counties and to all coalbed
methane nonproducing counties, shall deposit an amount
equal to the amount so calculated in the Coalbed Methane
Gas Distribution Fund, subject to the limitations set forth in
this section.

(g) In no case may the total amount distributed in any
fiscal year to the aggregate of all coalbed methane producing
counties and all coalbed methane nonproducing counties
calculated by the Tax Commissioner exceed the total amount
of tax on coalbed methane authorized to be remitted to the
county economic development entities and county
commissions pursuant to subsection (e) of this section.

(h) Distribution of coalbed methane severance tax to
county economic development entities or county
commissions is subject to the following:
(1) If the amount determined pursuant to subsections (f) and (g) of this section for a county is more than $10,000, the State Treasurer shall distribute the amount determined for that county to the county economic development entity. The State Treasurer is hereby authorized to distribute accumulated but undistributed moneys from fiscal years 2009, 2010, 2011 and 2012 to each county economic development entity.

(2) Each county economic development entity shall use such funds for economic development projects and infrastructure projects.

(3) For purposes of this section:

(A) “Economic development project” means a project in the state which is likely to foster economic growth and development in the area in which the project is developed for commercial, industrial, community improvement or preservation or other proper purposes.

(B) “Infrastructure project” means a project in the state which is likely to foster infrastructure improvements and covers post mining land use, water or wastewater facilities, stormwater systems, steam, gas, telephone and telecommunications, broadband development, electric lines and installations, roads, bridges, railroad spurs, drainage and flood control facilities, industrial park development, road or buildings that promote job creation and retention.

(4) Prior to expending any coalbed methane severance tax moneys, each county economic development entity must obtain the approval of its respective county commission, or the county commission or commissions representing the county or counties where the economic development or infrastructure project will be situate if the county economic development entity is regional and encompasses more than one county, in writing for the purpose of such expenditure.
(5) A county commission or county economic development entity may not use funds distributed to it pursuant to subsections (e), (f), (g) and (h) of this section for the purposes of paying wages to any employee of the county or any employee of a county economic development entity.

(6) If the amount determined pursuant to subsections (f) and (g) of this section for a county is $10,000 or less, the State Treasurer shall distribute the amount determined for that county to the county commission. The county commission may then use the funds to offset its regional jail costs, costs of any community corrections programs in which it participates, expenses of a volunteer fire department that provides service within its county or expenses of any library that provides services within its county.

(i) On or before December 1, 2013, and December 1 of each year thereafter, the county economic development entity as defined in this section or county commission receiving a distribution of funds under this section shall deliver to the Joint Committee on Government and Finance a written report setting forth the specific projects for which those funds were expended during the next preceding fiscal year, a detailed account of those expenditures and a showing that the expenditures were made for the purposes required by this section.

(j) An audit of any funds distributed under this section may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the county economic development entity or county commission audited.
AN ACT to amend and reenact §11-13W-1 of the Code of West Virginia, 1931, as amended, relating to increasing the tax credits for apprenticeship training in construction trades.

Be it enacted by the Legislature of West Virginia:

That §11-13W-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13W. APPRENTICESHIP TRAINING TAX CREDITS.

§11-13W-1. Tax credits for apprenticeship training in construction trades.

(a) Credit allowed. - For those tax years beginning on or after January 1, 2008, there shall be allowed a credit for any taxpayer against certain taxes imposed by this state as described in subsection (d) of this section for wages paid to apprentices in the construction trades who are registered with the United States Department of Labor, Office of Apprenticeship, West Virginia State Office, by the taxpayer in the tax year that an apprentice and taxpayer participate in a qualified apprenticeship training program, as described in
this section, which is: (1) Jointly administered by labor and management trustees; (2) administered pursuant to 29 U. S. C. Section 50; and (3) certified in accordance with regulations adopted by the United States Bureau of Apprenticeship and Training or the successor agency of that bureau.

(b) Amount of credit. -- The tax credit shall be in an amount equal to $1 per hour multiplied by the total number of hours worked during the tax year by an apprentice working for the taxpayer participating in the qualified apprenticeship training program, provided the amount of credit allowed for any tax year with respect to each such apprentice may not exceed $1,000 or fifty percent of the actual wages paid in the tax year for the apprenticeship, whichever is less: Provided, That for tax years beginning on and after January 1, 2012, the tax credit shall be in an amount equal to $2 per hour multiplied by the total number of hours worked during the tax year by an apprentice working for the participating taxpayer, and the amount of credit allowed for any tax year with respect to each apprentice may not exceed $2,000, or fifty percent of actual wages paid in that tax year for the apprenticeship, whichever is less.

(c) Qualified apprenticeship training program requirements. -- In addition to the qualifications specified in subsection (a) of this section, a qualified apprenticeship training program shall consist of at least two thousand but not more than ten thousand hours of on the job apprenticeship training for certification of the apprenticeship by the United States Bureau of Apprenticeship and Training or the successor agency of the bureau.

(d) Application of annual credit allowance. -- The amount of credit as determined under subsection (b) of this section is allowed as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) through (3), inclusive, of this subsection, and in that order.
(1) **Business franchise tax.** -- The credit must first be applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year.

(2) **Corporation net income taxes.** -- After application of subdivision (1) of this subsection, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year.

(3) **Personal income taxes.** --

(A) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit (after application of subdivisions (1) and (2) of this subsection) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(B) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(4) A credit is not allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(e) **Unused credit.** -- If any credit remains after application of subsection (d) of this section, that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance.
AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to adding an exception to the limitation on the right of a contractor to assert sales and use tax exemptions of a purchaser when the purchaser is a nonprofit youth organization.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

(a) Persons who perform “contracting” as defined in section two of this article or persons acting in an agency capacity may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled is invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is
8 directly invoiced to and paid by such taxpayer. This section
does not apply to purchases by an employee for his or her
employer, purchases by a partner for his or her partnership or
purchases by a duly authorized officer of a corporation, or
unincorporated organization, for his or her corporation or
unincorporated organization so long as the purchase is
invoiced to and paid by the employer, partnership,
corporation or unincorporated organization.

(b) Transition rule. -- This section does not apply to
purchases of tangible personal property or taxable services in
fulfillment of a purchasing agent or procurement agent
contract executed and legally binding on the parties thereto
prior to September 15, 1999. This transition rule does not
apply to any purchases of tangible personal property or
taxable services made under such a contract after August 31,
1991, and this transition rule does not apply if the primary
purpose of the purchasing agent or procurement agent
contract was to avoid payment of consumers sales and use
taxes. Effective July 1, 2007, this section does not apply to
purchases of services, machinery, supplies or materials,
except gasoline and special fuel, to be directly used or
consumed in the construction, alteration, repair or
improvement of a new or existing building or structure by a
person performing “contracting”, as defined in section two of
this article, if the purchaser of the contracting services would
be entitled to claim the refundable exemption under
subdivision (2), subsection (b), section nine of this article had
it purchased the services, machinery, supplies or materials.
Effective July 1, 2009, this section does not apply to
purchases of services, computers, servers, building materials
and tangible personal property, except purchases of gasoline
and special fuel, to be installed into a building or facility or
directly used or consumed in the construction, alteration,
repair or improvement of a new or existing building or
structure by a person performing “contracting”, as defined in
section two of this article, if the purchaser of the contracting
services would be entitled to claim the exemption under
subdivision (7), subsection (a), section nine-h of this article. This section shall not apply to qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components, or to qualified purchases of building materials and certain tangible personal property, as those terms are defined in section nine-n of this article, by a person performing “contracting”, as defined in section two of this article, if the purchaser of the contracting services would be entitled to claim the refundable exemption under section nine-n of this article. Purchases of gasoline and special fuel shall not be treated as exempt pursuant to this section.

(c) Effective July 1, 2011, notwithstanding any other provision of this code to the contrary, this section shall apply as to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing natural gas compressor station or gas transmission line having a diameter of twenty inches or more by a person performing “contracting”, as defined in section two of this article, even though the purchaser of the contracting services would be entitled to claim the refundable exemption under subdivision (2), subsection (b), section nine of this article had it purchased the services, machinery, supplies or materials, unless the person or entity performing contracting under this subsection, as the term “contracting” is defined in section two of this article, complies with subsection (e), section four, article thirteen-s of this chapter.

(d) (1) Effective July 1, 2012, this section does not apply to purchases of services, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing contracting, as defined in section two of
this article, if the purchaser of the contracting services is a nonprofit youth organization that would be entitled to claim the exemption under paragraph (E), subdivision (6), subsection (a), section nine of this article had it purchased the services, machinery, supplies or materials.

(2) For purposes of this subsection, the term “nonprofit youth organization” means any nonprofit organization, including any subsidiary, affiliated or other related entity within its corporate or business structure, that has been chartered by the United States Congress to help train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(3) The exception provided in this subsection shall terminate June 30, 2022.

CHAPTER 188

(S. B. 430 - By Senators Prezioso, Foster, Kessler, Mr. President, and Beach)

[Passed March 7, 2012; in effect from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-30, §11-15B-32, §11-15B-33 and §11-15B-34 of the Code of West Virginia, 1931, as amended, all relating to the administration of sales and use tax generally; adding new definitions; clarifying present definitions; incorporating changes to the Streamlined Sales and
Use Tax Agreement; adding a “computer software maintenance contract” as a Streamlined Sales and Use Tax Agreement defined term; relieving seller of tax liability in certain instances; clarifying due dates that fall on weekends and legal holidays; eliminating monetary allowance for certain sellers; providing new effective dates; and clarifying state administration of state and local sales and use taxes, bases and exceptions.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2, §11-15B-2a, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-30, §11-15B-32, §11-15B-33 and §11-15B-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.


(a) General. -- When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. --

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the Streamlined Sales and Use Tax Agreement as defined in section two-a of this article.
(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

(4) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A “bundled transaction” does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) “Distinct and identifiable products” does not include:

(i) Packaging such as containers, boxes, sacks, bags and bottles or other materials such as wrapping, labels, tags and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(iii) Items included in the member state’s definition of “sales price” as defined in this section.

(B) The term “one nonitemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt,
contract, service agreement, lease agreement, periodic notice
of rates and services, rate card or price list.

(C) A transaction that otherwise meets the definition of
a “bundled transaction”, as defined in this subdivision, is not
a “bundled transaction” if it is:

(i) The retail sale of tangible personal property and a
service where the tangible personal property is essential to
the use of the service and is provided exclusively in
connection with the service and the true object of the
transaction is the service; or

(ii) The retail sale of services where one service is
provided that is essential to the use or receipt of a second
service and the first service is provided exclusively in
connection with the second service and the true object of the
transaction is the second service; or

(iii) A transaction that includes taxable products and
nontaxable products and the purchase price or sales price of
the taxable products is de minimis;

(I) “De minimis” means the seller’s purchase price or
sales price of the taxable products is ten percent or less of the
total purchase price or sales price of the bundled products;

(II) Sellers shall use either the purchase price or the sales
price of the products to determine if the taxable products are
de minimis. Sellers may not use a combination of the
purchase price and sales price of the products to determine if
the taxable products are de minimis;

(III) Sellers shall use the full term of a service contract to
determine if the taxable products are de minimis; or
(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the purchase price or sales price of the products taxable at the general sales tax rate is de minimis. For purposes of this subparagraph, the term “de minimis” has the same meaning as ascribed to it under subparagraph (iii) of this paragraph;

(v) The retail sale of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes “food and food ingredients”, “drugs”, “durable medical equipment”, “mobility-enhancing equipment”, “over-the-counter drugs”, “prosthetic devices” or “medical supplies”, all as defined in this article; and

(II) Where the seller’s purchase price or sales price of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

(5) “Candy” means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

(6) “Clothing” means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

(A) “Clothing” shall include:
(i) Aprons, household and shop;
(ii) Athletic supporters;
(iii) Baby receiving blankets;
(iv) Bathing suits and caps;
(v) Beach capes and coats;
(vi) Belts and suspenders;
(vii) Boots;
(viii) Coats and jackets;
(ix) Costumes;
(x) Diapers, children and adult, including disposable diapers;
(xi) Ear muffs;
(xii) Footlets;
(xiii) Formal wear;
(xiv) Garters and garter belts;
(xv) Girdles;
(xvi) Gloves and mittens for general use;
(xvii) Hats and caps;
(xviii) Hosiery;
(xix) Insoles for shoes;
124 (xx) Lab coats;
125 (xxi) Neckties;
126 (xxii) Overshoes;
127 (xxiii) Pantyhose;
128 (xxiv) Rainwear;
129 (xxv) Rubber pants;
130 (xxvi) Sandals;
131 (xxvii) Scarves;
132 (xxviii) Shoes and shoe laces;
133 (xxix) Slippers;
134 (xxx) Sneakers;
135 (xxx) Socks and stockings;
136 (xxxii) Steel-toed shoes;
137 (xxxiii) Underwear;
138 (xxxiv) Uniforms, athletic and nonathletic; and
139 (xxxv) Wedding apparel.
140 (B) “Clothing” shall not include:
141 (i) Belt buckles sold separately;
142 (ii) Costume masks sold separately;
Ch. 188] TAXATION 1483

(iii) Patches and emblems sold separately;
(iv) Sewing equipment and supplies, including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures and thimbles; and
(v) Sewing materials that become part of clothing including, but not limited to, buttons, fabric, lace, thread, yarn and zippers.

(7) “Clothing accessories or equipment” means incidental items worn on the person or in conjunction with clothing. “Clothing accessories or equipment” are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing”, “sport or recreational equipment” and “protective equipment”. The following list contains examples and is not intended to be an all-inclusive list. “Clothing accessories or equipment” shall include:

(A) Briefcases;
(B) Cosmetics;
(C) Hair notions, including, but not limited to, barrettes, hair bows and hair nets;
(D) Handbags;
(E) Handkerchiefs;
(F) Jewelry;
(G) Sunglasses, nonprescription;
(H) Umbrellas;
(I) Wallets;
(J) Watches; and

(K) Wigs and hair pieces.

(8) “Certified automated system” or “CAS” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(9) “Certified service provider” or “CSP” means an agent certified under the agreement to perform all of the seller's sales and use tax functions other than the seller's obligation to remit tax on its own purchases.

(10) “Computer” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(11) “Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(12) “Computer software maintenance contract” means a contract that obligates a vendor of computer software, or other person, to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both. The term “computer software maintenance contract” includes contracts sold by a person other than the vendor of the computer software to which the contract relates.

(A) A “mandatory computer software maintenance contract” is a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.
(B) An “optional computer maintenance contract” is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(13) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

(14) “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(15) “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;

(B) And is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional
(C) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label as required pursuant to 21 CFR §101.36 or in any successor section of the Code of Federal Regulations.

“Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

(C) Intended to affect the structure or any function of the body. The amendment to this subdivision enacted during the 2009 regular legislative session shall apply to sales made after July 1, 2009.
(18) “Durable medical equipment” means equipment, including repair and replacement parts for the equipment, but does not include mobility-enhancing equipment, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(19) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(20) “Eligible property” means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in this state.

(21) “Energy Star qualified product” means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

(22) “Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(23) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by
humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, prepared food or tobacco.

(24) “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment.

(25) “Fur clothing” means clothing that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U.S.C. §69) and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. “Fur clothing” is human-wearing apparel suitable for general use but may be taxed differently from clothing. For the purposes of the definition of “fur clothing”, the term “fur” means any animal skin or part thereof with hair, fleece or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing the hair, fleece or fur fiber has been completely removed.

(26) “Governing board” means the governing board of the Streamlined Sales and Use Tax Agreement.

(27) “Grooming and hygiene products” are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun tan lotions and screens, regardless of whether the items meet the definition of “over-the-counter drugs”.

(28) “Includes” and “including” when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(29) “Layaway sale” means a transaction in which property is set aside for future delivery to a customer who
makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(30) “Lease” includes rental, hire and license. “Lease” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100 or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect or set up the tangible personal property.

(iv) “Lease” or “rental” includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U. S. C. §7701(h)(1).
(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code or other provisions of federal, state or local law.

(31) “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(32) “Mobility-enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(33) “Model I seller” means a seller registered under the Streamlined Sales and Use Tax Agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(34) “Model II seller” means a seller registered under the Streamlined Sales and Use Tax Agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.
(35) “Model III seller” means a seller registered under the Streamlined Sales and Use Tax Agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(36) “Model IV seller” means a seller registered under the Streamlined Sales and Use Tax Agreement and is not a Model I seller, a Model II seller or a Model III seller.

(37) “Over-the-counter drug” means a drug that contains a label that identifies the product as a drug as required by 21 CFR §201.66. The “over-the-counter drug” label includes:

(A) A drug facts panel; or
(B) A statement of the active ingredient(s) with a list of those ingredients contained in the compound, substance or preparation.

(38) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(39) “Personal service” includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and
(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(40) (A) “Prepared food” means:
(i) Food sold in a heated state or heated by the seller;
(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) “Prepared food” in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.

(C) Additionally, “prepared food” as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);
(ii) Food sold in an unheated state by weight or volume as a single item; or
(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(41) “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.
(42) “Prewritten computer software” means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(C) “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(43) “Product-based exemption” means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(44) “Prosthetic device” means a replacement, corrective or supportive device, including repair and replacement parts for the device worn on or in the body, to:
(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(45) “Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(46) “Purchase price” means the measure subject to the tax imposed by article fifteen or fifteen-a of this chapter and has the same meaning as sales price.

(47) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(48) “Retail sale” or “sale at retail” means:

(A) Any sale, lease or rental for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(49) (A) “Sales price” means the measure subject to the tax levied under article fifteen or fifteen-a of this chapter and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;
The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

Delivery charges; and

Installation charges.

“Sales price” does not include:

Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

“Sales price” shall include consideration received by the seller from third parties if:

The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

The seller has an obligation to pass the price reduction or discount through to the purchaser;
(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(50) “Sales tax” means the tax levied under article fifteen of this chapter.

(51) “School art supply” means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list:

(A) Clay and glazes;

(B) Paints; acrylic, tempora and oil;
(C) Paintbrushes for artwork;

(D) Sketch and drawing pads; and

(E) Watercolors.

“School instructional material” means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms “school supply”, “school art supply” and “school computer supply” and may be taxed differently. The following is an all-inclusive list:

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks.

“School computer supply” means an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply”, “school art supply” and “school instructional material” and may be taxed differently. The following is an all-inclusive list:

(A) Computer storage media; diskettes, compact disks;

(B) Handheld electronic schedulers, except devices that are cellular phones;

(C) Personal digital assistants, except devices that are cellular phones;

(D) Computer printers; and
(E) Printer supplies for computers; printer paper, printer ink.

(54) “School supply” means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms “school art supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list of school supplies:

(A) Binders;
(B) Book bags;
(C) Calculators;
(D) Cellophane tape;
(E) Blackboard chalk;
(F) Compasses;
(G) Composition books;
(H) Crayons;
(I) Erasers;
(J) Folders; expandable, pocket, plastic and manila;
(K) Glue, paste and paste sticks;
(L) Highlighters;
(M) Index cards;
(N) Index card boxes;
(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets.

(55) “Seller” means any person making sales, leases or rentals of personal property or services.

(56) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that
is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement and these payments are not considered to be payments for a service or selected service rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(57) “Soft drink” means nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent of vegetable or fruit juice by volume.

(58) “Sport or recreational equipment” means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sport or recreational equipment are mutually exclusive of and may be taxed differently than apparel within the definition of “clothing”, “clothing accessories or equipment” and “protective equipment”. The following list contains examples and is not intended to be an all-inclusive list. “Sport or recreational equipment” shall include:

(A) Ballet and tap shoes;

(B) Cleated or spiked athletic shoes;

(C) Gloves, including, but not limited to, baseball, bowling, boxing, hockey and golf;
(D) Goggles;
(E) Hand and elbow guards;
(F) Life preservers and vests;
(G) Mouth guards;
(H) Roller and ice skates;
(I) Shin guards;
(J) Shoulder pads;
(K) Ski boots;
(L) Waders; and
(M) Wetsuits and fins.

(59) “State” means any state of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(60) “Tangible personal property” means personal property that can be seen, weighed, measured, felt or touched or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(61) “Tax” includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

(62) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner
679 directly, or indirectly by one or more redelegations of
680 authority, to perform the functions mentioned or described in
681 this article or rules promulgated for this article.

682 (63) “Taxpayer” means any person liable for the taxes
683 levied by articles fifteen and fifteen-a of this chapter or any
684 additions to tax penalties imposed by article ten of this
685 chapter.

686 (64) “Telecommunications service” or
687 “telecommunication service” when used in this article and
688 articles fifteen and fifteen-a of this chapter shall have the
689 same meaning as that term is defined in section two-b of this
690 article.

691 (65) “Tobacco” means cigarettes, cigars, chewing or pipe
692 tobacco or any other item that contains tobacco.

693 (66) “Use tax” means the tax levied under article fifteen-a
694 of this chapter.

695 (67) “Use-based exemption” means an exemption based
696 on a specified use of the product or service by the purchaser.

697 (68) “Vendor” means any person furnishing services
698 taxed by article fifteen or fifteen-a of this chapter or making
699 sales of tangible personal property or custom software.
700 “Vendor” and “seller” are used interchangeably in this article
701 and in articles fifteen and fifteen-a of this chapter.

702 (c) Additional definitions. --

703 Other terms used in this article are defined in articles
704 fifteen and fifteen-a of this chapter, which definitions are
705 incorporated by reference into this article. Additionally,
706 other sections of this article may define terms primarily used
707 in the section in which the term is defined.

As used in this article and articles fifteen and fifteen-a of this chapter, the term “Streamlined Sales and Use Tax Agreement” or “agreement” means the agreement adopted November 12, 2002, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” includes amendments to the agreement adopted by the implementing states in calendar years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and amendments adopted by the governing board on or before, January 31, 2012, but does not include any substantive changes in the agreement adopted after January 31, 2012.


(a) General rules.--

When a purchaser claims an exemption from paying tax under article fifteen or fifteen-a of this chapter:

(1) Sellers shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase, as determined by the governing board.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board.
(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The Tax Commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that is presented to the seller at the time of the sale.

(6) The seller shall maintain proper records of exempt transactions and provide the records to the Tax Commissioner or the Tax Commissioner’s designee.

(7) The Tax Commissioner shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate or another means that does not burden sellers.

(8) In the case of drop shipments, a third-party vendor such as a drop shipper may claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use taxes in this state, when the sale is sourced to this state.

(b) The Tax Commissioner shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and shall hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply:

(A) To a seller who fraudulently fails to collect the tax;

(B) To a seller who solicits purchasers to participate in the unlawful claim of an exemption;
(C) To a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:

(i) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and (ii) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on uniform form and posting it on a state's website is an indicator) that the claimed exemption is not available in that state.

(c) Time within which seller must obtain exemption certificates.--

A seller is relieved from paying tax otherwise applicable under article fifteen or fifteen-a of this chapter if the seller obtains a fully completed exemption certificate or captures the required data elements within ninety days subsequent to the date of sale.

(d) (1) If the seller has not obtained an exemption certificate or all required data elements, the seller shall, within one hundred twenty days subsequent to a request for substantiation by the Tax Commissioner, either obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that: (i) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced; (ii) could be applicable to the item being purchased; and (iii) is reasonable for the purchaser's type of business; or obtain other information establishing that the transaction was not subject to the tax.

(2) If the seller obtains the information described in subdivision (1) of this subsection, the seller shall be relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such
information was provided that the information relating to the
exemption claimed was materially false or the seller
otherwise knowingly participated in activity intended to
purposefully evade the tax that is properly due on the
transaction.

(e) Nothing in this section shall affect the ability of the
Tax Commissioner to require purchasers to update exemption
certificate information or to reapply with the state to claim
certain exemptions.

(f) A seller is relieved from paying the tax otherwise
applicable if the seller obtains a blanket exemption certificate
from a purchaser with which the seller has a recurring
business relationship. Notwithstanding the provisions of
subsection (e) of this section, the Tax Commissioner may not
request from the seller renewal of blanket certificates or
updates of exemption certificate information or data elements
when there is a recurring business relationship between the
buyer and seller. For purposes of this subdivision, a
recurring business relationship exists when a period of no
more than twelve months elapses between sales transactions.

(g) Exception.--

No exemption certificate or direct pay permit number is
required when the sale is exempt per se from the taxes
imposed by articles fifteen and fifteen-a of this chapter.


(a) General.--

A seller who registers with this state is required to file a
single sales and use tax return with the Tax Commissioner for
each taxing period.

(b) Due date of return.--
(1) This return shall be due on the twentieth day of the month following the month in which the transaction subject to tax occurred.

(2) When the due date for a return falls on a Saturday or Sunday or legal holiday, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made pursuant to subdivision (e), section twenty-six of this article, the return shall be accepted as timely on the same day as the remittance under that subdivision.

(c) Additional information returns.--

The Tax Commissioner shall make available to all sellers, except sellers of products qualifying for exclusion from the provisions of the agreement, a simplified return that is filed electronically.

(d) The Tax Commissioner may not require a seller which has indicated at the time of registration that it anticipates making no sales which would be sourced to this state to file a return, except that the seller shall lose the exemption upon making any taxable sales into this state and shall file a return in the month following any sale.

(e) After January 1, 2010, the Tax Commissioner shall give notice to a seller, which has no legal requirement to register in this state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return: Provided, That the Tax Commissioner may establish a liability amount of taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

(f) Nothing in this section shall prohibit the Tax Commissioner from allowing additional return options or the filing of returns less frequently.

(a) General.--

Only one remittance is required for each return except as provided in this section.

(b) When electronic remittance required.--

(1) All remittances from sellers under Models I, II and III shall be remitted electronically after December 31, 2003.

(2) All remittances in payment of taxes reported on the approved simplified return format shall be remitted electronically.

(c) Method of remittance.--

Electronic payments shall be made using either the ACH credit or ACH debit method.

(d) Alternative method.--

The Tax Commissioner shall provide by rule, which may be an existing rule, an alternative method for making same-day payments if an electronic funds transfer fails.

(e) Due date of remittances.--

(1) If a due date for a payment falls on a Saturday, Sunday or legal holiday, the payment, including any related payment voucher information, is due on the next succeeding business day.

(2) If the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by ACH debit or credit, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.
Ch. 188] TAXATION 1509

(f) Format of data accompanying remittance.--

Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

(a) Monetary allowance under Model I.--

(1) The Tax Commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the Streamlined Sales and Use Tax Agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider; or

(B) For a period not to exceed twenty-four months following a voluntary seller’s registration through the agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(b) Monetary allowance for Model II sellers.--
The monetary allowance to sellers under Model II may be based on the following:

(1) All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate is set by the governing board of the Streamlined Sales and Use Tax Agreement after the base rate has been established for Model I certified service providers. This allowance is in addition to any vendor or seller discount afforded by each member state at the time.

(2) A voluntary Model II seller not otherwise required to register with this state to collect the consumers sales and service tax and use tax, that registers through the Streamlined Sales and Use Tax Agreement’s central registration process, shall receive for a period not to exceed twenty-four months following the voluntary seller’s registration, the base rate percentage of tax revenue generated for this state by the voluntary seller.

(3) Following the conclusion of the twenty-four-month period, a seller will only be entitled to a vendor discount afforded under each member state’s law at the time the base rate expires.

(c) Prohibition on allowance or payment of monetary allowances.--

Notwithstanding subsections (a), (b) and (c) of this section, the Tax Commissioner may not allow any vendor, seller or certified service provider any monetary allowance, discount or other compensation for collecting and remitting the taxes levied by articles fifteen and fifteen-a of this chapter, or for making and filing the periodic reports required by this article, or articles fifteen and fifteen-a of this chapter, until the cost of collection study required by the agreement is completed and the monetary allowances are based on the
results of that study, or on requirements of federal law requiring remote sellers to collect sales and use taxes for states that have signed the agreement.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by act of the Legislature in the year 2004 shall apply to all sales made on or after the date of passage in the year 2004.

(d) The provisions of this article, as amended or added during the regular legislative session in the year 2008, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(e) The provisions of this article, as amended or added during the 2009 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(f) The provisions of this article, as amended or added during the 2010 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.
The provisions of this article, as amended or added during the 2012 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

§11-15B-33. State administration of local sales and use taxes.

The Tax Commissioner shall administer, or authorize others to conduct on his or her behalf, the sales and use tax laws of this state subject to the agreement. Sellers and purchasers are only required to register with, file returns with and remit funds to the Tax Commissioner. The Tax Commissioner shall collect any municipal sales and use taxes and distribute them to the appropriate taxing jurisdictions. The Tax Commissioner shall conduct, or others may be authorized to conduct on his or her behalf, all audits of sellers and purchasers for compliance with the sales and use tax laws of this state and the sales and use tax laws of its local jurisdictions. Except as provided herein, local jurisdictions may not conduct independent sales or use tax audits of sellers and purchasers.

§11-15B-34. State and local sales and use tax bases.

(a) General.— The tax base of a local jurisdiction that levies a local sales or use tax pursuant to authority granted by the Legislature shall be identical to the sales and use tax base of this state, unless otherwise prohibited by federal law, except as provided in subsection (b) of this section.

(b) Exceptions.--

This section does not apply to sales or use taxes levied on: (1) The wholesale sale of gasoline or special fuel to power motor vehicles, aircraft, locomotives, or watercraft or to electricity, piped natural or artificial gas or other fuels delivered by the seller, which local jurisdictions are
prohibited from taxing; or (2) the retail sale or transfer of
motor vehicles, aircraft, watercraft, modular homes,
manufactured homes or mobile homes.

CHAPTER 189

(S. B. 209 - By Senators Kessler,
Mr. President, and Hall)
[By Request of the Executive]

[Passed February 16, 2012; in effect from passage.]
[Approved by the Governor on February 22, 2012.]

AN ACT to amend and reenact §11-21-9 of the Code of West
Virginia, 1931, as amended, relating to updating the meaning
of “federal adjusted gross income” and certain other terms used
in the West Virginia Personal Income Tax Act; and specifying
effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as
when used in a comparable context in the laws of the United
States relating to income taxes, unless a different meaning is
clearly required. Any reference in this article to the laws of
the United States means the provisions of the Internal
Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2010, but prior to January 1, 2012, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2012, shall be given any effect.

(b) Medical savings accounts. -- The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not wages for purposes of withholding under section seventy-one of this article.

(c) Surtax. -- The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the Tax Commissioner as tax collected under this article.

(d) Effective date. -- The amendments to this section enacted in the year 2012 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2013, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U. S. Department of Health and Human Services under the authority of 42 U. S. C.§9902(2).

CHAPTER 190
(S. B. 410 - By Senators Prezioso and Beach)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2012.]

AN ACT to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended, relating to personal income tax; and requiring backup withholding on certain gambling winnings.

Be it enacted by the Legislature of West Virginia:

That §11-21-77 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART V. WITHHOLDING OF TAX.

§11-21-77. Extension of withholding to certain lottery winnings.

(a) Lottery winnings subject to withholding. -- Proceeds of more than $5,000 from any lottery prize awarded by the
West Virginia State Lottery Commission is subject to withholding. The commission in making any payment of a lottery prize subject to withholding shall deduct and withhold from the payment a tax in an amount equal to six and one-half percent of the payment.

(b) Statement by recipient. -- Every person who is to receive payment of winnings which are subject to withholding shall furnish the person making the payment a statement made under the penalties of perjury, containing the name, address and taxpayer identification number of the person receiving the payment and each person entitled to any portion of the payment.

(c) Coordination with other sections. -- For the purposes of determining liability for payment of taxes and filing of returns, payments of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(d) Backup withholding. -- Beginning July 1, 2012, every person who is required to file Internal Revenue Service form W-2G, and who is subject to backup withholding under federal law, is subject to West Virginia backup withholding. The payor in making any payment of a gambling prize subject to backup withholding shall deduct and withhold from the payment a tax in an amount equal to six and one-half percent of the payment.
AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of “federal taxable income” and certain other terms used in the West Virginia Corporation Net Income Tax Act in order for the definitions to conform with the Internal Revenue Code’s definitions.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws
(b) The term “Internal Revenue Code of 1986" means the
Internal Revenue Code of the United States enacted by the
federal Tax Reform Act of 1986 and includes the provisions of
law formerly known as the Internal Revenue Code of 1954, as
amended, and in effect when the federal Tax Reform Act of
1986 was enacted that were not amended or repealed by the
federal Tax Reform Act of 1986. Except when inappropriate,
any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a
reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a
reference to the provisions of law formerly known as the Internal
Revenue Code of 1954.

(c) Effective date. -- The amendments to this section
enacted in the year 2012 are retroactive to the extent allowable
under federal income tax law. With respect to taxable years that
began prior to January 1, 2013, the law in effect for each of
those years shall be fully preserved as to that year, except as
provided in this section.
AN ACT to amend and reenact §11-24-13f of the Code of West Virginia, 1931, as amended, relating to taxation of water’s-edge corporations; exempting certain income which is already exempt under certain tax treaties by federal law; clarifying the entities to be included in a water’s-edge group for corporation net income tax purposes; providing certain authority to the Tax Commissioner to require reports or make adjustments; and authorizing legislative, procedural or emergency rules, as necessary.

Be it enacted by the Legislature of West Virginia:

That §11-24-13f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-13f. Water’s-edge reporting mandated absent affirmative election to report based on worldwide unitary combined reporting basis; initiation and withdrawal of worldwide combined reporting election.

(a) Water’s-edge reporting. --

Absent an election under subsection (b) of this section to report based upon a worldwide unitary combined reporting
basis, taxpayer members of a unitary group shall determine each of their apportioned shares of the net business income or loss of the combined group on a water’s-edge unitary combined reporting basis. In determining tax under this article and article twenty-three of this chapter on a water’s-edge unitary combined reporting basis, taxpayer members shall take into account all or a portion of the income and apportionment factors of only the following members otherwise included in the combined group pursuant to section thirteen-a of this article:

(1) The entire income and apportionment factors of any member incorporated in the United States or formed under the laws of any state, the District of Columbia or any territory or possession of the United States;

(2) The entire income and apportionment factors of any member, regardless of the place incorporated or formed, if the average of its property, payroll and sales factors within the United States is twenty percent or more;

(3) The entire income and apportionment factors of any member which is a domestic international sales corporation as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal Revenue Code Sections 921 to 927, inclusive; or any member which is an export trade corporation, as described in Internal Revenue Code Sections 970 to 971, inclusive;

(4) Any member not described in subdivision (1), (2) or (3) of this subsection shall include its business income which is effectively connected, or treated as effectively connected under the provisions of the Internal Revenue Code, with the conduct of a trade or business within the United States and, for that reason, subject to federal income tax;

(5) Any member that is a “controlled foreign corporation”, as defined in Internal Revenue Code Section 957, to the extent of the income of that member that is
defined in Section 952 of Subpart F of the Internal Revenue
Code (Subpart F income) not excluding lower-tier
subsidiaries’ distributions of such income which were
previously taxed, determined without regard to federal
treaties, and the apportionment factors related to that income;
any item of income received by a controlled foreign
corporation shall be excluded if such income was subject to
an effective rate of income tax imposed by a foreign country
greater than ninety percent of the maximum rate of tax
specified in Internal Revenue Code Section 11;

(6) Any member that earns more than twenty percent of
its income, directly or indirectly, from intangible property or
service-related activities that are deductible against the
business income of other members of the water's-edge group,
to the extent of that income and the apportionment factors
related thereto: Provided, That for purposes of this
subdivision, if a corporation organized outside of the United
States is included in a water's-edge combined group pursuant
to this subdivision, and has an item of income that is exempt
from United States federal income tax pursuant to the
mandate of a comprehensive income tax treaty qualified
under Internal Revenue Code Section 1(h)(11), that
corporation shall be considered to be included in the
combined group under this subdivision only with regard to
any items of income described in this subdivision that are not
so exempt, taking into account items of expense and
apportionment factors associated with such items of
nonexempt income. Nothing in this subdivision prevents the
Tax Commissioner from adjusting, under any provision of
this article, any deduction claimed by the payer for amounts
that are excluded from the combined group's taxable income
under this subdivision. The Tax Commissioner may require
the reporting of the amounts of such excluded income and the
documentation of any claimed treaty exemption as conditions
to be met by a payer claiming a deduction of such payments.
The Tax Commissioner may issue such legislative,
procedural or emergency rules as the Tax Commissioner may
deem necessary for the administration of this section; and
(7) The entire income and apportionment factors of any member that is doing business in a tax haven defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States Constitutional standards. If the member's business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria set forth in the definition of a tax haven, the activity of the member shall be treated as not having been conducted in a tax haven.

(b) *Initiation and withdrawal of election to report based on worldwide unitary combined reporting.* --

(1) An election to report West Virginia tax based on worldwide unitary combined reporting is effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax under this article. The Tax Commissioner shall develop rules governing the impact, if any, on the scope or application of a worldwide unitary combined reporting election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members and any other similar change.

(2) The election shall constitute consent to the reasonable production of documents and taking of depositions in accordance with the provisions of this code.

(3) In the discretion of the Tax Commissioner, a worldwide unitary combined reporting election may be disregarded, in part or in whole, and the income and apportionment factors of any member of the taxpayer's unitary group may be included in or excluded from the combined report without regard to the provisions of this section, if any member of the unitary group fails to comply with any provision of this article.

(4) In the discretion of the Tax Commissioner, the Tax Commissioner may mandate worldwide unitary combined
(5) A worldwide unitary combined reporting election is binding for and applicable to the tax year it is made and all tax years thereafter for a period of ten years. It may be withdrawn or reinstated after withdrawal, prior to the expiration of the ten-year period, only upon written request for reasonable cause based on extraordinary hardship due to unforeseen changes in state tax statutes, law or policy and only with the written permission of the Tax Commissioner. If the Tax Commissioner grants a withdrawal of election, he or she shall impose reasonable conditions necessary to prevent the evasion of tax or to clearly reflect income for the election period prior to or after the withdrawal. Upon the expiration of the ten-year period, a taxpayer may withdraw from the worldwide unitary combined reporting election. Withdrawal must be made in writing within one year of the expiration of the election and is binding for a period of ten years, subject to the same conditions as applied to the original election. If no withdrawal is properly made, the worldwide unitary combined reporting election shall be in place for an additional ten-year period, subject to the same conditions as applied to the original election.

(c) For purposes of determining the tax imposed by article twenty-three of this chapter, the term “income”, as used in this section, shall be interpreted to mean the tax base or capital, as applicable, for purposes of the tax imposed under article twenty-three of this chapter.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-14-15, relating to traffic safety; establishing the traffic offense of operating a motor vehicle while texting without the use of hands-free technology; establishing the offense of operating a motor vehicle while using an electronic communication device without the use of hands-free technology; defining terms; providing exceptions; clarifying means of enforcement as a primary offense; impact of violation on insurance coverage; impact of violation on law enforcement ability to seize or confiscate device; requiring signage on certain highways for motorists entering state; providing penalties; providing for increased fines for multiple offenses; assessing points against driver’s license for multiple offenses; exempting offense from the assessment of court costs and fees; and limitations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17C-14-15, to read as follows:

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-15. Prohibited use of an electronic communications device driving without handheld features; definitions; exceptions; penalties.

(a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:
(1) Texting; or

(2) Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

(b) For purposes of this section, the following terms shall mean:

(1) “Cell phone” shall mean a cellular, analog, wireless or digital telephone.

(2) “Driving” or “operating a motor vehicle” means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.

(3) “Electronic communication device” means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device. For the purposes of this section, an “electronic communication device” does not include:

(A) Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or

(B) Other voice radios used by a law-enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) licensed by the Federal Communications Commission and school bus operators.
(4) “Engaging in a call” means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.

(5) “Hands-free electronic communication device” means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

(6) “Hands-free equipment” means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.

(7) “Texting” means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication. For purposes of this section, “texting” does not include the following actions:

(A) Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by the pressing the device in order to initiate or receive a phone call or using voice commands to initiate or receive a telephone call;

(B) Inputting, selecting or reading information on a global positioning system or navigation system; or

(C) Using a device capable of performing multiple functions, including fleet management systems, dispatching
devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.

(8) “Using a cell phone or other electronic communication device” means holding in a person’s hand or hands an electronic communication device while:

(A) Viewing or transmitting images or data;

(B) Playing games;

(C) Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or

(D) Engaging in a call.

(c) Subsection (a) of this section shall not apply to:

(1) A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;

(2) A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.

(3) The activation or deactivation of hands-free equipment or a function of hands-free equipment.

(d) This section does not supersede the provisions of section three-a, article two, chapter seventeen-b of this code or any more restrictive provisions for drivers of commercial motor vehicles prescribed by the provisions of chapter seventeen-e of this code or federal law or rule.
(e) Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined $100; for a second offense be fined $200; and for a third or subsequent offense be fined $300. No court costs or other fees shall be assessed for a violation of subsection (a) of this section.

(f) Notwithstanding any other provision of this code to the contrary, points may not be entered on any driver’s record maintained by the Division of Motor Vehicles as a result of a violation of this section, except for the third and subsequent convictions of the offense, for which three points shall be entered on any driver’s record maintained by the Division of Motor Vehicles.

(g) Driving or operating a motor vehicle on a public street or highway while texting shall be enforced as a primary offense as of July 1, 2012. Driving or operating a motor vehicle on a public street or highway while using a cell phone or other electronic communication device without hands-free equipment shall be enforced as a secondary offense as of July 1, 2012, and as a primary offense as of July 1, 2013 for purposes of citation.

(h) Within ninety days of the effective date of this section, the Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.
(i) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

CHAPTER 194

(H. B. 4542 - By Delegates White, T. Campbell, Varner and Williams)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §21A-5-7 of the Code of West Virginia, 1931, as amended, all relating to unemployment compensation benefits; preventing contributory employers from being relieved of benefit charges to their accounts if an overpayment of benefits is the result of the employer’s or an employer’s agent’s failure to provide requested information to the agency timely or to adequately; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §21A-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.


1 (1) The commissioner shall maintain a separate account for each employer, and shall credit the employer’s account with all contributions of the employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in any employer's account after the
computation date may not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter grants an employer or individual in his, her or its service prior claims or rights to the amounts paid by him, her or its into the fund, either on his, her or its behalf or on behalf of the individuals. The account of any employer which has been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he or she has been employed as much as thirty working days, whether or not the days are consecutive: Provided, That no employer's account may be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he or she was employed as much as thirty days, whether or not the days are consecutive: Provided, however, That no employer’s account may be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Benefits paid to an individual are to be charged to the accounts of his or her employers in the base period, the amount of the charges, chargeable to the account of each employer, to be that portion of the total benefits paid the individual as the wages paid him or her by the employer in the base period are to the total wages paid him or her during his or her base period for insured work by all his or her employers in the base period. For the purposes of this section, no base period employer’s account may be charged for benefits paid under this chapter to a former employee, if the base period employer furnishes separation information within fourteen days from the date the
notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six, or subsection two, section three, article six of this chapter or would have resulted in a disqualification under that subsection except for a subsequent period of covered employment by another employing unit. Further, no contributory base period employer’s experience rating account may be charged for benefits paid under this chapter to an individual who has been continuously employed by that employer on a part-time basis, if the part-time employment continues while the individual is separated from other employment and is otherwise eligible for benefits. One half of extended benefits paid to an individual are to be charged to the accounts of his or her employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits. The entire state share of extended benefits paid to an individual shall be charged to the accounts of his or her base period employers. The provisions of this section permitting the noncharging of contributory employers’ accounts have no application to benefit charges imposed upon reimbursable employers.

(3) The commissioner shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view of fixing the contribution rates as will reflect such experiences. For the purpose of fixing the contribution rates for each calendar year, the books of the department shall be closed on July 31 of the preceding calendar year, and any contributions paid after that, as well as benefits paid after that with respect to compensable weeks ending on or before June 30 of the preceding calendar year, may not be taken into account until the next annual date for fixing contribution rates: Provided, That if an employer has failed to furnish to the commissioner on or before July 31 of the preceding calendar year the wage
information for all past periods necessary for the computation
of the contribution rate, the employer’s rate shall be, if it is
immediately prior to that July 31, less than three and three-
tenths percent, increased to three and three-tenths percent:
Provided, however, That any payment made or any
information necessary for the computation of a reduced rate
furnished on or before the termination of an extension of time
for the payment or reporting of information granted pursuant
to a rule of the commissioner authorizing an extension, shall
be taken into account for the purposes of fixing contribution
rates: Provided further, That when the time for filing any
report or making any payment required hereunder falls on
Saturday, Sunday, or a legal holiday, the due date is the next
succeeding business day: And provided further, That
whenever, through mistake or inadvertence, erroneous credits
or charges are found to have been made to or against the
reserved account of any employer, the rate shall be adjusted
as of January 1 of the calendar year in which the mistake or
inadvertence is discovered, but payments, made under any
rate assigned prior to January 1 of that year, are not
erroneously collected.

(4) The commissioner may prescribe rules for the
establishment, maintenance and dissolution of joint accounts
by two or more employers, and shall, in accordance with the
rules and upon application by two or more employers to
establish a joint account, or to merge their several individual
accounts in a joint account, maintain a joint account as if it is
a single employer’s account.

(5) State and local government employers may enter into
joint accounts and to maintain the joint account or accounts
as if it or they are a single employer’s account or accounts.

(6) Effective on and after July 1, 2012 if an employer has
failed to furnish to the commissioner on or before August 31
of each year the wage information for all past periods
necessary for the computation of the contribution rate, the employer’s rate shall be, if it is immediately prior to July 1, less than seven and five-tenths percent, increased to seven and five-tenths percent.

(7) Effective July 1, 2012, a contributory employer’s account shall not be relieved of charges relating to a payment from the Fund if the department determines that:

(A) The erroneous payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request of the agency for information relating to the claim for compensation; and

(B) The employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(8) For purposes of this section:

(A) “Erroneous payment” means a payment that but for the failure by the employer or the employer’s agent with respect to the claim for unemployment compensation would not have been made.

(B) “Pattern of failing” means repeated documented failure on the part of the employer or the agent of the employer to respond as requested in this section, taking into consideration the number of instances of failure in relation to the total volume of requests by the agency to the employer or the employer’s agent as described in this section.
AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment benefits for certain spouses of military personnel; providing that an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits; and providing that the account of the employer of the individual who leaves employment to accompany a spouse reassigned from one military assignment to another may not be charged for those benefits.

Be it enacted by the Legislature of West Virginia:

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:

3 (1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to
covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual leaves his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to workday, and which last preceding employer, after having previously employed the individual for thirty working days or more, laid off the individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within thirty days of leaving the job that his or her work aggravated, worsened or will worsen the individual’s health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following that week; or for the week in which he or she was discharged from his or her last thirty-day employing unit for misconduct and the six weeks immediately following that week. The disqualification
carries a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his or her benefit year, whether or not the days are consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under the disqualification; except that:

If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last thirty days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer’s property; assault upon the person of his or her employer or any employee of his or her employer; if the assault is committed at the individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter sixty-a of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code; arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least thirty days in covered employment: Provided, That for the purpose of this subdivision, the words “any other gross misconduct” includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.
(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. The disqualification carries a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For a week in which his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he or she was last employed, unless the commissioner is satisfied that he or she: (1) Was not participating, financing or directly interested in the dispute; and (2) did not belong to a grade or class of workers who were participating, financing or directly interested in the labor dispute which resulted in the stoppage of work. No disqualification under this subdivision is imposed if the employees are required to accept wages, hours or conditions of employment substantially less favorable than those prevailing for similar work in the locality, or if employees are denied the right of collective bargaining under generally prevailing conditions, or if an employer shuts down his or her plant or operation or dismisses his or her employees in order to force wage reduction, changes in hours or working conditions. For the purpose of this subdivision if any stoppage of work continues longer than four weeks after the termination of the labor dispute which caused stoppage of work, there is a rebuttable presumption that part of the stoppage of work which exists after a period of four weeks after the termination of the labor dispute did not exist because of the labor dispute; and in that event the burden is upon the employer or other interested party to show otherwise.

(5) For a week with respect to which he or she is receiving or has received:
(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers’ compensation law of any state or under a similar law of the United States; or

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days: Provided, That an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits pursuant to this subdivision: Provided, however, That the account of the employer of an individual who leaves the employment to accompany a spouse reassigned from one military assignment to another may not be charged.

(7) Benefits may not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes
of performing the services or was permanently residing in the
United States under color of law at the time the services were
performed (including an alien who is lawfully present in the
United States as a result of the application of the provisions
of Section 203(a)(7) or Section 212(d)(5) of the Immigration
and Nationality Act): Provided, That any modifications to
the provisions of Section 3304(a)(14) of the federal
Unemployment Tax Act as provided by Public Law 94-566
which specify other conditions or other effective date than
stated in this subdivision for the denial of benefits based on
services performed by aliens and which modifications are
required to be implemented under state law as a condition for
full tax credit against the tax imposed by the federal
Unemployment Tax Act are applicable under the provisions
of this section.

(b) Any data or information required of individuals
applying for benefits to determine whether benefits are not
payable to them because of their alien status shall be
uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for
benefits would otherwise be approved, no determination that
benefits to the individual are not payable because of his or
her alien status may be made except upon a preponderance of
the evidence.

(9) For each week in which an individual is unemployed
because, having voluntarily left employment to attend a
school, college, university or other educational institution, he
or she is attending that school, college, university or other
educational institution, or is awaiting entrance thereto or is
awaiting the starting of a new term or session thereof, and
until the individual returns to covered employment.

(10) For each week in which he or she is unemployed
because of his or her request, or that of his or her duly
authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments or remuneration: Provided, That if the amount of benefits is not a multiple of $1, it shall be computed to the next lowest multiple of $1: Provided, however, That there is no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: Provided further, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension or
other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within twenty-four calendar months immediately preceding the decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article:

Provided, That disqualification under this subdivision does not preclude prosecution under section seven, article ten of this chapter.
That §21A-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-7. False representations; penalties.

(a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or attempt to obtain or increase a benefit, either for himself, herself or another, under this chapter, or under an employment security law of any other state or of the federal government for either of which jurisdictions this state is acting as an agent, is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than $100 nor more than $1,000, or by confinement in jail for not longer than thirty days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, is a separate offense.

(b) After July 1, 2012, a penalty of twenty percent of the amount of the erroneous payment attaches to the amount of the liability to be repaid by the benefit recipient for any payment of benefits determined to be obtained by the recipient’s fraudulent statements or actions. The first seventy-five percent of the penalty collected from the benefit recipient shall be deposited in the state’s Unemployment Trust Fund with the remaining twenty-five percent of the penalty collected to be deposited in a special administrative account to be used for increased integrity activities to identify and recover erroneous payments of benefits created by fraudulent activities of benefit recipients. Penalty amounts established due to fraudulent activities of benefit recipients may not be used to offset future benefits payable to benefit recipients.
AN ACT to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Executive Director or Commissioner of Workforce West Virginia to provide data to certain governmental entities; changing the threshold of certain levels of compensation to be reported for certain data purposes by employers to the Executive Director or the Commissioner of Workforce West Virginia; and changing a designated recipient of the data to attain consistency with prior amendments to code.

Be it enacted by the Legislature of West Virginia:

That §21A-10-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:
(1) The employer’s assigned unemployment compensation registration number, the employer’s name and the address at which the employer’s payroll records are maintained;

(2) Each employee’s Social Security account number, name and the gross wages paid to each employee, which shall include the first $12,000 of remuneration and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first $12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;
(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary and vocational education; the West Virginia P-20 longitudinal data system established pursuant to section ten, article one-d, chapter eighteen-b of this code; and vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Workforce Investment Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The Insurance Commissioner for purposes of its workers compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.
(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse the Bureau of Employment Programs for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $20 nor more than $200 or confined in a county or regional jail not longer than ninety days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.
CHAPTER 198

(H. B. 4251 - By Delegates Doyle, Rodighiero, Ferro, Frazier, Reynolds and Storch)

[Passed March 8, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 15, 2012.]


Be it enacted by the Legislature of West Virginia:

**ARTICLE 2A. LEASES.**

**PART 1. GENERAL PROVISIONS.**

§46-2A–103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale, but does not include, a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

3 (b) “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

4 (c) “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of lease and
division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) “Conforming” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) “Consumer lease” shall have the same meaning as that ascribed to it in section one hundred two, article one, chapter forty-six-a of this code.

(f) “Fault” means wrongful act, omission, breach or default.

(g) “Finance lease” means a lease with respect to which:

(i) The lessor does not select, manufacture or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing: (a) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.
(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of
other property or on secured or unsecured credit and includes
acquiring goods or documents of title under a preexisting
lease contract but does not include a transfer in bulk or as
security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to
possession and use of goods under a lease. Unless the context
clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest
in the goods after expiration, termination or cancellation of
the lease contract.

(r) “Lien” means a charge against or interest in goods to
secure payment of a debt or performance of an obligation, but
the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the
subject matter of a separate lease or delivery, whether or not
it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant
with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain
of one or more sums payable in the future, discounted to the
date certain. The discount is determined by the interest rate
specified by the parties if the rate was not manifestly
unreasonable at the time the transaction was entered into;
otherwise, the discount is determined by a commercially
reasonable rate that takes into account the facts and
circumstances of each case at the time the transaction was
entered into.

(v) “Purchase” includes taking by sale, lease, mortgage,
security interest, pledge, gift or any other voluntary
transaction creating an interest in goods.
(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

(z) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

“Accessions”. Section 2A-310(1).

“Construction mortgage”. Section 2A-309(1)(d).

“Encumbrance”. Section 2A-309(1)(e).

“Fixtures”. Section 2A-309(1)(a).

“Fixture filing”. Section 2A-309(1)(b).

“Purchase money lease”. Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

“Account”. Section 9–102(a)(2).

“Between merchants”. Section 2–104(3).

“Buyer”. Section 2–103(1)(a).
(4) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-102. Definitions and index of definitions.

(a) Article 9 definitions. -- In this article:
(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance: (i) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (i) Rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter-of-credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) Authenticated by a secured party;
(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor’s farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(ii) Leased real property to a debtor in connection with the debtor’s farming operation; and

(C) Whose effectiveness does not depend on the person’s possession of the personal property.

(6) “As-extracted collateral” means:

(A) Oil, gas or other minerals that are subject to a security interest that:
(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

(A) To sign; or

(B) To attach to or logically associate with the record an electronic sound, symbol or process, with present intent to adopt or accept a record.

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.
(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) Charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant’s business or profession; and
(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange or market and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:
(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.
(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) “Consumer transaction” means a transaction in which: (i) An individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
(28) “Debtor” means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) A consignee.

(29) “Deposit account” means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in section 7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing or to be grown, including:

(i) Crops produced on trees, vines and bushes; and
(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) “Filing office” means an office designated in section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.
(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

(43) [reserved].

(44) “Goods” means all things that are movable when a security interest attaches. The term includes: (i) Fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) The program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt
on which interest is exempt from income taxation under the
laws of the United States.

(46) “Health-care-insurance receivable” means an interest
in or claim under a policy of insurance which is a right to
payment of a monetary obligation for health-care goods or
services provided.

(47) “Instrument” means a negotiable instrument or any
other writing that evidences a right to the payment of a
monetary obligation, is not itself a security agreement or
lease, and is of a type that in ordinary course of business is
transferred by delivery with any necessary indorsement or
assignment. The term does not include: (i) Investment
property; (ii) letters of credit; or (iii) writings that evidence
a right to payment arising out of the use of a credit or charge
card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products,
which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be
furnished under a contract of service;

(C) Are furnished by a person under a contract of service;
or

(D) Consist of raw materials, work in process or materials
used or consumed in a business.

(49) “Investment property” means a security, whether
certificated or uncertificated, security entitlement, securities
account, commodity contract or commodity account.

(50) “Jurisdiction of organization”, with respect to a
registered organization, means the jurisdiction under whose
law the organization is formed or organized.
“Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

“Lien creditor” means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

“Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.
(54) “Manufactured-home transaction” means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means: (i) Money; (ii) money’s worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) Owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable, in whole or in part, for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
(60) “Original debtor” except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to”, with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual’s spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to”, with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
(D) The spouse of an individual described in subparagraph (A), (B) or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) and shares the same home with the individual.

(64) “Proceeds”, except as used in section 9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Production-money crops” means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) “Production-money obligation” means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.
(67) “Production of crops” includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops and protecting them from damage or disease.

(68) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

(70) “Public-finance transaction” means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) “Public organic record” means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(72) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(73) “Record”, except as used in “for record”, “of record”, “record or legal title” and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(74) “Registered organization” means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

(75) “Secondary obligor” means an obligor to the extent that:
485 (A) The obligor’s obligation is secondary; or

486 (B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

489 (76) “Secured party” means:

490 (A) A person in whose favor a security interest is created or provided under a security agreement, whether or not any obligation to be secured is outstanding;

493 (B) A person that holds an agricultural lien;

494 (C) A consignor;

495 (D) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

497 (E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or

500 (F) A person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

502 (77) “Security agreement” means an agreement that creates or provides for a security interest.

504 (78) “Send,” in connection with a record or notification, means:

506 (A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
(B) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (A).

(79) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(80) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(81) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(82) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(83) “Termination statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(84) “Transmitting utility” means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway or trolley bus;
(B) Transmitting communications electrically, electromagnetically or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas or water.

(b) Definitions in other articles. “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Applicant” Section 5-102.

“Beneficiary” Section 5-102.

“Broker” Section 8-102.

“Certificated security” Section 8-102.

“Check” Section 3-104.

“Clearing corporation” Section 8-102.

“Contract for sale” Section 2-106.

“Customer” Section 4-104.

“Entitlement holder” Section 8-102.

“Financial asset” Section 8-102.

“Holder in due course” Section 3-302.

“Issuer” (with respect to a letter of credit or letter-of-credit right) Section 5-102.
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>560</td>
<td>“Issuer” (with respect to a security)</td>
<td>8-201</td>
</tr>
<tr>
<td>561</td>
<td>“Issuer” (with respect to a document of title)</td>
<td>7-102</td>
</tr>
<tr>
<td>562</td>
<td></td>
<td></td>
</tr>
<tr>
<td>563</td>
<td>“Lease”</td>
<td>2A-103</td>
</tr>
<tr>
<td>564</td>
<td>“Lease agreement”</td>
<td>2A-103</td>
</tr>
<tr>
<td>565</td>
<td>“Lease contract”</td>
<td>2A-103</td>
</tr>
<tr>
<td>566</td>
<td>“Leasehold interest”</td>
<td>2A-103</td>
</tr>
<tr>
<td>567</td>
<td>“Lessee”</td>
<td>2A-103</td>
</tr>
<tr>
<td>568</td>
<td>“Lessee in ordinary course of business”</td>
<td>2A-103</td>
</tr>
<tr>
<td>569</td>
<td></td>
<td></td>
</tr>
<tr>
<td>570</td>
<td>“Lessor”</td>
<td>2A-103</td>
</tr>
<tr>
<td>571</td>
<td>“Lessor’s residual interest”</td>
<td>2A-103</td>
</tr>
<tr>
<td>572</td>
<td>“Letter of credit”</td>
<td>5-102</td>
</tr>
<tr>
<td>573</td>
<td>“Merchant”</td>
<td>2-104</td>
</tr>
<tr>
<td>574</td>
<td>“Negotiable instrument”</td>
<td>3-104</td>
</tr>
<tr>
<td>575</td>
<td>“Nominated person”</td>
<td>5-102</td>
</tr>
<tr>
<td>576</td>
<td>“Note”</td>
<td>3-104</td>
</tr>
<tr>
<td>577</td>
<td>“Proceeds of a letter of credit”</td>
<td>5-114</td>
</tr>
<tr>
<td>578</td>
<td>“Prove”</td>
<td>3-103</td>
</tr>
<tr>
<td>579</td>
<td>“Sale”</td>
<td>2-106</td>
</tr>
</tbody>
</table>
“Securities account” Section 8-501.
“Securities intermediary” Section 8-102.
“Security” Section 8-102.
“Security certificate” Section 8-102.
“Security entitlement” Section 8-102.
“Uncertificated security” Section 8-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-9-105. Control of electronic chattel paper.

1 (a) General rule: control of electronic chattel paper. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

6 (b) Specific facts giving control: a system satisfies subsection (a) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

10 (1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5) and (6) of this section, unalterable;

14 (2) The authoritative copy identifies the secured party as the assignee of the record or records;
(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

§46-9-307. Location of debtor.

(a) “Place of business.” -- In this section, “place of business” means a place where a debtor conducts its affairs.

(b) Debtor’s location: general rules. -- Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual’s principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). -- Subsection (b) of this section applies only if a debtor’s residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally
requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) *Continuation of location: cessation of existence, etc.*-- A person that ceases to exist, have a residence or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) *Location of registered organization organized under state law.*-- A registered organization that is organized under the law of a state is located in that state.

(f) *Location of registered organization organized under federal law; bank branches and agencies.*-- Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office or other comparable office; or

(3) In the District of Columbia, if neither subdivision(1) nor subdivision(2) of this subsection applies.
(g) Continuation of location: changed in status of registered organization. -- A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture or lapse of the registered organization’s status as such in its jurisdiction of organization; or

(2) The dissolution, winding up or cancellation of the existence of the registered organization.

(h) Location of United States. -- The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. -- A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. -- A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this part. -- This section applies only for purposes of this part.

§46-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

(a) Security interest subject to other law. -- Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
(1) A statute, regulation or treaty of the United States whose requirements for a security interest’s obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) The following statute of this state: Chapter seventeen-
a of this code: Provided, That during any period in which collateral is inventory: (i) Held for sale by a person who is in the business of selling goods of that kind; or (ii) held for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles, the filing provision of this article apply to a security interest in that collateral created by such person as a debtor or obligor, as appropriate; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. -- Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) of this section and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. -- Except as otherwise provided in subsection (d) of this section and section 9-316(d) and (e), duration and renewal of perfection
38 of a security interest perfected by compliance with the
39 requirements prescribed by a statute, regulation or treaty
40 described in subsection (a) are governed by the statute,
41 regulation or treaty. In other respects, the security interest is
42 subject to this article.

43 (d) Inapplicability to certain inventory. -- During any
44 period in which collateral subject to a statute specified in
45 subsection (a)(2) of this section is inventory held for sale or
46 lease by a person or leased by that person as lessor and that
47 person is in the business of selling goods of that kind, this
48 section does not apply to a security interest in that collateral
49 created by that person.

§46-9-316. Effect of change in governing law.

1 (a) General rule: effect on perfection of change in
governing law. -- A security interest perfected pursuant to the
2 law of the jurisdiction designated in section 9-301(1) or 9-
3 305(c) remains perfected until the earliest of:

4 (1) The time perfection would have ceased under the law
5 of that jurisdiction;

6 (2) The expiration of four months after a change of the
7 debtor’s location to another jurisdiction; or

8 (3) The expiration of one year after a transfer of collateral
9 to a person that thereby becomes a debtor and is located in
10 another jurisdiction.

11 (b) Security interest perfected or unperfected under law
12 of new jurisdiction. -- If a security interest described in
13 subsection (a) of this section becomes perfected under the
14 law of the other jurisdiction before the earliest time or event
15 described in said subsection, it remains perfected thereafter.
16 If the security interest does not become perfected under the
law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** -- A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

1. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
2. Thereafter the collateral is brought into another jurisdiction; and
3. Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.**-- Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** -- A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:
49 (1) The time the security interest would have become
50 unperfected under the law of the other jurisdiction had the
51 goods not become covered by a certificate of title from this
52 state; or
53
54 (2) The expiration of four months after the goods had
55 become so covered.

56 (f) Change in jurisdiction of bank, issuer, nominated
57 person, securities intermediary or commodity intermediary.--
58 A security interest in deposit accounts, letter-of-credit rights,
59 or investment property which is perfected under the law of
60 the bank’s jurisdiction, the issuer’s jurisdiction, a nominated
61 person’s jurisdiction, the securities intermediary’s jurisdiction
62 or the commodity intermediary’s jurisdiction, as applicable,
63 remains perfected until the earlier of:

64 (1) The time the security interest would have become
65 unperfected under the law of that jurisdiction; or
66
67 (2) The expiration of four months after a change of the
68 applicable jurisdiction to another jurisdiction.

69 (g) Subsection (f) security interest perfected or
70 unperfected under law of new jurisdiction. -- If a security
71 interest described in subsection (f) of this section becomes
72 perfected under the law of the other jurisdiction before the
73 earlier of the time or the end of the period described in that
74 subsection, it remains perfected thereafter. If the security
75 interest does not become perfected under the law of the other
76 jurisdiction before the earlier of that time or the end of that
77 period, it becomes unperfected and is deemed never to have
78 been perfected as against a purchaser of the collateral for
79 value.

80 (h) Effect on filed financing statement of change in
81 governing law. -- The following rules apply to collateral to
which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) Effect of change in governing law on financing statement filed against original debtor. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.
(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. -- A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time: (A) The security interest or agricultural lien is perfected; or (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
(c) *Lessees that receive delivery.* -- Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) *Licensees and buyers of certain collateral.* -- A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) *Purchase-money security interest.* -- Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

§46-9-326. Priority of security interests created by new debtor.

(a) *Subordination of security interest created by new debtor.* -- Subject to subsection (b) of this section, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.
(b) Priority under other provisions; multiple original debtors. -- The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor’s having become bound.

PART 4. RIGHTS OF THIRD PARTIES.

§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

(a) Discharge of account debtor; effect of notification.-- Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. -- Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account
debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. -- Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (e) of this section and sections 2A-303 and 9-407, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or
(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Inapplicability of subsection (d) to certain sales.-- Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(f) Legal restrictions on assignment generally ineffective. -- Except as otherwise provided in sections 2A-303 and 9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. -- Subject to subsection (h) of this section, an account debtor may not
waive or vary its option under subsection (b)(3) of this section.

(h) Rule for individual under other law. -- This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) Inapplicability. -- This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) does not apply to an assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f): Chapter twenty-three, article four, section eighteen, chapter forty-six-a, article six-h, and a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396p(d)(4).

(j) Section prevails over specified inconsistent law. -- This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective.-- Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which
term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(c) Legal restrictions on assignment generally ineffective. -- A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or
(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c).** -- To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

1. Is not enforceable against the person obligated on the promissory note or the account debtor;

2. Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

3. Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

4. Does not entitle the secured party to use or assign the debtor’s rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;
(5) Does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible.

(c) *Section prevails over specified inconsistent law.* -- This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

(f) *Inapplicability.* -- Subsection (c) of this section does not apply to an assignment or transfer of or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the statute is inconsistent with said subsection: Chapter twenty-three, article four, section eighteen; chapter forty-six-a, article six-h; and a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396(d)(4).

§46-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) *Sufficiency of financing statement.* -- Subject to subsection (b), a financing statement is sufficient only if it:

1. Provides the name of the debtor;

2. Provides the name of the secured party or a representative of the secured party; and
(3) Indicates the collateral covered by the financing statement.

(b) **Real-property-related financing statements.** -- Except as otherwise provided in section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) **Record of mortgage as financing statement.** -- A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures relate to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
(3) The record satisfies the requirements for a financing statement in this section: Provided, That

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9-503(a)(4) applies; and

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. -- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§46-9-503. Name of debtor and secured party.

(a) Sufficiency of debtor’s name. -- A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3) of this section, if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization’s name on the public organic record most recently filed with or issued or enacted by the debtor’s jurisdiction of organization which purports to state, amend or restate the registered organization’s name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and indicates that collateral is being administered by a personal representative;
(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g), if the debtor is an individual to whom this state has issued a driver’s license that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver’s license;

(5) If the debtor is an individual to whom subdivision (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and
(B) If the debtor does not have a name, only if it provides
the names of the partners, members, associates or other
persons comprising the debtor, in a manner that each name
provided would be sufficient if the person named were the
debtor.

(b) \textit{Additional debtor-related information}. -- A financing
statement that provides the name of the debtor in accordance
with subsection (a) of this section is not rendered ineffective
by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B) of this
section, names of partners, members, associates or other
persons comprising the debtor.

(c) \textit{Debtor’s trade name insufficient}. -- A financing
statement that provides only the debtor’s trade name does not
sufficiently provide the name of the debtor.

(d) \textit{Representative capacity}.-- Failure to indicate the
representative capacity of a secured party or representative of
a secured party does not affect the sufficiency of a financing
statement.

(e) \textit{Multiple debtors and secured parties}. -- A financing
statement may provide the name of more than one debtor and
the name of more than one secured party.

(f) \textit{Name of decedent}. -- The name of the decedent
indicated on the order appointing the personal representative
of the decedent issued by the court having jurisdiction over
the collateral is sufficient as the “name of the decedent”
under subdivision (a)(2) of this section.

(g) \textit{Multiple driver’s licenses}. -- If this state has issued to
an individual more than one driver’s license of a kind
described in subdivision (a)(4) of this section, the one that
was issued most recently is the one to which subdivision
(a)(4) refers.

(h) Definition. -- In this section, the “name of the settlor
or testator” means:

(1) If the settlor is a registered organization, the name that
is stated to be the settlor’s name on the public organic record
most recently filed with or issued or enacted by the settlor’s
jurisdiction of organization which purports to state, amend,
or restate the settlor’s name; or

(2) In other cases, the name of the settlor or testator
indicated in the trust’s organic record.

§46-9-507. Effect of certain events on effectiveness of financing
statement.

(a) Disposition. -- A filed financing statement remains
effective with respect to collateral that is sold, exchanged,
leased, licensed or otherwise disposed of and in which a
security interest or agricultural lien continues, even if the
secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. --
Except as otherwise provided in subsection (c) of this section
and section 9-508, a financing statement is not rendered
ineffective if, after the financing statement is filed, the
information provided in the financing statement becomes
seriously misleading under section 9-506.

(c) Change in debtor’s name. -- If the name that a filed
financing statement provides for a debtor becomes
insufficient as the name of the debtor under section 9-503(a)
so that the financing statement becomes seriously misleading
under section 9-506:
(1) The financing statement is effective to perfect a
security interest in collateral acquired by the debtor before,
or within four months after, the filed financing statement
becomes seriously misleading; and

(2) The financing statement is not effective to perfect a
security interest in collateral acquired by the debtor more
than four months after the filed financing statement becomes
seriously misleading, unless an amendment to the financing
statement which renders the financing statement not seriously
misleading is filed within four months after the financing
statement became seriously misleading.

§46-9-515. Duration and effectiveness of financing statement;
effect of lapsed financing statement.

(a) Five-year effectiveness. -- Except as otherwise
provided in subsections (b), (e), (f) and (g) of this section, a
filed financing statement is effective for a period of five years
after the date of filing.

(b) Public-finance or manufactured-home transaction. --
Except as otherwise provided in subsections (e), (f) and (g)
of this section, an initial financing statement filed in
connection with a public-finance transaction or
manufactured-home transaction is effective for a period of
forty years after the date of filing if it indicates that it is filed
in connection with a public-finance transaction or
manufactured-home transaction.

(c) Lapse and continuation of financing statement. -- The
effectiveness of a filed financing statement lapses on the
expiration of the period of its effectiveness unless before the
lapse a continuation statement is filed pursuant to subsection
(d) of this section. Upon lapse, a financing statement ceases
to be effective and any security interest or agricultural lien
that was perfected by the financing statement becomes
unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) *When continuation statement may be filed.* -- A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) *Effect of filing continuation statement.* -- Except as otherwise provided in section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) *Transmitting utility financing statement.* -- If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) *Record of mortgage as financing statement.* -- A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.
§46-9-516. What constitutes filing; effectiveness of filing.

1 (a) What constitutes filing. -- Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a filing office refuses to accept because:

1 (1) The record is not communicated by a method or medium of communication authorized by the filing office;

2 (2) An amount equal to or greater than the applicable filing fee is not tendered;

3 (3) The filing office is unable to index the record because:

4 (A) In the case of an initial financing statement, the record does not provide a name for the debtor;

5 (B) In the case of an amendment or information statement, the record:

6 (i) Does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or

7 (ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515;

8 (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor’s surname; or
(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). -- For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which
it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. -- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

(e) Administrative review. – If the Secretary of State determines that a financing statement which identifies a public official or employee as a debtor is fraudulent or that an individual debtor and an individual secured party would appear to be the same individual on the financing statement or that the individual debtor claims to be a transmitting utility, without supporting documents, the Secretary may commence administrative proceedings to remove the statement from its records in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(1) Upon the commencement of proceedings pursuant to this subsection, the Secretary of State shall identify the financing statement in its records as subject to administrative review and publish a notice in the West Virginia Register regarding the proceedings.

(2) A financing statement may be found to be fraudulent only if, based upon clear and convincing evidence, no good faith basis exists upon which to conclude that the secured party was authorized to file the statement and the statement was submitted for the purpose of harassment or intimidation or fraudulent intent of the alleged debtor.
(3) If upon the completion of administrative review, it is determined that the filing of a financing statement was fraudulent, the filing party shall be assessed all costs incurred by the Secretary in reaching a final determination, including reimbursement for all costs of the hearing. The filing party may also be subject to a civil penalty not exceeding $500 per fraudulent filing. If upon completion of administrative review or any subsequent appeal of a decision of the Secretary of State, it is determined that a filing subject to appeal is not fraudulent, the secretary or court may award the prevailing party reasonable costs and expenses, including attorney fees.

(4) The Secretary of State shall annually submit a report to the Legislature regarding actions taken against fraudulent filings pursuant to this section which identifies the number and characteristics of such proceedings, identifies any creditors found to have made fraudulent filings, describes proceedings initiated by the secretary in which it is ultimately determined that fraudulent filings did not occur, describes the number and type of complaints received by the secretary in which it is alleged that fraudulent filings have occurred, and describes the actions taken by the secretary to investigate complaints concerning allegedly fraudulent filings and the results of the investigations.

(5) A decision by the secretary to remove a financing statement determined to have been fraudulently filed subject to appeal _de novo_ to the circuit court of Kanawha County. Pending the outcome of an appeal, the financing statement may not be removed from the records of the Secretary, but shall be identified in the records as having been adjudicated to be fraudulent, subject to a pending appeal by the putative creditor.

(6) A financing statement filed by a regulated financial institution is not subject to the provisions of this section. For
the purposes of this section, a regulated financial institution
is a bank, bank and trust company, trust company, savings
bank, savings association, building and loan association,
credit union, consumer finance company, insurance company,
investment company, mortgage lender or broker, securities
broker, dealer or underwriter, or other institution chartered,
licensed, registered or otherwise authorized under federal
law, the law of this state or any other state, to engage in
secured lending.

§46-9-518. Claim concerning inaccurate or wrongfully filed
record.

(a) **Statement with respect to record indexed under**
**person’s name.** -- A person may file in the filing office an
information statement with respect to a record indexed there
under the person’s name if the person believes that the record
is inaccurate or was wrongfully filed.

(b) **Contents of statement under subsection (a).** -- An
information statement under subsection (a) of this section
must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing
statement to which the record relates; and

(B) If the information statement relates to a record filed
or recorded in a filing office described in section 9-501(a)(1),
the date and time that the initial financing statement was filed
or recorded and the information specified in section 9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person’s belief that the
record is inaccurate and indicate the manner in which the
person believes the record should be amended to cure any
inaccuracy or provide the basis for the person’s belief that the
record was wrongfully filed.

(c) Statement by secured party of record. -- A person
may file in the filing office an information statement with
respect to a record filed there if the person is a secured party
of record with respect to the financing statement to which the
record relates and believes that the person that filed the
record was not entitled to do so under section 9-509(d).

(d) Contents of statement under subsection (c). -- An
information statement under subsection (c) of this section
must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing
statement to which the record relates; and

(B) If the information statement relates to a record filed
or recorded in a filing office described in section 9-501(a)(1),
the date and time that the initial financing statement was filed
or recorded and the information specified in section 9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person’s belief that the
person that filed the record was not entitled to do so under
Section 9-509(d).

(e) Record not affected by information statement. -- The
filing of an information statement does not affect the
effectiveness of an initial financing statement or other filed
record.
§46-9-607. Collection and enforcement by secured party.

(a) Collection and enforcement generally. -- If so agreed, and in any event after default, a secured party:

1. May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

2. May take any proceeds to which the secured party is entitled under section 9-315;

3. May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

4. If it holds a security interest in a deposit account perfected by control under section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

5. If it holds a security interest in a deposit account perfected by control under section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. -- If necessary to enable a secured party to exercise under subsection (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party’s sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. -- A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. -- A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney’s fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. -- This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party.
§46-9-625. Remedies for secured party’s failure to comply with article.

(a) Judicial orders concerning noncompliance.-- If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. -- Subject to subsections (c), (d) and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor’s inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages if collateral is consumer goods. -- Except as otherwise provided in section 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. -- A debtor whose deficiency is eliminated under section 9-626 may recover damages for the loss of any surplus. However,
(e) Statutory damages: noncompliance with specified provisions. -- In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) Fails to comply with section 9-208;

(2) Fails to comply with section 9-209;

(3) Files a record that the person is not entitled to file under section 9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by section 9-513(a) or (c);

(5) Fails to comply with section 9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with section 9-616(b)(2).

(f) Statutory damages: noncompliance with section 9-210. -- A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under section 9-210. A recipient of a request under section 9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to
comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with section 9-210. -- If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

PART 8. TRANSITION PROVISIONS

FOR 2012 AMENDMENTS.

§46-9-801. Effective date.

1 The amendments to this article enacted by the Legislature during the 2012 Regular Legislative Session take effect on July 1, 2013.

§46-9-802. Savings clause.

1 (a) Preeffective-date transactions or liens. -- Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the amendments to this article during the 2012 Regular Legislative Session take effect as provided in section 9-801.

(b) Preeffective-date proceedings. -- This article does not affect an action, case, or proceeding commenced before the amendments to this article during the 2012 Regular Legislative Session take effect as provided in section 9-801.
§46-9-803. Security interest perfected before effective date.

(a) Continuing perfection: perfection requirements satisfied. -- A security interest that is a perfected security interest immediately before the amendments to this article take effect is a perfected security interest under this article if, when this article takes effect, the applicable requirements for attachment and perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. -- Except as otherwise provided in section 9-805, if, immediately before amendments to this article take effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are not satisfied when the amendments to this article take effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are satisfied within one year after the amendments take effect.

§46-9-804. Security interest unperfected before effective date.

A security interest that is an unperfected security interest immediately before the amendments to this article during the 2012 Regular Legislative Session take effect becomes a perfected security interest:

(1) Without further action, when the amendments to this article during the 2012 Regular Legislative Session take effect if the applicable requirements for perfection under this article as amended during the 2012 Regular Legislative Session are satisfied before or at that time; or
(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§46-9-805. Effectiveness of action taken before effective date.

(a) Preeffective-date filing effective. -- The filing of a financing statement before the amendments to this article during the 2012 Regular Legislative Session take effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article as amended during the 2012 Regular Legislative Session.

(b) When preeffective-date filing becomes ineffective. -- This article does not render ineffective an effective financing statement that, before the amendments to this article during the 2011 Regular Legislative Session take effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before its amendment during the 2012 Regular Legislative Session. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had the amendments to this article during the 2012 Regular Legislative Session not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.
Continuation statement. -- The filing of a continuation statement after the amendments to this article during the 2012 Regular Legislative Session take effect does not continue the effectiveness of a financing statement filed before those amendments to the article take effect. However, upon the timely filing of a continuation statement after the amendments to this article during the 2012 Regular Legislative session take effect and in accordance with the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session, the effectiveness of a financing statement filed in the same office in that jurisdiction before the amendments to this article during the 2012 Regular Legislative Session takes effect continues for the period provided by the law of that jurisdiction.

Application of subsection (b)(2)(B) to transmitting utility financing statement. -- Subsection (b)(2)(B) applies to a financing statement that, before the amendments to this article during the 2012 Regular Legislative Session take effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before amendment, only to the extent that this article as amended by during the 2012 Regular Legislative Session provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

Application of Part 5. -- A financing statement that includes a financing statement filed before the amendments to this article during 2012 Regular Session take effect and a continuation statement filed after the amendments to this article during the 2012 Regular Legislative Session take effect is effective only to the extent that it satisfies the requirements of Part 5 as amended during the 2012 Regular Legislative Session for an initial financing statement. A
financing statement that indicates that the debtor is a decedent’s estate indicates that the collateral is being administered by a personal representative within the meaning of section 9-503(a)(2) as amended during the 2012 Regular Legislative Session. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9-503(a)(3) as amended during the 2012 Regular Legislative Session.

§46-9-806. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement. -- The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article as amended during the 2012 Regular Legislative Session;

(2) The preeffective-date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness. -- The filing of an initial financing statement under subsection (a) continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before the amendments to this article during the 2012 Regular
§46-9-807. Amendment of preeffective-date financing statement.

(a) “Preeffective-date financing statement”. -- In this section, “preeffective-date financing statement” means a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session take effect.
(b) **Applicable law.** -- After the amendments to this article during the 2012 Regular Legislative Session take effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) **Method of amending: general rule.** -- Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after the amendments to this article during the 2012 Regular Legislative Session take effect only if:

1. The preeffective-date financing statement and an amendment are filed in the office specified in section 9-501;
2. An amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-806(c); or
3. An initial financing statement that provides the information as amended and satisfies section 9-806(c) is filed in the office specified in section 9-501.

(d) **Method of amending: continuation.** -- If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under section 9-805(c) and (e) or 9-806.
(e) Method of amending: additional termination rule. -- Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated after the amendments to this article during the 2012 Regular Legislative Session take effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session as the office in which to file a financing statement.

§46-9-808. Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session take effect; or

(B) To perfect or continue the perfection of a security interest.

§46-9-809. Priority.

This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the amendments to this article during the 2012 Regular Legislative Session take effect, this article, as it existed before the 2012 amendments determines priority.
AN ACT to repeal §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and §39-4-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new chapter, designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104, §39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109, §39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114, §39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119, §39B-1-120, §39B-1-121, §39B-1-122, §39B-1-123, §39B-2-101, §39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106, §39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110, §39B-2-111, §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115, §39B-2-116, §39B-2-117, §39B-3-101 §39B-3-102, §39B-4-101, §39B-4-102, and §39B-4-103; and to amend and reenact §44A-3-3 of said code, all relating to repealing the Uniform Durable Power of Attorney Act and adopting the Uniform Power of Attorney Act; declaring the state law of the state where the power of attorney is executed to be controlling; providing a short title; providing definitions; setting forth the applicability of the act; providing that the power of attorney is durable; requiring the power of attorney to be acknowledged before a notary public or other individual authorized by law to take acknowledgments; providing for execution, validity and meaning and effect of power of attorney; nominating conservator or guardian and relation of agent to court-appointed fiduciary; providing when power of attorney effective; terminating power of attorney or
agent’s authority; providing for coagents and successor agents and their liability; reimbursing and compensating agent, exception; providing for agent’s acceptance of appointment and agent’s duties; exonerating agent in power of attorney, exceptions; providing certain persons judicial relief to construe a power of attorney or review an agent’s conduct; providing for agent’s liability in certain monetary amounts; providing for resignation of agent; accepting and relying upon acknowledged power of attorney and for what a request may be made before accepting the power of attorney; providing for liability for refusing to accept an acknowledged statutory form power of attorney; declaring that principles of law and equity supplement the act; providing that laws applicable to financial institutions and entities supercede this act; declaring remedies under the act are not exclusive; granting specific and general authority under the power of attorney; providing for granting general authority of the agent under a power of attorney which incorporates by reference a subject matter involving real property, tangible personal property, stocks and bonds, commodities and options, financial institutions, operation of an entity or business, insurance and annuities, estates, trusts and other beneficial interests, claims and litigation, personal and family maintenance, benefits from governmental programs or civil or military service, retirement plans, taxes and gifts; providing a statutory form power of attorney form; providing miscellaneous provisions relating to uniformity of application and construction and relating to electronic signatures in the Global and National Commerce Act; providing application of act on existing powers of attorney; and removing provision in the West Virginia Guardianship and Conservatorship Act that a conservator may not revoke or amend a durable power of attorney without approval of the court to avoid a conflict.

Be it enacted by the Legislature of West Virginia:

That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and §39-4-7 of the Code of West Virginia, 1931, as amended, be

CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.

ARTICLE 1. GENERAL PROVISIONS.


This chapter may be cited as the Uniform Power of Attorney Act, and is cited in this chapter as “this act”.

§39B-1-102. Definitions.

In this act:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes an original agent, coagent, successor agent and a person to which an agent’s authority is delegated.

(2) “Durable,” with respect to a power of attorney means not terminated by the principal’s incapacity.

(3) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.
(4) “Good faith” means honesty in fact.

(5) “Incapacity” means inability of an individual to manage property or business affairs because the individual:

(A) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(B) Is:

(i) Detained, including incarcerated in a penal system; or

(ii) Outside the United States and unable to return.

(6) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(7) “Power of attorney” means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.

(8) “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard or the passage of the
specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) “Principal” means an individual who grants authority to an agent in a power of attorney.

(10) “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable or any interest or right therein.

(11) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol or process.

(13) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(14) “Stocks and bonds” means stocks, bonds, mutual funds and all other types of securities and financial instruments, whether held directly, indirectly or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

§39B-1-103. Applicability.

This act applies to all powers of attorney except:
§39B-1-104. Power of attorney is durable.

A power of attorney created under this act is durable unless it expressly provides that it is terminated by the incapacity of the principal.

§39B-1-105. Execution of power of attorney.

A power of attorney must be signed by the principal or in the principal’s conscious presence by another individual directed by the principal to sign the principal’s name on the power of attorney and must be acknowledged by the principal before a notary public or other individual authorized by law to take acknowledgments.

§39B-1-106. Validity of power of attorney.

(a) A power of attorney executed in this state on or after the effective date of this act, is valid if its execution complies with section one hundred five of this article.

(b) A power of attorney executed in this state before the effective date of this act, is valid if its execution complied with the law of this state as it existed at the time of execution.
(c) A power of attorney executed other than in this state is valid in this state if, when the power of attorney was executed, the execution complied with:

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to section one hundred seven of this article; or

(2) The requirements for a military power of attorney pursuant to 10 U. S. C. §1044b.

(d) Except as otherwise provided by statute other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.


The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

§39B-1-108. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

(a) In a power of attorney, a principal may nominate a conservator of the principal’s estate or guardian of the principal’s person for consideration by the court if protective proceedings for the principal’s estate or person are begun after the principal executes the power of attorney. In the protective proceedings the court shall consider the nomination in accordance with the provisions of section eight, article two, chapter forty-four-a of this code.
(b) If, after a principal executes a power of attorney, a court appoints a conservator of the principal’s estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. Unless otherwise ordered by the court making the appointment, the power of attorney and the agent’s authority thereunder terminates upon the appointment.

§39B-1-109. When power of attorney effective.

(a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a power of attorney becomes effective upon the principal’s incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(1) A physician or licensed psychologist that the principal is incapacitated within the meaning of section one hundred two (5)(A) of this article; or

(2) An attorney at law, a judge or an appropriate governmental official that the principal is incapacitated within the meaning of section one hundred two (5)(B) of this article.
(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal’s personal representative pursuant to the Health Insurance Portability and Accountability Act, §1171 through §1179 of the Social Security Act, 42 U. S. C. §1320d, and applicable regulations, to obtain access to the principal’s health-care information and communicate with the principal’s health-care provider.

§39B-1-110. Termination of power of attorney or agent’s authority.

(a) A power of attorney terminates when:

(1) The principal dies;

(2) The principal becomes incapacitated, if the power of attorney is not durable;

(3) The principal revokes the power of attorney;

(4) The power of attorney provides that it terminates;

(5) The purpose of the power of attorney is accomplished; or

(6) The principal revokes the agent’s authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(b) An agent’s authority terminates when:

(1) The principal revokes the authority;

(2) The agent dies, becomes incapacitated, or resigns;
(3) An action is filed for the dissolution or annulment of the agent’s marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or

(4) The power of attorney terminates.

(c) Unless the power of attorney otherwise provides, an agent’s authority is exercisable until the authority terminates pursuant to this section, notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent’s authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal’s successors in interest.

(e) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person who, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal’s successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

§39B-1-111. Coagents and successor agents.

(a) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise his or her authority independently
and the consent of all coagents is not necessary for the validity of an act or transaction.

(b) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office or function. Unless the power of attorney otherwise provides, a successor agent:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(c) Except as otherwise provided in the power of attorney and this act, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(d) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent has a duty to notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal’s best interest. An agent who fails to notify the principal or take action as required by this article is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§39B-1-112. Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on
behalf of the principal and to compensation that is reasonable under the circumstances: Provided, That an agent who is related to the principal as an ancestor, spouse or descendent is not entitled to compensation for services as agent, unless the power of attorney specifically provides for compensation.

§39B-1-113. Agent’s acceptance.

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§39B-1-114. Agent’s duties.

(a) Notwithstanding provisions in the power of attorney, an agent who has accepted appointment shall:

(1) Act in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, in the principal’s best interest;

(2) Act in good faith; and

(3) Act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall:

(1) Act loyally for the principal’s benefit;

(2) Act so as not to create a conflict of interest that impairs the agent’s ability to act impartially in the principal’s best interest;
(3) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

(4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;

(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal’s best interest; and

(6) Attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:

(A) The value and nature of the principal’s property;

(B) The principal’s foreseeable obligations and need for maintenance;

(C) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes; and

(D) Eligibility for a benefit, a program or assistance under a statute or regulation.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal’s estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.
(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent’s representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal’s property declines.

(g) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal or provide an accounting unless: ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal’s estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days. If an agent fails or refuses to comply with the provisions of this section, the court may award the principal or other authorized party requesting the disclosure reimbursement of reasonable attorneys fees and costs incurred.
§39B-1-115. Exoneration of agent.

(a) A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal’s successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.


(a) The following persons may petition a court to construe a power of attorney or review the agent’s conduct and grant appropriate relief:

(1) The principal or the agent;

(2) A guardian, conservator or other fiduciary acting for the principal;

(3) A person authorized to make health-care decisions for the principal;

(4) The principal’s spouse, parent or descendant;

(5) An individual who would qualify as a presumptive heir of the principal;

(6) A person named as a beneficiary to receive any property, benefit or contractual right on the principal’s death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal’s estate;
(7) A governmental agency having regulatory authority to protect the welfare of the principal;

(8) The principal’s caregiver or another person that demonstrates sufficient interest in the principal’s welfare; and

(9) A person asked to accept the power of attorney.

(b) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent’s authority or the power of attorney.

§39B-1-117. Agent’s liability.

(a) An agent that violates this act is liable to the principal or the principal’s successors in interest for the amount required to:

(1) Restore the value of the principal’s property to what it would have been had the violation not occurred;

(2) Reimburse the principal or the principal’s successors in interest for the attorney’s fees and costs paid on the agent’s behalf out of the principal’s assets;

(3) Reimburse the reasonable attorneys fees and costs incurred by the principal or the principal’s successors in interest in pursuing rectification of the violation by the agent; and

(4) Pay such other amounts, damages, costs or expenses as the court may award.

§39B-1-118. Agent’s resignation; notice.

(a) Unless the power of attorney provides a different method for an agent’s resignation, an agent may resign by
giving notice to the principal and, if the principal is incapacitated:

(1) To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent; or

(2) If there is no person described in paragraph (1), to:

(A) The principal’s caregiver;

(B) Another person reasonably believed by the agent to have sufficient interest in the principal’s welfare; or

(C) A governmental agency having authority to protect the welfare of the principal.

§39B-1-119. Acceptance of and reliance upon acknowledged power of attorney.

(a) For purposes of this section and section one hundred five of this article, “acknowledged” means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(b) A person who in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under the provisions of section one hundred five of this article that the signature is genuine.

(c) A person who in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid or terminated, that the purported agent’s authority is void, invalid or terminated, or that the agent is exceeding or improperly exercising the agent’s authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent’s
authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority except as to a conveyance of interests in real property where the principal has previously filed a notice of termination of the power of attorney in the office of the clerk of the county commission in the county in which the property is located.

(d) A person who is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:

(1) An agent’s certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney;

(2) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(3) An opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(e) An English translation or an opinion of counsel requested under this section must be provided at the principal’s expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

(f) For purposes of this section and the act, a person who conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.
§39B-1-120. Liability for refusal to accept acknowledged statutory form power of attorney.

(a) In this section, “statutory form power of attorney” means a power of attorney substantially in the form provided in this act or that meets the requirements for a military power of attorney pursuant to 10 U. S. C. §1044b.

(b) Except as otherwise provided in this section:

(1) A person shall either accept an acknowledged statutory form power of attorney or request a certification, a translation or an opinion of counsel under section one hundred nineteen subsection (d) of this article no later than seven business days after presentation of the power of attorney for acceptance;

(2) If a person requests a certification, a translation, or an opinion of counsel under section one hundred nineteen subsection (d) of this article, the person shall accept the statutory form power of attorney no later than five business days after receipt of the certification, translation or opinion of counsel; and

(3) A person may not require an additional or different form of power of attorney for authority granted in the statutory form power of attorney presented.

(c) A person is not required to accept an acknowledged statutory form power of attorney if:

(1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;
(3) The person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;

(4) A request for a certification, a translation, or an opinion of counsel under section one hundred nineteen subsection (d) of this article is not timely provided;

(5) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation or an opinion of counsel under section one hundred nineteen subsection (d) of this article has been requested or provided; or

(6) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or a person acting for or with the agent.

(d) A person who refuses in violation of this section to accept an acknowledged statutory form power of attorney is subject to a court order mandating acceptance of the power of attorney. The court may at its discretion award to the principal or the principal’s agent reasonable attorney’s fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

§39B-1-121. **Principles of law and equity.**

Unless displaced by a provision of this act, the principles of law and equity supplement this act.
§39B-1-122. Laws applicable to financial institutions and entities.

1 This act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this act.

§39B-1-123. Remedies under other law.

1 The remedies under this act are not exclusive and do not abrogate any right or remedy under the law of this state other than this act.

ARTICLE 2. AUTHORITY.

§39B-2-101. Authority that requires specific grant; grant of general authority.

1 (a) An agent under a power of attorney may do the following on behalf of the principal or with the principal’s property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject to:

7 (1) Create, amend, revoke or terminate an inter vivos trust;

9 (2) Make a gift;

10 (3) Create or change rights of survivorship;

11 (4) Create or change a beneficiary designation;

12 (5) Delegate authority granted under the power of attorney;
(6) Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate; or

(8) Disclaim property, including a power of appointment.

(b) Notwithstanding a grant of authority to do an act described in this section, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Subject to subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in section one hundred four through section one hundred sixteen of this article.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of section one hundred seventeen of this article.

(e) Subject to subsections (a), (b) and (d) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the
property is located in this state and whether or not the
authority is exercised or the power of attorney is executed in
this state.

(g) An act performed by an agent pursuant to a power of
attorney has the same effect and inures to the benefit of and
binds the principal and the principal’s successors in interest
as if the principal had performed the act.

§39B-2-102. Incorporation of authority.

(a) An agent has authority described in this article if the
power of attorney refers to general authority with respect to
the descriptive term for the subjects stated in section one
hundred four through section one hundred seventeen of this
article or cites the section in this article in which the authority
is described.

(b) A reference in a power of attorney to general
authority with respect to the descriptive term for a subject in
section one hundred four through section one hundred
seventeen of this article or a citation to a section of section
one hundred four through section one hundred seventeen of
this article incorporates the entire section as if it were set out
in full in the power of attorney.

(c) A principal may modify authority incorporated by
reference.


Except as otherwise provided in the power of attorney, by
executing a power of attorney that incorporates by reference
a subject described in sections one hundred four through one
hundred seventeen of this article or that grants to an agent
authority to do all acts that a principal could do pursuant to
the provisions of section one hundred one subsection (c) of
this article, a principal authorizes the agent, with respect to that subject, to:

(1) Demand, receive and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become or claims to be entitled, and conserve, invest, disburse or use anything so received or obtained for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, deliver, file or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal’s property and attaching it to the power of attorney;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) Seek on the principal’s behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

(6) Engage, compensate and discharge an attorney, accountant, discretionary investment manager, expert witness or other advisor;

(7) Prepare, execute and file a record, report or other document to safeguard or promote the principal’s interest under a statute or rule;
(8) Communicate with any representative or employee of a government or governmental subdivision, agency or instrumentality, on behalf of the principal;

(9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone or other means; and

(10) Do any lawful act with respect to the subject and all property related to the subject.

§39B-2-104. Real property.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

(1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) Sell, exchange, convey with or without covenants, representations, or warranties, quitclaim, release, surrender, retain title for security, encumber, partition, consent to partitioning, subject to an easement or covenant, subdivide, apply for zoning or other governmental permits, plat or consent to platting; develop, grant an option concerning, lease, sublease, contribute to an entity in exchange for an interest in that entity or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
(4) Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property which exists or is asserted;

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) Insuring against liability or casualty or other loss;

(B) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(D) Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property;

(6) Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) Selling or otherwise disposing of them;

(B) Exercising or selling an option, right of conversion or similar right with respect to them; and
(C) Exercising any voting rights in person or by proxy;

(8) Change the form of title of an interest in or right incident to real property; and

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(b) In order to exercise the powers provided in subdivisions (2), (3), (8) and (9), subsection (a) of this section, or to release or assign an interest in real property as described in subdivision (4), subsection (a) of this section, the power of attorney must first be recorded in the office of the clerk of the county commission in the county in which the property is located.

§39B-2-105. Tangible personal property.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) Demand, buy, receive or accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell, exchange, convey with or without covenants, representations, or warranties; quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to
borrow money or pay, renew or extend the time of payment
of a debt of the principal or a debt guaranteed by the
principal;

(4) Release, assign, satisfy or enforce by litigation or
otherwise, a security interest, lien or other claim on behalf of
the principal, with respect to tangible personal property or an
interest in tangible personal property;

(5) Manage or conserve tangible personal property or an
interest in tangible personal property on behalf of the
principal, including:

(A) Insuring against liability or casualty or other loss;

(B) Obtaining or regaining possession of or protecting the
property or interest, by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes
or assessments or applying for and receiving refunds in
connection with taxes or assessments;

(D) Moving the property from place to place;

(E) Storing the property for hire or on a gratuitous
bailment; and

(F) Using and making repairs, alterations or
improvements to the property; and

(6) Change the form of title of an interest in tangible
personal property.

§39B-2-106. Stocks and bonds.

(a) Unless the power of attorney otherwise provides,
language in a power of attorney granting general authority
with respect to stocks and bonds authorizes the agent to:
(1) Buy, sell and exchange stocks and bonds;

(2) Establish, continue, modify or terminate an account with respect to stocks and bonds;

(3) Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

(4) Receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

§39B-2-107. Commodities and options.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) Establish, continue, modify and terminate option accounts.

§39B-2-108. Banks and other financial institutions.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:
(1) Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal’s order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
(9) Receive for the principal and act upon a sight draft, warehouse receipt or other document of title whether tangible or electronic or other negotiable or nonnegotiable instrument;

(10) Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler’s checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.


(a) Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have, or claims to have;

(3) Enforce the terms of an ownership agreement;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the
principal has or claims to have as the holder of stocks and bonds;

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(7) With respect to an entity or business owned solely by the principal:

(A) Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(B) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors;

(C) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and
(D) Demand and receive money due or claimed by the principal or on the principal’s behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) Put additional capital into an entity or business in which the principal has an interest;

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) Sell or liquidate all or part of an entity or business;

(11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(12) Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

(13) Pay, compromise, or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§39B-2-110. Insurance and annuities.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract
procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different and additional contracts of insurance and annuities for the principal and the principal’s spouse, children and other dependents, and select the amount, type of insurance or annuity and mode of payment;

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

(4) Apply for and receive a loan secured by a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) Exercise an election;

(7) Exercise investment powers available under a contract of insurance or annuity;

(8) Change the manner of paying premiums on a contract of insurance or annuity;

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;
(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) Pay, from proceeds or otherwise, compromise or contest and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

§39B-2-111. Estates, trusts and other beneficial interests.

(a) In this section, “estate, trust, or other beneficial interest” means a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts and other beneficial interests authorizes the agent to:

(1) Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment from an estate, trust or other beneficial interest;

(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust or other beneficial interest, by litigation or otherwise;

(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise
with respect to litigation to ascertain the meaning, validity or
effect of a deed, will, declaration of trust or other instrument
or transaction affecting the interest of the principal;

(5) Initiate, participate in, submit to alternative dispute
resolution, settle, oppose or propose or accept a compromise
with respect to litigation to remove, substitute or surcharge a
fiduciary;

(6) Conserve, invest, disburse or use anything received
for an authorized purpose;

(7) Transfer an interest of the principal in real property,
stocks and bonds, accounts with financial institutions or
securities intermediaries, insurance, annuities and other
property to the trustee of a revocable trust created by the
principal as settler; and

(8) Reject, renounce, disclaim, release or consent to a
reduction in or modification of a share in or payment from an
estate, trust or other beneficial interest.

§39B-2-112. Claims and litigation.

(a) Unless the power of attorney otherwise provides,
language in a power of attorney granting general authority
with respect to claims and litigation authorizes the agent to:

(1) Assert and maintain before a court or administrative
agency a claim, claim for relief, cause of action, counterclaim,
offset, recoupment or defense, including an action to recover
property or other thing of value, recover damages sustained by
the principal, eliminate or modify tax liability, or seek an
injunction, specific performance or other relief;

(2) Bring an action to determine adverse claims or
intervene or otherwise participate in litigation;
(3) Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

(4) Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

(5) Submit to alternative dispute resolution, settle and propose or accept a compromise;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal’s behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8) Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and
(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

§39B-2-113. Personal and family maintenance.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) Perform the acts necessary to maintain the customary standard of living of the principal, the principal’s spouse and the following individuals, whether living when the power of attorney is executed or later born:

(A) The principal’s children;

(B) Other individuals legally entitled to be supported by the principal; and

(C) The individuals whom the principal has customarily supported or indicated the intent to support;

(2) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(3) Provide living quarters for the individuals described in subsection (1) of this section by:

(A) Purchase, lease or other contract; or

(B) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;
(4) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education and other current living costs for the individuals described in subsection (1) of this section;

(5) Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision (1) of this section;

(6) Act as the principal’s personal representative pursuant to the Health Insurance Portability and Accountability Act, §1171 through §1179 of the Social Security Act, §42 U. S. C. 1320d, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(7) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in subsection (1) of this section;

(8) Maintain credit and debit accounts for the convenience of the individuals described in subsection (1) of this section and open new accounts; and

(9) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations.

(b) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this article.
§39B-2-114. Benefits from governmental programs or civil or military service.

(a) In this section, “benefits from governmental programs or civil or military service” means any benefit, program or assistance provided under a federal, state or local statute or regulation including Social Security, Medicare and Medicaid.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section one hundred thirteen, subsection (a)(1) of this article, and for shipment of their household effects;

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument for that purpose;

(3) Enroll in, apply for, select, reject, change, amend or discontinue, on the principal’s behalf, a benefit or program;

(4) Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or rule;
(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or rule; and

(6) Receive the financial proceeds of a claim described in subdivision(4) of this section and conserve, invest, disburse or use for a lawful purpose anything so received.


(a) In this section, “retirement plan” means a plan or account created by an employer, the principal or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) An individual retirement account under Internal Revenue Code, 26 U. S. C. §408;

(2) A Roth individual retirement account under Internal Revenue Code, 26 U. S. C. §408A;

(3) A deemed individual retirement account under Internal Revenue Code, 26 U. S. C. §408(q);

(4) An annuity or mutual fund custodial account under Internal Revenue Code, 26 U. S. C. §403(b);

(5) A pension, profit-sharing, stock bonus or other retirement plan qualified under Internal Revenue Code, 26 U. S. C. §401(a);

(6) A plan under Internal Revenue Code, 26 U. S. C. §457(b); and
(7) A nonqualified deferred compensation plan under Internal Revenue Code, 26 U. S. C. §409A.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) Establish a retirement plan in the principal’s name;

(4) Make contributions to a retirement plan;

(5) Exercise investment powers available under a retirement plan; and

(6) Borrow from, sell assets to or purchase assets from a retirement plan.


Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code, 26 U. S. C. §2032A, closing
agreements and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.


(a) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code, 26 U. S. C. §529, as amended.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(1) Make outright to, or for the benefit of, a person, a gift of any of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code, 26 U. S. C. §2503(b), without regard to whether the federal gift tax exclusion applies to the gift or if the principal’s spouse agrees to consent to a split gift pursuant to Internal Revenue Code, 26 U. S. C. §2513, as
amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(2) Consent, pursuant to Internal Revenue Code, 26 U. S. C. §2513, to the splitting of a gift made by the principal’s spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(c) An agent may make a gift of the principal’s property only as the agent determines is consistent with the principal’s objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal’s best interest based on all relevant factors, including:

(1) The value and nature of the principal’s property;

(2) The principal’s foreseeable obligations and need for maintenance;

(3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;

(4) Eligibility for a benefit, a program or assistance under a statute or regulation; and

(5) The principal’s personal history of making or joining in making gifts.

ARTICLE 3. STATUTORY FORMS.

§39B-3-101. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this act.
State of West Virginia

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act [insert citation].

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent’s authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions. This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.
If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I ________________ name the following person as my agent:

(Name of Principal)

Name of Agent:____________________________________

Agent’s Address:____________________________________

Agent’s Telephone Number:__________________________

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:____________________________

Successor Agent’s Address:___________________________

Successor Agent’s Telephone Number:__________________

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:_____________________

Second Successor Agent’s Address:____________________

Second Successor Agent’s Telephone Number:___________

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects
as defined in the Uniform Power of Attorney Act [insert citation]:

(INITIAL each subject you want to include in the agent’s general authority. If you wish to grant general authority over all of the subjects you may initial “All Preceding Subjects” instead of initialing each subject.)

(___ Real Property

(___ Tangible Personal Property

(___ Stocks and Bonds

(___ Commodities and Options

(___ Banks and Other Financial Institutions

(___ Operation of Entity or Business

(___ Insurance and Annuities

(___ Estates, Trusts, and Other Beneficial Interests

(___ Claims and Litigation

(___ Personal and Family Maintenance

(___ Benefits from Governmental Programs or Civil or Military Service

(___ Retirement Plans

(___ Taxes

(___ All Preceding Subjects
GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

____ Create, amend, revoke, or terminate an inter vivos trust

____ Make a gift, subject to the limitations of the West Virginia Uniform Power of Attorney Act and any special instructions in this power of attorney

____ Create or change rights of survivorship

____ Create or change a beneficiary designation

____ Authorize another person to exercise the authority granted under this power of attorney

____ Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

____ Exercise fiduciary powers that the principal has authority to delegate

____ Disclaim or refuse an interest in property, including a power of appointment]
LIMITATION ON AGENT’S AUTHORITY

An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or [guardian] of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate:

Nominee’s Address:
Nominee’s Telephone Number:________________________

Name of Nominee for [guardian] of my person:__________

Nominee’s Address:________________________________

Nominee’s Telephone Number:________________________

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

_____________________________ _______________
Your Signature Date

Your Name Printed_____________________________________

Your Address____________________________________________

Your Telephone Number___________________________________

State of _____________________________________________

[County] of__________________________________________

This document was acknowledged before me on __________, (Date)

by__________________________________________________

(Name of Principal)
137  ______________________________________ (Seal, if any)

138  Signature of Notary

139  My commission expires: ________________________

140  [This document prepared by:_________________________]

141  IMPORTANT INFORMATION FOR AGENT

142  Agent’s Duties

143  When you accept the authority granted under this power
144  of attorney, a special legal relationship is created between
145  you and the principal. This relationship imposes upon you
146  legal duties that continue until you resign or the power of
147  attorney is terminated or revoked. You must:

148  (1) Do what you know the principal reasonably expects
149  you to do with the principal’s property or, if you do not know
150  the principal’s expectations, act in the principal’s best
151  interest; act in good faith;

152  (2) Do nothing beyond the authority granted in this power
153  of attorney; and

154  (3) Disclose your identity as an agent whenever you act
155  for the principal by writing or printing the name of the
156  principal and signing your own name as “agent” in the
157  following manner:

158  ______________________ by _____________________

159  (Principal’s Name) (Your Signature) as Agent

160  Unless the special instructions in this power of attorney
161  state otherwise, you must also:
162 (1) Act loyally for the principal’s benefit;

163 (2) Avoid conflicts that would impair your ability to act in the principal’s best interest;

165 (3) Act with care, competence and diligence;

166 (4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;

168 (5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal’s expectations, to act in the principal’s best interest; and attempt to preserve the principal’s estate plan if you know the plan and preserving the plan is consistent with the principal’s best interest.

176 **Termination of Agent’s Authority**

176 You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

181 (1) Death of the principal;

182 (2) The principal’s revocation of the power of attorney or your authority;

184 (3) The occurrence of a termination event stated in the power of attorney;

186 (4) The purpose of the power of attorney is fully accomplished; or
(5) If you are married to the principal, a legal action is
filed with a court to end your marriage or for your legal
separation, unless the Special Instructions in this power of
attorney state that such an action will not terminate your
authority.

Liability of Agent

The meaning of the authority granted to you is defined in
the Uniform Power of Attorney Act [insert citation]. If you
violate the Uniform Power of Attorney Act [insert citation] or
act outside the authority granted, you may be liable for any
damages caused by your violation.

If there is anything about this document or your
duties that you do not understand, you should seek legal
advice.

§39B-3-102. Agent’s certification

The following optional form may be used by an agent to
certify facts concerning a power of attorney:

AGENT’S CERTIFICATION AS TO THE VALIDITY
OF POWER OF ATTORNEY AND AGENT’S
AUTHORITY

State of _____________________________

[County] of ___________________________

I, ____________________________________(Name of
Agent), [certify] under penalty of perjury that
____________________________________(Name of Principal)
granted me authority as an agent or successor agent in a
power of attorney dated ______________.
I, further [certify] that to my knowledge:

(1) The Principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

___________________________________________________________
___________________________________________________________
___________________________________________________________
(Insert other relevant statements)

**SIGNATURE AND ACKNOWLEDGMENT**

___________________________________________________________

Agent’s Signature Date

Agent’s Name Printed _______________________________

Agent’s Address _______________________________

Agent’s Telephone Number _______________________________

This document was acknowledged before me on ________________,

(Date)

by _________________________________________________.

(Name of Agent)
ARTICLE 4. MISCELLANEOUS PROVISIONS.

§39B-4-101. Uniformity of application and construction.

In applying and construing the provisions of this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.


§39B-4-103. Effect on existing powers of attorney.

(a) Except as otherwise provided in this act, on the effective date of this act its provisions apply to:

(1) A power of attorney created before, on, or after the effective date of this act;

(2) A judicial proceeding concerning a power of attorney commenced on or after the effective date of this act; and
(3) A judicial proceeding concerning a power of attorney commenced before the effective date of this act unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

(b) An act done before the effective date of this act is not affected by this act.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-3. Distributive duties and powers of the conservator of a protected person.

(a) A conservator of a protected person, without the necessity of seeking prior court authorization, shall apply the income and principal of the estate as needed for the protected person's support, care, health, and if applicable, habilitation, education or therapeutic needs. A conservator shall also apply the income and principal as needed for the support of any legal dependents who are unable to support themselves and who are in need of support.

(b) A conservator, when making distributions, shall exercise authority only to the extent necessitated by the protected person's limitations, and shall, where feasible, encourage the protected person to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage the estate and his or her financial affairs. A conservator shall also consider the size of the estate, the probable duration of the conservatorship, the protected person’s accustomed manner of living, other resources known
to the conservator to be available, and the recommendations of the guardian.

(c) A conservator shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person’s best interests and exercise reasonable care, diligence and prudence.

CHAPTER 200

(Com. Sub. for H. B. 4493 - By Delegates Ashley, Anderson, Iaquinta, White, Azinger, Armstead, Paxton, Boggs and Pasdon)

[Passed February 29, 2012; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2012.]

AN ACT to amend and reenact §2-2-1a of the Code of West Virginia, 1931, as amended, relating to establishing special memorial observances for military veterans; observing the week in which December 7 falls as a special memorial week to be known as Pearl Harbor and Military Appreciation Week; directing the State Department of Education to implement a program involving students which recognizes the contributions made by West Virginians in the United States military; declaring March 30 as a special memorial day to be known as Vietnam Veteran Recognition Day; declaring August 7 as a special memorial day to be known as Purple Heart Recognition Day; and declaring July 27 as a special memorial day to be known as Korean War Veteran Recognition Day.

Be it enacted by the Legislature of West Virginia:
That §2-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1a. Special memorial days.

(a) The Governor shall, by proclamation, declare the week beginning with the Sunday before Thanksgiving as a special memorial week to be known as Native American Indian Heritage Week.

(b) The first Tuesday after the first Monday of November is designated Susan B. Anthony Day and shall only be a legal holiday in all years ending in an even number. The Governor shall annually issue a proclamation calling on all schools, civic organizations, government departments and citizens to undertake activities on the designated day and surrounding days to pay tribute to the accomplishments of Susan B. Anthony in securing the civil and political rights of all Americans, including securing equal voting rights for women.

(c) The Governor shall, by proclamation, declare the week during which December 7 falls to be a special memorial week, to be known as Pearl Harbor and Military Appreciation week, honoring all West Virginians who fought in World War II and all other military conflicts and shall encourage all municipalities in the state to do the same. The State Department of Education is directed to implement a program involving activities in which students shall participate which shall recognize the contributions West Virginians have made to their country through service in the United States military.

(d) The Governor shall, by proclamation, declare March 30 as a special memorial day to be known as Vietnam
Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Republic of Vietnam during the period beginning February 28, 1961 and ending May 7, 1975, and shall encourage all counties and municipalities in the state to do the same.

(e) The Governor shall, by proclamation, declare August 7 as a special memorial day, to be known as Purple Heart Recognition Day, honoring all West Virginians who, while serving in the United States Armed Forces, have been wounded or killed in action and shall encourage all municipalities and counties in the state to do the same.

(f) The Governor shall, by proclamation, declare July 27 as a special memorial day to be known as Korean War Veteran Recognition Day honoring all West Virginians who served in the United States Armed Forces in the Korean War, and shall encourage all counties and municipalities in the state to do the same.

CHAPTER 201

(S. B. 414 - By Senators Kessler, Mr. President, and Hall)
[By Request of the Executive]

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend and reenact §29-29-3 of the Code of West Virginia, 1931, as amended, relating to medical service professionals under the Volunteer for Nonprofit Youth Organizations Act.
Be it enacted by the Legislature of West Virginia:

That §29-29-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29. VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATIONS ACT.

§29-29-3. Definitions.

As used in this article:

(a) “Applicant” means any emergency medical service applicant, law-enforcement applicant or medical services applicant, that is registered as a volunteer of the nonprofit organization, making application for a nonprofit volunteer permit under the provisions of this article.

(b) “Appropriate licensing agency” means the board, department, division or other agency in each jurisdiction charged with the licensing, certification or permitting of persons performing services of the nature and kind described or duties provided for in this article.

(c) “Emergency medical service applicant” means a person authorized to provide emergency medical services in West Virginia, or in another state who but for this article would be required to obtain a certification from the Commissioner of the Bureau for Public Health pursuant to article eight, chapter sixteen of this code to perform emergency medical services in this state.

(d) “Law-enforcement applicant” means a person authorized to work as a law-enforcement officer in West Virginia, or in another state who but for this article would be required to obtain authorization pursuant to article twenty-nine, chapter thirty of this code to work as a law-enforcement
Provided, That any person authorized to work as a law-enforcement officer in another state shall have completed a training program approved by the governing authority of a political subdivision in order to work as a law-enforcement officer in that state.

(e) “Medical services applicant” means a person authorized to provide medical services in West Virginia, or in another state who but for this article would be required to obtain authorization to practice in this state, and who is a:

(1) Practitioner of medicine, surgery or podiatry as defined in article three, chapter thirty of this code;

(2) Physician assistant as defined in section three, article three, chapter thirty of this code;

(3) Chiropractor as defined in section three, article sixteen, chapter thirty of this code;

(4) Dentist or dental assistant as defined in article four, chapter thirty of this code;

(5) Nurse as defined in article seven or seven-a, chapter thirty of this code;

(6) Nurse practitioner as defined in section one, article four-b, chapter nine of this code;

(7) Occupational therapist as defined in section three, article twenty-eight, chapter thirty of this code;

(8) Practitioner of optometry as defined in section three, article eight, chapter thirty of this code;
(9) Osteopathic physician or surgeon as defined in article fourteen, chapter thirty of this code;

(10) Osteopathic physician assistant as defined in article fourteen-a, chapter thirty of this code;

(11) Pharmacist as defined in section one-b, article five, chapter thirty of this code;

(12) Physical therapist as defined in article twenty, chapter thirty of this code;

(13) Professional counselor as defined in section three, article thirty-one, chapter thirty of this code;

(14) Practitioner of psychology or school psychologist as defined in section two, article twenty-one, chapter thirty of this code;

(15) Radiologic technologist, nuclear medicine technologist or practitioner of medical imaging and radiation therapy technology as defined in section four, article twenty-three, chapter thirty of this code; and

(16) Social worker licensed by the state Board of Social Work Examiners pursuant to article thirty, chapter thirty of this code.

(f) “Nonprofit volunteer permit” or “permit” means a permit issued to an applicant pursuant to the provisions of this article.

(g) “Nonprofit volunteer permittee” or “permittee” means a person holding a nonprofit volunteer permit issued under the provisions of this article.
(h) “Nonprofit youth organization” or “organization” means any nonprofit organization, including any subsidiary, affiliated or other related entity within its corporate or business structure, that has been chartered by the United States Congress to help train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(i) “Nonprofit volunteer organization medical director” means an individual licensed in West Virginia as a practitioner of medicine or surgery pursuant to article three, chapter thirty of this code, or an individual licensed in West Virginia as an osteopathic physician or surgeon pursuant to article fourteen, chapter thirty of this code, that has been designated by the nonprofit volunteer organization to serve as the medical director for an event or program offered by the organization.

CHAPTER 202

(Com. Sub. for S. B. 562 - By Senators Kessler, Mr. President, Beach, D. Facemire, Fanning, Hall, Helmick, Prezioso, Plymale and Klempa)

[Passed March 10, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]
component of the narrative water quality standard; and clarifying that narrative water quality rules cannot be less protective than current requirements.

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

That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-7b. Water quality standards; implementation of antidegradation procedures; procedure to determine compliance with the biologic component of the narrative water quality standard.**

(a) All authority to promulgate rules and implement water quality standards is vested in the Secretary of the Department of Environmental Protection.

(b) All meetings with the secretary or any employee of the department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with the provisions of article nine-a, chapter six of this code. When the secretary is considering the form and substance of the rules governing water quality standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the department’s employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the department’s employees or its consultants, contractors or agents; or (iii) consultations between the secretary, the department’s employees or its consultants, contractors or agents with any interested party for the purpose of collecting
facts and explaining state and federal requirements relating to
a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the
secretary shall promulgate legislative rules in accordance
with the provisions of article three, chapter twenty-nine-a of
this code setting standards of water quality applicable to both
the surface waters and groundwaters of this state. Standards
of quality with respect to surface waters shall protect the
public health and welfare, wildlife, fish and aquatic life and
the present and prospective future uses of the water for
domestic, agricultural, industrial, recreational, scenic and
other legitimate beneficial uses thereof. The water quality
standards of the secretary may not specify the design of
equipment, type of construction or particular method which
a person shall use to reduce the discharge of a pollutant.

(d) The secretary shall establish the antidegradation
implementation procedures as required by 40 C. F. R.
131.12(a) which apply to regulated activities that have the
potential to affect water quality. The secretary shall propose
for legislative approval, pursuant to article three, chapter
twenty-nine-a of the code, legislative rules to establish
implementation procedures which include specifics of the
review depending upon the existing uses of the water body
segment that would be affected, the level of protection or
“tier” assigned to the applicable water body segment, the
nature of the activity and the extent to which existing water
quality would be degraded. Any final classification
determination of a water as a Tier 2.5 water (Water of Special
Concern) does not become effective until that determination
is approved by the Legislature through the legislative rule-
making process as provided in article three, chapter
twenty-nine-a of the code.

(e) All remaining variances shall be applied for and
considered by the secretary and any variance granted shall be
consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remining variance the secretary shall consider the data and information submitted by the applicant for the variance; and comments received at a public comment period and public hearing. The secretary may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment. Any such requirement will be included as a permit condition. The secretary may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The secretary may not grant a variance where he or she determines that degradation of the instream water quality will result from the remining operation.

(f) The secretary shall propose rules measuring compliance with the biologic component of West Virginia's narrative water quality standard requires evaluation of the holistic health of the aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic community that is diverse in species composition; (ii) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is composed of benthic invertebrate assemblages sufficient to perform the biological functions necessary to support fish communities within the assessed reach, or, if the assessed reach has insufficient flows to support a fish community, in those downstream reaches where fish are present. The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code that implement the provisions of this subsection. Rules promulgated pursuant to this subsection may not establish measurements for biologic components of West Virginia's narrative water quality
standards that would establish standards less protective than
requirements that exist at the time of enactment of the
amendments to this subsection by the Legislature during the
2012 regular session.

CHAPTER 203

(Com. Sub. for S. B. 588 - By Senators
Palumbo, Stollings, Plymale,
Jenkins and Barnes)

[Passed March 10, 2012; in effect July 1, 2012.]
[Approved by the Governor on March 30, 2012.]

AN ACT to repeal §60A-8-4 of the Code of West Virginia, 1931, as
amended; to amend and reenact §60A-8-3, §60A-8-5 and
§60A-8-7 of said code; and to amend said code by adding
thereo three new sections, designated §60A-8-14, §60A-8-15
and §60A-8-16, all relating generally to wholesale drug
distributors licensed by Board of Pharmacy; specifying purpose
of article; modifying the definitions of “wholesale distribution” and
“manufacturer”; adding definitions of “person”, “key
person” and “third-party logistics provider”; specifying
wholesale drug distributor licensing requirements; specifying
powers of Board of Pharmacy; increasing licensing fees;
requiring updates when material changes occur to a licensee;
authorizing board to take certain disciplinary action against
licensees, including revocation or suspension of licenses, refusal
to renew license and civil penalties; providing a right to
hearing; providing for register of wholesale and pharmacy
distributors of prescription drugs; and providing for the
disposition of fees.

Be it enacted by the Legislature of West Virginia:
That §60A-8-4 of the Code of West Virginia, 1931, as amended, be repealed; that §60A-8-3, §60A-8-5 and §60A-8-7 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §60A-8-14, §60A-8-15 and §60A-8-16, all to read as follows:


§60A-8-3. Purpose.

The purpose of this article is to protect the health, safety and general welfare of residents of this state and to implement the federal Prescription Drug Marketing Act of 1987 (“PDMA”), U. S. Public Law 100-293, 102 Stat. 95, codified at 21 U. S. Code §321; and particularly PDMA requirements that no person or entity may engage in the wholesale distribution of human prescription drugs in any state unless such person or entity is licensed by such state in accordance with federally-prescribed minimum standards, terms and conditions as set forth in guidelines issued by United States food and drug administration (FDA) regulations pursuant to 21 U. S. Code §353(e)(2)(A) and (B); and such regulations as are set forth in 21 C. F. R. Part 205.

§60A-8-5. Definitions.

As used in this article:

(a) “Wholesale distribution” and “wholesale distributions” mean distribution of prescription drugs, including directly or through the use of a third-party logistics provider or any other situation in which title, ownership or control over the prescription drug remains with one person or entity but the prescription drug is brought into this state by another person or entity on his, her or its behalf, to persons other than a consumer or patient, but does not include:
(1) Intracompany sales, being defined as any transaction, transfer or delivery into or within this state between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity;

(2) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(3) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care entities that are under common control. For purposes of this article, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(5) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for "emergency medical reasons" for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any twelve consecutive month period;
(6) The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(7) The distribution of drug samples by manufacturers' representatives or distributors' representatives, if the distribution is permitted under federal law [21 U. S. C. 353(d)];

(8) Drug returns by a pharmacy or chain drug warehouse to wholesale drug distributor or the drug’s manufacturer; or

(9) The sale, purchase or trade of blood and blood components intended for transfusion.

(b) “Wholesale drug distributor” or “wholesale distributor” means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

(c) “Pharmacy distributor” means any pharmacy licensed in this state or hospital pharmacy which is engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this state or to any other person or
entity, including, but not limited to, a wholesale drug
distributor as defined in subdivision (b) of this section
engaged in the delivery or distribution of prescription drugs
and who is involved in the actual, constructive or attempted
transfer of a drug in this state to other than the ultimate
consumer except as otherwise provided for by law.

(d) “Manufacturer” means any person who is engaged in
manufacturing, preparing, propagating, compounding,
processing, packaging, repackaging or labeling of a
prescription drug, whether within or outside this state.

(e) “West Virginia Board of Pharmacy”, “Board of
Pharmacy” or “board” means the agency of this state
authorized to license wholesale drug distribution except
where otherwise provided.

(f) “Prescription drug” means any human drug required
by federal law or regulation to be dispensed only by
prescription, including finished dosage forms and active
ingredients subject to section 503(b) of the federal food, drug
and cosmetic act.

(g) “Blood” means whole blood collected from a single
donor and processed either for transfusion or further
manufacturing.

(h) “Blood component” means that part of blood
separated by physical or mechanical means.

(i) “Drug sample” means a unit of a prescription drug that
is not intended to be sold and is intended to promote the sale
of the drug.

(j) “Person” means any individual, partnership,
association, limited liability company, corporation or other
entity.
(k) “Key person” means the person designated by the applicant or license holder from any of the following:

1. An officer, director, trustee, partner, principal or proprietor of a person that has applied for or holds a license issued under this article or an affiliate or holding company that has control of a person that has applied for or holds a license under this article.

2. A person that holds a combined direct, indirect or attributed debt or equity interest of more than five percent in a person that has applied for or holds a license under this article;

3. A person that holds a combined direct, indirect or attributed equity interest of more than five percent in a person that has a controlling interest in a person that has applied for or holds license under this article;

4. A managerial employee of a person that has applied for or holds a license under this article or a managerial employee of an affiliate or holding company that has control of a person that has applied for or holds a license under this article, who performs the function of principal executive officer, principal operating officer, principal accounting officer or an equivalent officer;

5. A managerial employee of a person that has applied for or holds a license under this article or a managerial employee of an affiliate or holding company that has control of a person that has applied for or holds a license under this article who will perform or performs the function of an operations manager or will exercise or exercises management, supervisory or policy-making authority over the distribution of prescription drugs.
Third-party logistics provider” means a person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition. A third-party logistics provider must be licensed as a wholesale distributor under this article and, in order to be considered part of the normal distribution channel, must also be an authorized distributor of record.

§60A-8-7. Wholesale drug distributor licensing requirements.

(a) Every applicant for a license under this article shall provide the board with the following as part of the application for a license and as part of any renewal of such license:

(1) The name, full business address and telephone number of the licensee;

(2) All trade or business names used by the licensee;

(3) Addresses, telephone numbers and the names of contact persons for all facilities used by the licensee for the storage, handling and distribution of prescription drugs;

(4) The type of ownership or operation (i.e., partnership, corporation or sole proprietorship);

(5) The name(s) of the owner and operator, or both, of the licensee, including:

(A) If a person, the name of the person;

(B) If a partnership, the name of each partner and the name of the partnership;
(C) If a corporation, the name and title of each corporate officer and director, the corporate names and the name of the state of incorporation; and

(D) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and

(6) Any other information or documentation that the board may require.

(b) All wholesale distributors and pharmacy distributors shall be subject to the following requirements:

(1) No person or distribution outlet may act as a wholesale drug distributor without first obtaining a license to do so from the Board of Pharmacy and paying any reasonable fee required by the Board of Pharmacy, such fee not to exceed four hundred dollars per year: Provided, That for licenses that are effective on and after July 1, 2012, the annual fee shall be $750 per license until modified by legislative rule. All fees collected pursuant to this section shall be used for the operation and implementation of the West Virginia Controlled Substances Monitoring Program database or in the same manner as those fees governed by section fourteen-b, article five, chapter thirty of this code.

(2) The Board of Pharmacy may grant a temporary license when a wholesale drug distributor first applies to the board for a wholesale drug distributor’s license and the temporary license shall remain valid until the Board of Pharmacy finds that the applicant meets or fails to meet the requirements for regular licensure, except that no temporary license shall be valid for more than ninety days from the date of issuance. Any temporary license issued pursuant to this subdivision shall be renewable for a similar period of time not to exceed ninety days pursuant to policies and procedures to be prescribed by the Board of Pharmacy.
(3) No license may be issued or renewed for a wholesale drug distributor to operate unless the distributor operates in a manner prescribed by law and according to the rules promulgated by the Board of Pharmacy with respect thereto.

(4) The Board of Pharmacy may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one location and there exists joint ownership and control among all the entities.

(c) The minimum qualifications for licensure are set forth in this section as follows:

(1) As a condition for receiving and retaining any wholesale drug distributor license issued pursuant to this article, each applicant shall satisfy the Board of Pharmacy that it has and will continuously maintain:

(A) Acceptable storage and handling conditions plus facilities standards;

(B) Minimum liability and other insurance as may be required under any applicable federal or state law;

(C) A security system which includes after hours central alarm or comparable entry detection capability, restricted premises access, adequate outside perimeter lighting, comprehensive employment applicant screening and safeguards against employee theft;

(D) An electronic, manual or any other reasonable system of records describing all wholesale distributor activities governed by this article for the two-year period following
disposition of each product and being reasonably accessible
as defined by Board of Pharmacy regulations during any
inspection authorized by the Board of Pharmacy;

(E) Officers, directors, managers and other persons in
charge of wholesale drug distribution, storage and handling,
who must at all times demonstrate and maintain their
capability of conducting business according to sound
financial practices as well as state and federal law;

(F) Complete, updated information to be provided to the
Board of Pharmacy as a condition for obtaining and retaining
a license about each wholesale distributor to be licensed
under this article including all pertinent licensee ownership
and other key personnel and facilities information determined
necessary for enforcement of this article;

(G) Written policies and procedures which assure
reasonable wholesale distributor preparation for protection
against and handling of any facility security or operation
problems, including, but not limited to, those caused by
natural disaster or government emergency, inventory
inaccuracies or product shipping and receiving, outdated
product or other unauthorized product control, appropriate
disposition of returned goods and product recalls;

(H) Sufficient inspection procedures for all incoming and
outgoing product shipments; and

(I) Operations in compliance with all federal legal
requirements applicable to wholesale drug distribution.

(2) The board of pharmacy shall consider, at a minimum,
the following factors in reviewing the qualifications of
persons who apply for a wholesale distributor license under
this section or for renewal of that license:
(A) Any conviction of the applicant under any federal, state or local laws relating to drug samples, wholesale or retail drug distribution or distribution of controlled substances;

(B) Any felony convictions of the applicant or any key person under federal, state or local laws;

(C) The applicant's past experience in the manufacture or distribution of prescription drugs, including, but not limited to, controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(E) Suspension or revocation by federal, state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drug, including, but not limited to, controlled substances;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Whether personnel employed by the applicant in wholesale drug distribution have appropriate education or experience, or both education and experience, to assume responsibility for positions related to compliance with the requirements of this article;

(H) Compliance with requirements to maintain and make available to the Board of Pharmacy or to federal, state or local law-enforcement officials those records required by this article; and
(I) Any other factors or qualifications the Board of Pharmacy considers relevant to and consistent with the public health and safety, including whether the granting of the license would not be in the public interest.

(3) All requirements set forth in this subsection shall conform to wholesale drug distributor licensing guidelines formally adopted by the United States Food and Drug Administration (FDA); and in case of conflict between any wholesale drug distributor licensing requirement imposed by the Board of Pharmacy pursuant to this subsection and any food and drug administration wholesale drug distributor licensing guideline, the latter shall control.

(d) An employee of any licensed wholesale drug distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when the employee is acting in the usual course of business or employment.

(e) The issuance of a license pursuant to this article does not change or affect tax liability imposed by this state's Department of Tax and Revenue on any wholesale drug distributor.

(f) An applicant who is awarded a license or renewal of a license shall give the board written notification of any material change in the information previously submitted in, or with the application for the license or for renewal thereof, whichever is the most recent document filed with the board, within thirty days after the material change occurs or the licensee becomes aware of the material change, whichever event occurs last. Material changes include, but are not limited to:

(1) A change of the physical address or mailing address;
(2) A change of the responsible individual, compliance officer or other executive officers or board members;

(3) A change of the licensee’s name or trade name;

(4) A change in the location where the records of the licensee are retained;

(5) The felony conviction of a key person of the licensee; and

(6) Any other material change that the board may specify by rule.

(g) Before denial of a license or application for renewal of a license, the applicant shall be entitled to a hearing in accordance with subsection (h), section eight, article one, chapter thirty of this code.

(h) The licensing of any person as a wholesale drug distributor subjects the person and the person’s agents and employees to the jurisdiction of the board and to the laws of this state for the purpose of the enforcement of this article, article five, chapter thirty of this code and the rules of the board. However, the filing of an application for a license as a wholesale drug distributor by, or on behalf of, any person or the licensing of any person as a wholesale drug distributor may not, of itself, constitute evidence that the person is doing business within this state.

(i) The Board of Pharmacy may adopt rules pursuant to section nine of this article which permit out-of-state wholesale drug distributors to obtain any license required by this article on the basis of reciprocity to the extent that: (1) An out-of-state wholesale drug distributor possesses a valid license granted by another state pursuant to legal standards
comparable to those which must be met by a wholesale drug
distributor of this state as prerequisites for obtaining a license
under the laws of this state; and (2) such other state would
extend reciprocal treatment under its own laws to a wholesale
drug distributor of this state.

§60A-8-14. Disciplinary actions - wholesale drug distributor.

(a) In accordance with article five, chapter thirty of this
code, the Board of Pharmacy may suspend, revoke or refuse
to renew any license issued to a wholesale distributor of
prescription drugs pursuant to this article or may impose a
civil money penalty not to exceed $1,000, in the discretion of
the board for any of the following causes:

(1) Making any false material statements in an application
for a license or for renewal of a license as a wholesale
distributor or pharmacy distributor of prescription drugs;

(2) Violating any federal, state or local drug law, any
provision of this article or any rule of the board;

(3) Conviction of a felony. For purposes of this
subdivision “felony” means a felony or crime punishable as
a felony under the laws of this state, any other state or the
United States;

(4) Ceasing to satisfy the qualifications for licensure
under section seven of this article or the rules of the board;

(5) The license or registration of a wholesale drug
distributor licensed under this article has been revoked by the
licensing authority of another state, jurisdiction of foreign
country; or
(6) Any reason for which the board may impose disciplinary sanctions under the provisions of chapter thirty of this code.

(b) Upon the suspension or revocation of the license of any wholesale distributor of prescription drugs, the distributor shall immediately surrender the license to the board.

(c) If the board suspends, revokes or refuses to renew any license issued to a wholesale distributor of prescription drugs and determines that there is clear and convincing evidence of a danger of immediate and serious harm to any person, the board may place under seal all drugs owned by or in the possession, custody or control of the affected wholesale distributor. Except as provided in this article, the board may not dispose of the drugs sealed under this subsection until the distributor exhausts all of his or her appeal rights under this article or article five, chapter thirty of this code. The court involved in the appeal may order the board, during the pendency of the appeal, to sell sealed dangerous drugs that are perishable. The board shall deposit the proceeds of the sale with the court.

§60A-8-15. Maintenance of register and roster of wholesale and pharmacy distributors.

(a) The Executive Director of the Board of Pharmacy shall maintain a register of the names, addresses and the date the current license was issued or renewed pursuant to this article for license years beginning on and after July 1, 2013. The register shall be the property of the board and shall be open for public examination and inspection at all reasonable times, as the board may direct.

(b) The register shall set forth the names and addresses of:
(1) Those persons who are or have been licensed under this article for the current license year;

(2) Those persons whose licenses have been suspended, revoked or surrendered during the current license year or during the two preceding license years; and

(3) Those persons whose licenses have not been renewed for the current license year.

(c) In lieu of annually publishing a typed or printed register providing the information required by this subsection, the board may make the information required to be published available at its website.

(d) A written statement signed and verified by the executive director of the board, in which it is stated that after diligent search of the register no record or entry of the issuance of a license or registration certificate to a person is found, is admissible in evidence and constitutes presumptive evidence of the fact that the person is not a licensed as a wholesale drug distributor under this article.

§60A-8-16. Disposition of fees.

The board shall pay all fees it collects under this article into the separate fund created in the State Treasury for the board pursuant to section ten, article one, chapter thirty of this code. The money in this fund shall be used exclusively by the board for the purposes of administering and enforcement of its duties pursuant to this article, articles one and five, chapter thirty of this code, or any other duty of the board prescribed by any other provision of this code.
AN ACT to amend and reenact chapter 196 of the Acts of the Legislature, regular session, 1963, as last amended and reenacted by chapter 206 of the Acts of the Legislature, regular session, 1967, all relating to the Braxton County Recreational Development Authority; modifying the membership of the Braxton County Recreational Development Authority; transferring certain authority from the Braxton County Board of Education to the Braxton County Commission; and requiring the approval of the Braxton County Commission and the Braxton County Board of Education on land transactions conducted by the authority.

Be it enacted by the Legislature of West Virginia:

That chapter 196 of the Acts of the Legislature, regular session, 1963, as last amended and reenacted by chapter 206 of the Acts of the Legislature, regular session, 1967, be amended and reenacted, all to read as follows:

BRAXTON COUNTY RECREATIONAL DEVELOPMENT AUTHORITY.

§1. Braxton County Recreational Development Authority continued.

1. The Braxton County Recreational Development Authority is continued for the purposes and in the manner provided in this act.
§2. Acquisition, construction, maintenance, etc. of the county Four-H youth camps and recreational areas and facilities.

The authority is authorized to acquire, equip, construct, improve, maintain and operate county Four-H youth camps and general public recreational areas and facilities in Braxton County with all usual and convenient appurtenances, including, but not limited to, recreational facilities, such as swimming pools, tennis courts, golf courses and horse riding stables; and to operate, either directly or on a concession basis, any activity that is necessary or convenient, customary or desirable, and related or incidental to the above-mentioned camps and recreational areas and facilities, including, but not limited to, hotels, restaurants and gift shops.

§3. Members of the authority.

(a) The management and control of the authority, its property, operations, business and affairs, is lodged in a board of five members each of whom shall be appointed for a term of five years. After June 30, 2012, as terms expire or vacancies are filled, appointments shall be made by the Braxton County Commission so that no more than two of these members represent any one magisterial district located within Braxton County.

(b) Effective July 1, 2012, the board shall include two additional members, bringing the total board membership to seven. One member shall be a member of and appointed by the Braxton County Commission. One member shall be a member of and appointed by the Braxton County Board of Education. These members serve for five-year terms or for as long as the member continues to serve on the county commission or board of education, respectively, whichever is shorter.
§4. Removal of members.

(a) The Braxton County Commission may remove a member of the authority whom it appointed in the manner set forth in subsection (c) of this section.

(b) The Braxton County Board of Education may remove a member of the authority whom it appointed in the manner set forth in subsection (c) of this section.

(c) (1) The appointing body shall notify the member whom it desires to remove in writing, stating the reasons for the removal.

(2) Within ten days of the receipt of the written notice of removal, the member may request a hearing before the appointing body.

(3) The appointing body shall hold a hearing within ten days of the receipt of the member’s request.

(4) Any member who is removed may petition the Braxton County Circuit Court to review the removal action.

§5. Substitution of members.

If any member of the authority dies, resigns, or is removed, or for any other reason ceases to be a member of the authority, the appointing body shall appoint another person to fill the unexpired portion of the term of the member.

§6. Qualification of members.

All members must be residents of Braxton County and of legal voting age.
§7. Payment of expenses of members.

No member may receive any compensation, whether in form of salary, per diem allowances or otherwise, for or in connection with his or her service as a member. Each member is entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as a member.


The authority is a public corporation with the name of “Braxton County Recreational Development Authority” and as such has perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded and have and use a common seal.


(a) The authority may:

(1) Make and adopt all necessary bylaws, rules and regulations for its organization and operation not inconsistent with law;

(2) Elect its own officers, to appoint committees and employ and fix the compensation for personnel necessary for its operation;

(3) Enter into contracts with any person, governmental department, firm or corporation, including both public and private corporations, and generally to do any and all things necessary or convenient for the purpose of acquiring, equipping, constructing, maintaining, improving, extending, financing and operating county youth camps and general public recreational areas and facilities and all usual and convenient appurtenant activities and facilities in Braxton
County, West Virginia, including, but not limited to, those enumerated in section two of this act;

(4) Delegate any authority given to it by law to any of its officers, committees, agents or employees;

(5) Apply from, receive and use grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any agency of the federal government, and the State of West Virginia, and to accept and use bequests, devises, gifts and donations from any person, firm or corporation;

(6) Acquire lands and hold title thereto in its own name;

(7) Purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real estate which it may own;

(8) Borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give security therefor as is requisite, including giving a mortgage or deed of trust on its property and facilities in connection with the issuance of mortgage bonds;

(9) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen, chapter eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, it being expressly provided that the authority is a “municipal authority” within the definition of that term as used in article sixteen, chapter eight of the code; and

(10) Expend its funds in the execution of its powers and authority.
(b) The buying, selling and trading of land must have a majority vote of the Braxton County Commission, the Braxton County Board of Education, and the five members of the Braxton County Recreational Development Authority appointed under subsection (a), section three of this act.

§10. Indebtedness of the authority.

The authority may incur any proper indebtedness and issue any obligations and give any security which it considers necessary or advisable in connection with carrying out its purposes. No statutory limitation with respect to the nature or amount of indebtedness which may be incurred by municipalities or other public bodies applies to indebtedness of the authority. No indebtedness of any nature of the authority is an indebtedness of the Braxton County Commission, nor of the county nor of the board of education, or a charge against any property of the county or board. No obligation incurred by the authority gives any right against any member or the Braxton County Commission or any member of the board of education or any member of the board or authority. The rights of creditors of the authority are solely against the authority as a corporate body and may be satisfied only out of property held by it in its corporate capacity.

§11. Agreements in connection with obtaining funds.

The authority may, in connection with obtaining funds for its purpose, enter into any agreement with any person, firm or corporation, including the federal government, or any agency or subdivision of the federal government, containing provisions, covenants, terms and conditions as it considers advisable.
§12. Property, bonds and obligations of authority exempt from taxation.

The authority is exempt from the payment of any taxes or fees to the state or any subdivisions of the state or to any officer or employee of the state or of any subdivisions of the state. The property of the authority is exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities and, together with interest thereon, are exempt from taxes.

§13. County commission authorized to convey properties and facilities to authority.

The Braxton County Commission is authorized to convey to the authority property owned by Braxton County, together with all the appurtenances and facilities therewith, the conveyance to be without consideration or for a price and with terms and conditions as the Braxton County Commission considers proper.

§14. Property and facilities may be leased to the Braxton County Commission, the Braxton County Board of Education or others.

The authority may lease the property on which the camp or camps and facilities are situated, in whole or in part, and all the appurtenances and facilities therewith, to the Braxton County Commission, to the Braxton County Board of Education or to any other available lessee or lessees at such rental and upon such terms and conditions as the authority considers proper. If the authority determines to lease the property and its appurtenances and facilities, as a whole, it shall first offer the same to the Braxton County Commission upon an annual lease and it may not lease the property and its appurtenances and facilities as a whole to any other lessee until
the Braxton County Commission has notified the authority that it does not desire to lease said properties, which notice shall be given within thirty days after notice by the authority of a desire on its part to lease the property as a whole. The Braxton County Commission is authorized to enter into a lease with the authority for the property and appurtenances and facilities at such rental and upon such terms and conditions as it considers proper, and the Braxton County Commission may levy taxes as provided by law for the purpose of paying the rent for the property, appurtenances and facilities. The authority, however, may lease one or more portions of its property without first offering the same to the Braxton County Commission. The lease shall be for some purpose associated with recreational or other related activities.

§15. Disposition of surplus of authority.

If the authority should realize a surplus, whether from operating the property or leasing it for operation, over and above the amount required for the maintenance, improvement and operation thereof and for meeting all required payments on its obligations, it shall set aside a reserve for future operations, improvements and contingencies as it considers proper and then apply the residue of the surplus, if any, to the payment of any recognized and established obligations not then due; and after all its recognized and established obligations have been paid off and discharged in full, the authority shall, at the end of each fiscal year, set aside the reserve for future operations, improvements and contingencies, and then pay the residue of the surplus, if any, to the Braxton County Commission to be used by the county commission for general county purposes.

§16. Contributions; funds and accounts; publication of annual report.

Contributions may be made to the authority from time to time by the Braxton County Commission, the Braxton County
Board of Education, the federal government, and by any persons, firms or corporations that desire to do so. All those funds and all other funds received by the authority shall be deposited in a bank or banks as the authority directs and shall be withdrawn as the authority directs. The authority shall keep strict account of all its receipts and expenditures and shall each quarter make a report to the Braxton County Commission containing an itemized account of its receipts and disbursements during the preceding quarter. The report shall be made within thirty days after the termination of the quarter. Within thirty days after the end of the fiscal year, the authority shall make an annual report containing an itemized statement of its receipts and disbursements for the preceding year and the annual report shall be published once a week for two successive weeks in two newspapers or opposite politics published in Braxton County, West Virginia, if there are two such papers, or otherwise in any newspaper of general circulation in the county. The books, records and accounts of the authority are subject to audit and examination by the West Virginia State Auditor, acting as the Chief Inspector and by any other proper public official or body in the manner provided by law.

§17. Employees to be covered by workers’ compensation.

The authority is an employer subject to the requirements of chapter twenty-three of the Code of West Virginia.

§18. Dissolution of authority.

The authority may at any time pay off and discharge in full all of its indebtedness, obligations and liabilities, convey its properties, appurtenances and facilities to the Braxton County Commission and be dissolved. Before making such conveyance of its properties, the authority shall first publish notice of its intention so to do and of its intention to be dissolved, once a week for four successive weeks in two newspapers of opposite politics published in, and of general circulation in Braxton County, West Virginia, if there are two such papers, or
otherwise in any newspaper of general circulation in the county. Certificates from the publishers shall be filed with the Braxton County Commission on or before the deed conveying the properties is delivered. Any funds remaining in the hands of the authority at the time of the conveyance of the properties shall be paid over to the Braxton County Commission to be used by it for purposes in connection with the properties. Upon the payment of its indebtedness, obligations and liabilities, the publishing of the notices aforesaid, the conveyance of its properties and the paying over to the Braxton County Commission of any funds remaining in its hands, the authority shall cause a certificate showing its dissolution to be executed under its name and seal and to be recorded in the office of the clerk of the Braxton County Commission and thereupon its dissolution shall be complete.

§19. Construction of act; additional powers of board of education and county commission.

It is the purpose of this act to provide for the acquisition, construction, improvement, extension, maintenance and operation of a camp or camps and recreational facilities and appurtenant facilities in a prudent and economical manner. This act shall be liberally construed as giving to the authority full and complete power reasonably required to give effect to its purposes. The provisions of this act are in addition to and not in derogation of any power existing in the Braxton County Board of Education and the Braxton County Commission under any constitutional or statutory provisions which they may now have, or may acquire.


The several sections and provisions of this act are severable, and if any section or provision of this act is held unconstitutional, all the remaining sections and provisions of this act shall nevertheless remain valid.
AN ACT to amend and reenact §7-22-9 of the Code of West Virginia, 1931, as amended, relating to permitting the Harrison County Commission to levy a special district tax.

Be it enacted by the Legislature of West Virginia:

That §7-22-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.


(a) General. -- County commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature. The Legislature is specifically extended, and intends by this article, to exercise certain relevant powers expressed in section six-a, article X of the Constitution of this state as follows: (1) The Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law; and (2)
the Legislature may impose a state tax or taxes or dedicate a
state tax or taxes or any portion thereof for the benefit of and
use by counties, municipalities or other political subdivisions
of the state for public purposes, the proceeds of any such
imposed or dedicated tax or taxes or portion thereof to be
distributed to such counties, municipalities or other political
subdivisions of the state under such circumstances and
subject to such terms, conditions and restrictions as the
Legislature may prescribe.

Because a special district excise tax would have the effect
of diverting, for a specified period of years, tax dollars which
to the extent, if any, are not essentially incremental to tax
dollars currently paid into the General Revenue Fund of the
state, the Legislature finds that in order to substantially
ensure that such special district excise taxes will not
adversely impact the current level of the General Revenue
Fund of the state, it is necessary for the Legislature to
separately consider and act upon each and every economic
development district which is proposed, including the unique
characteristics of location, current condition and activity of
and within the area included in such proposed economic
opportunity development district and that for such reasons a
statute more general in ultimate application is not feasible for
accomplishment of the intention and purpose of the
Legislature in enacting this article. Therefore, no economic
opportunity development district excise tax may be levied by
a county commission until after the Legislature expressly
authorizes the county commission to levy a special district
excise tax on sales of tangible personal property and services
made within district boundaries approved by the Legislature.

(b) Authorizations. -- The Legislature authorizes the
following county commissions to levy special district excise
taxes on sales of tangible personal property and services
made from business locations in the following economic
opportunity development districts.
The Ohio County Commission may levy a special district excise tax for the benefit of the “Fort Henry” economic opportunity development project district which comprises three hundred contiguous acres of land.

The Harrison County Commission may levy a special district excise tax for the benefit of the “Charles Pointe Economic Opportunity Development District” which comprises four hundred thirty-seven acres of land.

CHAPTER 206

(H. B. 4415 - By Delegates Staggers, Perry, Sumner, Pino, O’Neal, Boggs, Moye and L. Phillips)

[Passed February 24, 2012; in effect from passage.]
[Approved by the Governor on March 1, 2012.]

AN ACT to authorize a Prince Railroad Station Authority to acquire and maintain the railroad station building and the appurtenances thereto located in Prince, West Virginia; to be created as a public corporation; membership, terms and compensation of the board; powers; exemption from taxation; and dissolution of the authority.

Be it enacted by the Legislature of West Virginia:

PRINCE RAILROAD STATION AUTHORITY.

§1. Legislative findings.

1 Since the railroad station located in Prince, West Virginia, will be the primary stop for Boy Scouts riding trains
to attend the Bechtel Family Summit Scout Reserve in Fayette County, and since the railroad station located in Prince is a vital transportation facility for many residents in the area, and since the railroad station located in Prince has potential for passenger inter-modal operations, and since the railroad station located in Prince is rich in railroad history and has architectural significance, the Legislature finds that creating and empowering a statutory corporation to work with railroad officials to acquire, renovate and maintain the railroad station building and the appurtenances thereto located in Prince, West Virginia, would be in the public interest and would result in a better travel experience for all persons coming to and leaving southern West Virginia.

§2. Prince Railroad Station Authority authorized.

The Fayette County Commission and the Raleigh County commission are hereby authorized to create and establish the Prince Railroad Station Authority for the purpose of acquiring, establishing, renovating, constructing, equipping, improving, financing, maintaining, operating and leasing the railroad station building and the appurtenances thereto located in Prince, West Virginia.

§3. The authority to be a public corporation.

The Prince Railroad Station Authority when created and established, and the members thereof, shall constitute a public corporation and as such, shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

§4. Appointment of board; terms.

(a) The authority shall be governed by a nine-member board which shall consist of the following members:
(1) A member of the Fayette County commission or a designee;

(2) A member of the Raleigh County commission or a designee;

(3) A member of the Southern West Virginia Convention and Visitors Bureau or a designee;

(4) A member of the State Rail Authority or a designee;

(5) A member of the Fayette County Chamber of Commerce or a designee;

(6) A member of the Raleigh County Chamber of Commerce or a designee;

(7) The director of the Historic Preservation Section of the West Virginia Division of Culture and History or a designee;

(8) One professional member of the Boy Scouts of America representing the Bechtel Family Summit Scout Reserve, appointed by the Fayette County commission; and

(9) One citizen member, appointed by the Raleigh County commission, who has a knowledge of and demonstrates an interest in passenger railroads and is from southern West Virginia.

(b) The initial appointment terms for the appointed members of the board shall be staggered. After the initial terms, the terms for the appointed members of the board shall be five years and they may be reappointed.

§5. Compensation of board members.

Each member of the board shall serve without compensation, but each member shall be entitled to reimbursement by the authority for all reasonable and
necessary expenses actually incurred in the performance of his or her duties as a board member.

§6. **Board; quorum; bylaws.**

(a) The board is the governing body of the authority and the board shall exercise all the powers given to the authority. The board shall meet at least quarterly and may meet on the call of the chairperson.

(b) A majority of the members of the board constitutes a quorum and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall adopt bylaws and rules, as may be necessary for its operation and management, governing the manner in which the business of the authority is conducted and shall develop and approve an annual budget.

§7. **Powers of the authority.**

The authority shall have the following powers:

(1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(3) To sue and be sued, implead and be impleaded and complain and defend in any court;

(4) To execute contracts with any person, firm, corporation or governmental agency;
(5) To obtain and maintain all necessary insurance;

(6) To insure that lessees maintain all necessary insurance;

(7) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(8) To purchase, acquire, own, hold, sell, convey, lease and dispose of property;

(9) To borrow money and execute negotiable notes and deeds of trust;

(10) To expend its funds in the execution of its powers;

(11) To apply for, accept, receive and use loans, grants, gifts, donations, contributions, technical assistance from any source;

(12) To insure that all applicable laws, rules and regulations are followed; and

(13) To do any and all things necessary or convenient for the purpose of acquiring, establishing, renovating, constructing, equipping, improving, financing, maintaining, operating and leasing the railroad station building and the appurtenances thereto located in Prince, West Virginia.

§8. Exemption from taxation.

The property, operations and activities of the authority are exempt from the payment of any taxes or fees to the state or any of its political subdivisions.

When the railroad station building and the appurtenances thereto located in Prince, West Virginia, are no longer being used for the purpose of a railroad station, then the authority shall perform all its duties set out in the Deed in which it acquired the railroad station building and the appurtenances thereto and also all the duties set out in the authority's bylaws to dispose of the railroad station building and the appurtenances thereto. At the conclusion of all of its duties, the authority shall dissolve.
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2012, in the amount of $10,000,000 from the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, 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 Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2012, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2012.

WHEREAS, The Governor finds that the account balance in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, exceeds that which is necessary for the purpose for which the account was established; and
WHEREAS, The Governor submitted to the Legislature the Executive Budget Documents on January 11, 2012, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2011, and further included the estimate of revenues for the fiscal year 2012, less net appropriation balances forwarded and regular appropriations for the fiscal year 2012; and

WHEREAS, It appears from the 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, 2012; 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, 2012, in the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2009, organization 0100, activity 236, be decreased by expiring the amount of $10,000,000, to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2012.

And, That the total appropriation for the fiscal year ending June 30, 2012, to fund 0105, fiscal year 2012, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EXECUTIVE

4 7–Governor’s Office -

5 Civil Contingent Fund
(WV Code Chapter 5)

Fund 0105 FY 2012 Org 0100

Any federal reimbursements received to remunerate disbursements from this activity or funds transferred from this activity shall be credited back to this activity.

Any unexpended balance remaining in the appropriation for 2012 Natural Disasters - Surplus (fund 0105, activity 135) at the close of fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.

The purpose of this supplemental appropriation bill is to expire, supplement, amend and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2012.

CHAPTER 2

(H. B. 101 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 16, 2012; in effect from passage.]
[Approved by the Governor on April 2, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13CC-1, §11-13CC-2,
§11-13CC-3, §11-13CC-3a, §11-13CC-4 and §11-13CC-5; and to amend and reenact §24-2-1j of said code, all relating to creating the Energy Intensive Industrial Consumers Revitalization Tax Credit Act; making legislative findings and declaring purpose; establishing tax credits for suppliers of coal to certain electric utilities who are subject to the coal severance tax subject to certain limitations and requirements; specifying when the tax credits may be claimed; authorizing the carry forward of tax credits subject to certain limitations and restrictions; specifying how the tax credits are calculated and allocated; providing for applicability of tax credit against required minimum severance tax payments on coal; specifying how the payments triggered by the tax credits are to be calculated and made; authorizing the notification and disclosure of certain information related to the implementation and administration of tax credits and required payments; establishing certain effective dates and expiration dates; granting the Public Service Commission certain authority concerning special rates and prescribing certain limitations and requirements related thereto; and requiring information on special rates in the Public Service Commission’s annual report.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-3a, §11-13CC-4 and §11-13CC-5; and that §24-2-1j of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13CC. ENERGY INTENSIVE INDUSTRIAL CONSUMERS REVITALIZATION TAX CREDIT.

§11-13CC-1. Short title.

1 This article may be cited as the “Energy Intensive Industrial Consumers Revitalization Tax Credit Act.”
§11-13CC-2. Legislative findings and purpose.  

1 The Legislature finds that:

2   (a) West Virginia enjoys a competitive economic advantage among the states attributable to relatively low-cost electric power due in considerable measure to an abundance of coal resources, production from which powers electric generation in the state.

3   (b) As a consequence, a number of energy intensive industrial consumers of electric power have located in the state and have provided jobs for its citizens and an increased tax base that contributes to the support of schools, other institutions, and programs that benefit all West Virginians.

4   (c) As the result of competitive disadvantages emanating from outside the state and the current state of the national economy, some energy intensive industrial consumers of electric power have had to cease doing business in the state or are experiencing or may experience strains that could threaten their viability and continued operation.

5   (d) Conversely, coal production in the state is relatively stable and is benefitting from demand from coal purchasers inside the state, outside the state, and outside the country, which demand has increasingly benefitted the state in terms of its coal severance tax revenues.

6   (e) It is in the public interest for the state to assist eligible energy intensive industrial consumers of electric power determined to be in need of special rate assistance pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, in order to encourage them to locate, to remain in operation, or to resume operation, in West Virginia on a long-term basis, by employing a portion of the coal severance tax revenues to reduce such industrial
consumers’ electric power costs without imposing an undue burden on electric utilities or their other customers.

(f) In furtherance of its findings, the Legislature’s purpose in this article is to create a credit, as provided in section three of this article, against the coal severance tax imposed and levied under the provisions of subsections (a) and (b), section three, article thirteen-a of this chapter, of which the primary ultimate economic beneficiary shall be eligible energy intensive industrial consumers of electric power determined to be in need of special rate assistance pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code.

§11-13CC-3. Amounts of credits; limitations.

(a) Every taxpayer which is a supplier of coal to a West Virginia electric utility providing a special rate to one or more eligible energy intensive industrial consumers of electric power pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code and which is subject to paying the tax on the privilege of severing coal levied and imposed by subsections (a) and (b), section three, article thirteen-a of this chapter, prior to the application of any other credits against the tax, shall be entitled to a credit against that tax in an amount determined by the Public Service Commission pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, subject to the following limitations:

(1) The tax credits authorized by this article shall only be available when the eligible energy intensive industrial consumer of electric power receives a special rate from a West Virginia electric utility pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code;

(2) The total aggregate credits available to all taxpayers under this section shall not exceed $20 million in any calendar year; and
(3) The total credits available to any taxpayer in a given calendar year shall not exceed ninety-three percent of that taxpayer’s tax liability imposed and levied under subsections (a) and (b), section three, article thirteen-a of this chapter, so as to preserve undiminished the seven percent of total coal severance tax revenues that is apportioned among counties and municipalities pursuant to section six, article thirteen-a of this chapter.

(b) If the full amount of the $20 million in credits authorized by this article is not allocated and claimed in any calendar year, during all periods when a special rate is in effect for any one or more eligible energy intensive industrial consumers, the unused credits may be carried forward to future years: Provided, That the maximum aggregate amount of unused credits that may be carried forward to future years shall not exceed $15 million at any time. In no event may the amount of credits allocated and claimed in any single year, including unused credits that have been carried forward, exceed $35 million.

(c) If in any year the taxpayers that are suppliers of coal to a West Virginia electric utility providing a special rate to one or more eligible energy intensive industrial consumers of electric power entitled to receive credits pursuant to this section cannot or do not claim credits in an amount equal to the amount of tax credits designated by the commission, then the affected public utility may allocate the unclaimed tax credits, with such allocated amounts subject to the approval of the Public Service Commission, to and the tax credits may be claimed by any taxpayer that is subject to paying the tax on the privilege of severing coal levied and imposed by subsections (a) and (b), section three, article thirteen-a of this chapter: Provided, That taxpayers receiving the reallocation shall comply with the requirements and procedures set forth in this article.
(d) All unused credits authorized under this article expire and cease to be usable for tax years beginning on or after December 31, 2021.

(e) The credits authorized in this article shall not become available for any purpose prior to the Public Service Commission’s first approval of a special rate for an eligible energy intensive industrial consumer. The credits provided in this article may be claimed by taxpayers against periodic installment payments of severance tax paid under the provisions of section nine, article thirteen-a of this chapter.

§11-13CC-3a. Applicability to minimum severance tax credit.

Every taxpayer which applies the tax credit allowed under section three of this article for a tax year shall also be entitled to apply the tax credit against the minimum coal severance tax imposed by article twelve-b of this chapter for the same tax year in an amount up to the amount of the tax credit applied for the tax year under the provisions of section three of this article.

§11-13CC-4. Required payments to public utilities.

(a) Each person claiming any tax credit pursuant to section three of this article shall, as a condition of receiving that tax credit, make payment equal to ninety-seven percent of the amount of that credit to the public utility providing electric power to the special rate customer whose special rate required the funding generated by that tax credit, as determined by the Public Service Commission pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code. Any payment made to the public utility providing electric power to the special rate customer shall be treated in the same manner as the payment of taxes under section three, article thirteen-a of the chapter, and shall not be treated as an adjustment to the price of coal sold to the public utility.
(b) Each taxpayer that elects to participate in this tax credit and required payment program shall notify the State Tax Department of its election to participate at the time and in such form of notification as prescribed by the State Tax Department. Notwithstanding the provisions of section five-d, article ten of this chapter or any other provision of this code, the State Tax Department shall provide updated notification to the Public Service Commission of the identity of taxpayers from which it has received notification of voluntary participation, and other information necessary for the efficient and accurate administration of this article. Notwithstanding any provision of this code to the contrary, the Public Service Commission shall disclose to the State Tax Department information necessary for the efficient and accurate administration of this article. This information may be provided to the electric utilities by the Public Service Commission for purpose of calculating, pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, the allocated share of tax credits that are available to each taxpayer, and payments that are required to be made to the public utility in order to qualify for the tax credit. Information disclosure to electric utilities by the Public Service Commission is limited to that information necessary for the calculations. Payment to the public utility shall be made no later than the time at which the tax against which the credit is taken would have been due and payable to the state under the provisions of section nine, article thirteen-a of this chapter.

(c) The three percent differential between a taxpayer’s tax credit and its required payment to the public utility is intended as an inducement to the taxpayer to participate in the tax credit and required payment mechanism provided in this article and may be retained by the taxpayer as compensation for the costs of participation.

§11-13CC-5. Expiration.

The provisions of this article shall be effective for tax years beginning on or after January 1, 2012. No new tax
credits may be created for any tax year beginning on or after December 31, 2021. All unused tax credits expire and cease to be useable in tax years beginning on or after December 31, 2021.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1j. Special rates for energy intensive industrial consumers of electric power.

(a) The Legislature hereby finds that:

(1) West Virginia enjoys relatively low cost electric power rates for residential customers, business and industry and these relatively low rates constitute a competitive economic advantage for West Virginia;

(2) West Virginia has many energy intensive industrial consumers of electric power, and has the ability to retain its existing energy intensive industrial consumers of electric power and attract additional energy intensive industrial consumers of electric power in the future, through the adoption of policies and the establishment of rates that enhance and preserve the attractiveness of West Virginia as a place for energy intensive industrial consumers to do business;

(3) Energy intensive industrial consumers of electric power create jobs, provide a substantial tax base and enhance the productive capacity, competitiveness and economic opportunities of West Virginia and all of its citizens;

(4) Energy intensive industrial consumers of electric power help keep power rates low for all consumers of electric
(5) It is in the best interests of West Virginia, the citizens of West Virginia, electric public utilities in West Virginia, and all consumers of electric power in West Virginia, including residential customers, to encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, thereby increasing the creation, preservation and retention of jobs, expanding the tax base, helping keep power rates low for all consumers of electric power, and enhancing the productive capacity, competitiveness and economic opportunities of all citizens of West Virginia;

(6) To encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, the commission may establish special rates under this section that in its judgment are necessary or appropriate for the continued, new or expanded operation of energy intensive industrial consumers and that can reasonably be expected to support the long-term operation of energy intensive industrial consumers, and that do not impose an unreasonable burden upon electric public utilities or their other customers; and

(7) To assist the commission in the exercise of its authority to establish special rates under this section, the Legislature creates in article thirteen-cc, chapter eleven of this code a tax credit mechanism to provide a source of funding to support special rates of which the commission may avail itself in exercising said authority in certain circumstances.
(b) As used in this section:

(1) “Energy intensive industrial consumer” means an industrial facility, plant or enterprise that has a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions.

(2) “Special rate” means a rate set for an energy intensive industrial consumer pursuant to this section.

c. In addition to any authority of the commission to allow special rates or contracts under any other provision of the code or rule, and in addition to all other factors which the commission may consider in setting rates for consumers of electric power, including, but not limited to, the commission’s responsibilities under subsection (b), section one, article one of this chapter, and notwithstanding any other provisions of this code to the contrary, in setting a special rate the commission may take into consideration fluctuations in market prices for the goods or products produced by the energy intensive industrial consumer of electric power, or other variables or factors which may be relevant to or affect the continuing vitality of the energy intensive industrial consumer of electric power in dynamic markets. In setting a special rate by reference to fluctuations in market prices for the goods and products produced by an energy intensive industrial consumer of electric power, the commission may establish variable rates including, but not limited to, ceilings and floors on the special rate, banking or crediting mechanisms, caps, limits or other similar types of safeguards that are intended by the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in the special rate over time, to permit the energy intensive industrial customer the ability to make the capital investments and other commitments necessary to support the continued operation of the facility.
(d) An energy intensive industrial consumer wishing to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power, regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the energy intensive industrial consumer and the utility, the energy intensive industrial consumer and the utility shall make a joint filing with the commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the energy intensive industrial consumer may file a petition with the commission to consider establishing a special rate. The commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(e) In order to qualify for a special rate, an energy intensive industrial consumer shall:

(1) Have a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions;

(2) Create or retain at least twenty-five full-time jobs in West Virginia;

(3) Have invested not less than $500,000 in fixed assets, including machinery and equipment, in West Virginia;

(4) Provide reasonable evidence that due to market conditions in the industry in which the energy intensive industrial consumer operates, or other factors bearing on investment in and operation of the industrial facility or facilities, without the special rate the operation or continued operation of the industrial facility or facilities is threatened or not economically viable under reasonable assumptions and projections regarding the market and the operation of the industrial facility or facilities;
(5) Provide reasonable evidence that, with the special rate, the energy intensive industrial consumer intends to operate the industrial facility or facilities in West Virginia for an extended period of time, and that the operation or continued operation of the industrial facility or facilities for an extended period of time appears economically viable, under reasonable assumptions and projections regarding the market in which the energy intensive industrial consumer operates and regarding the operation of the industrial facility or facilities; and

(6) Provide information and data setting forth how the energy intensive industrial consumer meets the qualifications of this section, and how the special rate advances the policy goals set forth in subsection (a) of this section.

(f) The commission shall determine whether any excess revenue or revenue shortfall created by a special rate authorized pursuant to this section should be allocated among any other customers of the utility. In making that determination, the commission shall consider all relevant factors, including whether such allocation is just, reasonable, and fairly balances the interests of other customers, the utility, and the customer receiving the special rate.

(g) If the commission determines that: (1) A special rate is necessary for the creation, preservation or retention of jobs by the energy intensive industrial consumer; (2) in connection with the initial special rate that is authorized by the commission for an energy intensive industrial consumer, the energy intensive industrial consumer will increase the number of persons it employs, including both persons who have been previously employed by the energy intensive industrial consumer and persons not previously employed by the energy intensive industrial consumer, by at least one hundred fifty persons as a result of the special rate; (3) the energy intensive industrial consumer will employ no fewer
than three hundred persons, which number may include, but
is not limited to, the persons newly hired or rehired pursuant
to the preceding clause in this subsection; (4) the energy
intensive industrial consumer has a contract demand of at
least two hundred fifty thousand kilowatts of electric power
at its West Virginia facilities under normal operating
conditions; and (5) a special rate for an energy intensive
industrial consumer of electric power would create a revenue
shortfall, the commission shall, prior to determining whether
it is reasonable to allocate all or a portion of the revenue
shortfall amount among a public utility’s other customers,
first consider the availability of tax credits and payments
required to be made to public utilities pursuant to article
thirteen-cc, chapter eleven of this code to reduce or eliminate
a revenue shortfall. The commission shall identify in each
proceeding in which it establishes a special rate for an
eligible energy intensive industrial consumer the amount of
any unallocated revenue shortfall in need of funding pursuant
to article thirteen-cc, chapter eleven of this code to defray it
and shall project the amount of the gross tax credits needed
for that purpose after taking into consideration the net
amounts of credits that are required to be paid to utilities
pursuant to subsection (a), section four, article thirteen-cc,
chapter eleven of this code and the limits specified in section
three, article thirteen-cc, chapter eleven of this code. Tax
credits authorized under this section may be designated by
the commission only in respect of periods of time during
which the eligible energy intensive industrial consumer
employs at least three hundred persons. The commission’s
determination as to the amount of tax credits on which it
relies in establishing a given special rate, shall constitute an
authorization for each supplier of West Virginia coal to the
utility offering that special rate to claim its allocated share of
the total amount of tax credits. The allocated share shall be
calculated by the affected public utility, subject to the
approval of the commission.
(h) The commission shall include in the annual report to the Legislature which it makes pursuant to subsection (d), section one, article one of this chapter a report on the tax credits being employed pursuant to article thirteen-cc, chapter eleven of this code to help fund special rates created under this section.
AN ACT to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5B-2B-4a; to amend and reenact §22-6-1 and §22-6-2 of said code; to amend said code by adding thereto a new section, designated §22-6-2a; to amend said code by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; to amend said code by adding thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to amend and reenact §22C-8-2 of said code; and to amend and reenact §22C-9-2 of said code, all relating generally to oil and gas wells; requiring West Virginia Workforce Investment Council to complete certain reviews and provide report to Legislature; expanding
powers of Secretary of the Department of Environmental Protection; authorizing secretary to determine number of oil and gas inspectors and supervisors and to make investigations or inspections to ensure compliance with applicable law; providing for inspector qualifications, duties and minimum salaries; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; requiring secretary to submit written report to Legislature on number of waivers granted; providing for applicability of act and exceptions; providing special considerations regarding karst formations; requiring the secretary to propose emergency and legislative rules pertaining to drilling in karst formations; defining terms; making horizontal wells subject to certain provisions in article six, chapter twenty-two of the Code of West Virginia; specifying powers and duties of secretary, including certain rule-making power and reporting duties; requiring permit for horizontal wells; establishing permit application requirements and contents; requiring bond and permit fees; providing for issuance of emergency permits; providing for denial, suspension and reinstatement of permits in certain circumstances; providing for application review, requirements for issuance of permit and permit requirements; establishing performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large pits or impoundments construction; requiring application for certificate; establishing application requirements and payment of fees; providing for modification, revocation or suspension of certificate and hearing procedure, including an administrative appeals process; providing exceptions for certain farm ponds; authorizing secretary to propose legislative rules governing large pits and impoundment; providing certain notices to certain property owners regarding certain applications and intent to enter property to survey or to conduct seismic activity; requiring the submission of certain documents and information to be provided with such notice; clarifying that notice to certain lienholders is not notice to certain landowners;
providing for public notice and comment; requiring applicant to file Class II ad and allowing submission of written comments to Department of Environmental Protection; establishing certain information to be contained in the published newspaper notice; providing for the publishing public comment received by the Department of Environmental Protection on the department’s public website; clarifying method of delivery of notice; establishing procedure for filing written comments; establishing well location restrictions; requiring the secretary to prepare a report to the legislature on noise, light dust and volatile organic compounds and their relationship to well location restrictions for occupied dwellings; allowing the secretary to propose guidelines and procedures for controlling and mitigating levels of noise, light, dust and volatile organic compounds in relation to horizontal drilling activities; requiring promulgation of legislative rules for plugging and abandonment of horizontal wells; exempting certain wells from Natural Gas Horizontal Well Control Act; establishing reclamation requirements; requiring performance bonds or other security; providing notice of planned operation and contents of notice to certain surface owners; providing notice to certain surface owner and offer for compensation for certain damages to certain surface owner; providing for reimbursement of property taxes to surface owner; providing for civil action, rebuttable presumption and relief for water contamination or deprivation; establishing water rights and replacement procedure; establishing civil penalties and offenses; establishing criminal penalties and offenses; requiring gas operations to submit certification from Division of Highways that operator has entered into road maintenance agreement pursuant to Division of Highways Oil and Gas Road Policy; creating public website and electronic notification registry of horizontal well permit applications and public notice of website; providing for the publication of information pertaining to permit applications on that public website; providing for air quality study, report to Legislature and rulemaking; requiring secretary to report to Legislature regarding safety of pits and
impoundments; providing casing and cement standards; authorizing secretary to promulgate legislative and emergency rules relating to casing and cement standards; authorizing secretary to promulgate legislative rules governing pits and impoundments; providing secretary authority to establish, revise and grant waivers regarding casing and cement standards and programs; creating the Oil and Gas Horizontal Well Production Damage Compensation Act; providing legislative findings and purpose; defining terms; providing conditions and parameters for compensation of surface owners for drilling operations; preserving common law right of action and providing offset for compensation or damages paid; requiring notice of claims by surface owners; providing manner in which oil and gas operator must provide notice of reclamation; providing for offers of settlement; providing procedures for civil actions, arbitration and fees; preserving alternate remedies; and modifying definitions of “shallow wells” and “deep wells”.

Be it enacted by the Legislature of West Virginia:

That §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §5B-2B-4a; that §22-6-1 and §22-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-6-2a; that said code be amended by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; that said code be amended by adding thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; that §22C-8-2 of said code be amended and reenacted; and that §22C-9-2 of said code be amended and reenacted, all to read as follows:
CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-4a. Report to Legislature.

(a) The Legislature finds that:

1. (1) The advent and advancement of new technologies in horizontal drilling and the production of horizontal wells defined in article six-a, chapter twenty-two of this code has created thousands and has the potential to create thousands of additional drilling, production, construction, manufacturing, and related jobs in West Virginia and in the Appalachian Basin;

2. (2) This economic opportunity presents new and exciting opportunities for jobs for West Virginians;

3. (3) The state needs to take all necessary steps to retain, educate and train West Virginians to have the skills necessary to compete for job opportunities resulting from horizontal drilling;

4. (4) Specific attention shall be made by the state of West Virginia to train and educate West Virginia citizens that have not historically or traditionally been exposed to the oil and gas industry through training programs offered by community colleges, technical schools and institutions and small business owners. Small business owners shall be made aware by the State of West Virginia of any and all programs and grants available to assist them in training said individuals.

(b) To assist in maximizing the economic opportunities available with horizontal drilling, the council shall make a report to the Joint Committee on Government and Finance
and the Legislative Oversight Commission on Education Accountability on or before November 1 of each year through 2016, detailing a comprehensive review of the direct and indirect economic impact of employers engaged in the production of horizontal wells in the State of West Virginia, as more specifically defined in article six-a, chapter twenty-two of this code, which shall include:

(1) A review of the total number of jobs created;

(2) A review of total payroll of all jobs created;

(3) The average salary per job type;

(4) A review of the number of employees domiciled in the State of West Virginia;

(5) A review of total economic impact;

(6) The council’s recommendations for the establishment of an overall workforce investment public education agenda with goals and benchmarks toward maximizing job creation opportunities in the State of West Virginia;

(7) A review of number of jobs created for minorities based on race, ethnicity and gender;

(8) A review of number of jobs created for individuals re-employed from the state of West Virginia’s unemployment rosters;

(9) A review of number of jobs created for returning veterans; and

(10) A review of number of jobs created for legal West Virginia residents and non-West Virginia residents.
(c) To the extent permitted by federal law, and to the extent necessary for the council to comply with this section, the council, Workforce West Virginia, the Division of Labor, and the Office of the Insurance Commissioner may enter into agreements providing for the sharing of job data and related information.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-1. Definitions.

As used in this article:

(a) “Casing” means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) “Cement” means hydraulic cement properly mixed with water;

(c) “Chair” means the chair of the West Virginia shallow gas well review board as provided for in section four, article eight, chapter twenty-two-c of this code;

(d) “Coal operator” means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(e) “Coal seam” and “workable coal bed” are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(f) “Director” means the Secretary of the Department of Environmental Protection as established in article one of this
chapter or other person to whom the secretary has delegated
authority or duties pursuant to sections six or eight, article
one of this chapter.

(g) “Deep well” means any well other than a shallow well
or coalbed methane well, drilled to a formation below the top
of the uppermost member of the “Onondaga Group”;

(h) “Expanding cement” means any cement approved by
the office of oil and gas which expands during the hardening
process, including, but not limited to, regular oil field
cements with the proper additives;

(i) “Facility” means any facility utilized in the oil and gas
industry in this state and specifically named or referred to in this
article or in article eight or nine of this chapter, other than a well
or well site;

(j) “Gas” means all natural gas and all other fluid
hydrocarbons not defined as oil in this section;

(k) “Oil” means natural crude oil or petroleum and other
hydrocarbons, regardless of gravity, which are produced at
the well in liquid form by ordinary production methods and
which are not the result of condensation of gas after it leaves
the underground reservoirs;

(l) “Owner” when used with reference to any well, shall
include any person or persons, firm, partnership, partnership
association or corporation that owns, manages, operates,
controls or possesses such well as principal, or as lessee or
contractor, employee or agent of such principal;

(m) “Owner” when used with reference to any coal seam,
shall include any person or persons who own, lease or
operate such coal seam;
(n) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(o) “Plat” means a map, drawing or print showing the location of a well or wells as herein defined;

(p) “Pollutant” has the same meaning as provided in section three, article eleven of this chapter;

(q) “Review board” means the West Virginia Shallow Gas Well Review Board as provided for in section four, article eight, chapter twenty-two-c of this code;

(r) “Safe mining through of a well” means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(s) “Secretary” means the Secretary of the Department of Environmental Protection as established in article one of this chapter or other person to whom the secretary has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(t) “Shallow well” means any gas well, other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the “Onondaga Group”: Provided, That in no event may the “Onondaga Group” formation or any formation below the “Onondaga Group” be produced, perforated or stimulated in any manner;

(u) “Stimulate” means any action taken by a well operator to increase the inherent productivity of an oil or gas well,
including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) “Waste” means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter authorizes any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article nine, chapter twenty-two-c of this code and the provisions of article eight, chapter twenty-two-c of this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the Federal Energy Regulatory Commission is conclusively presumed to be efficient; and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code, or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, however, That nothing in this exclusion is intended to address ownership of the gas;

(w) “Waters of this state” has the same meaning as the term “waters” as provided in section three, article eleven of this chapter;
(x) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term “well” does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(y) “Well work” means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well; and

(z) “Well operator” or “operator” means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined.

§22-6-2. Secretary -- Powers and duties generally; department records open to public; inspectors.

(a) The secretary shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles six-a, eight, nine, ten and twenty-one of this chapter.

(b) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to effectuate the above stated purposes.

(c) The secretary shall have full charge of the oil and gas matters set out in this article and in articles six-a, eight, nine, ten and twenty-one of this chapter. In addition to all other
powers and duties conferred upon him or her, the secretary
shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil
and gas and see that the purposes set forth in subsections (a)
and (b) of this section are carried out;

(2) Determine the number of supervising oil and gas
inspectors and oil and gas inspectors needed to carry out the
purposes of this article and articles six-a, eight, nine, ten, and
twenty-one of this chapter and appoint them as such. All
appointees must be qualified civil service employees, but no
person is eligible for appointment until he or she has served
in a probationary status for a period of six months to the
satisfaction of the secretary;

(3) Supervise and direct such oil and gas inspectors and
supervising inspectors in the performance of their duties;

(4) Make investigations or inspections necessary to
ensure compliance with and to enforce the provisions of this
article and articles six-a, eight, nine, ten, and twenty-one of
this chapter;

(5) Prepare report forms to be used by oil and gas
inspectors or the supervising inspector in making their
findings, orders and notices, upon inspections made in
accordance with this article and articles six-a, eight, nine, ten
and twenty-one of this chapter;

(6) Employ a hearing officer and such clerks,
stenographers and other employees, as may be necessary to
carry out his or her duties and the purposes of the office of oil
and gas and fix their compensation;

(7) Hear and determine applications made by owners,
well operators and coal operators for the annulment or
(8) Cause a properly indexed permanent and public record to be kept of all inspections made by the secretary or by oil and gas inspectors or the supervising inspector;

(9) Conduct research and studies as the secretary shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(10) Collect a permit fee of $400 for each permit application filed other than an application for a deep well, horizontal wells regulated pursuant to article six-a of this chapter, or a coalbed methane well; and collect a permit fee of $650 for each permit application filed for a deep well: Provided, That no permit application fee is required when an application is submitted solely for the plugging or replugging of a well, or to modify an existing application for which the operator previously has submitted a permit fee under this section. All application fees required hereunder are in lieu of and not in addition to any fees imposed under article eleven of this chapter relating to discharges of stormwater but are in addition to any other fees required by the provisions of this article: Provided, however, That upon a final determination by the United States Environmental Protection Agency regarding the scope of the exemption under section 402(l)(2) of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which determination requires a “national pollutant discharge elimination system” permit for stormwater discharges from the oil and gas operations described therein, any permit fees
for stormwater permits required under article eleven of this chapter for such operations may not exceed $100.

(11) Perform all other duties which are expressly imposed upon the secretary by the provisions of this chapter;

(12) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production, storage and recovery of this state’s oil and gas;

(13) Adopt rules with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules shall assure that the rules, permits and authorizations issued by the secretary are adequate to satisfy the purposes of this article and articles six-a, seven, eight, nine, ten and twenty-one of this chapter particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state’s oil and gas; and

(14) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage and recovery of this state’s oil and gas, which programs are assumable by the state.

(d) The secretary shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and supervising inspectors shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Such inspectors shall
make all necessary inspections of oil and gas operations required by this article and articles six-a, eight, nine, ten and twenty-one of this chapter; administer and enforce all oil and gas laws and rules; and perform other duties and services as may be prescribed by the secretary. The inspectors shall note and describe all violations of this article and articles six-a, eight, nine, ten or twenty-one of this chapter and promptly report those violations to the secretary in writing, furnishing at the same time a copy of the report to the operator concerned. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Subject to the provisions of article one, chapter twenty-nine-b of this code, all records of the office shall be open to the public.

§22-6-2a. Oil and gas inspectors qualifications and salary.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of probationary appointment, the person: (1) is a citizen of West Virginia, in good health and of good character, reputation and temperate habits; (2) has had at least two years actual relevant experience in the oil and gas industry: Provided, That no more than one year of the experience requirement may be satisfied by any of following: (i) A bachelor of science degree in science or engineering; (ii) an associate degree in petroleum technology; or (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or
reclamation, each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable water and mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector by the secretary, an eligible applicant shall submit to a written and oral examination by the Division of Personnel within the Department of Administration and shall furnish any evidence of good health, character and other facts establishing eligibility required by the Division of Personnel. The Office of Oil and Gas shall determine the substance of the examinations administered to candidates for the positions of oil and gas inspector and supervising oil and gas inspector by the Division of Personnel. If the Division of Personnel finds after investigation and examination that an applicant: (1) is eligible for appointment; and (2) has passed all written and oral examinations, the division shall add the applicant’s name and grade to the register of qualified eligible candidates and certify its action to the secretary. No candidate’s name may remain on the register for more than three years without requalifying.

(c) Every supervising oil and gas inspector shall be paid not less than $40,000 per year. Every oil and gas inspector shall be paid not less than $35,000 per year.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.


This article shall be known and cited as the “Horizontal Well Act”. 
§22-6A-2. Legislative findings; declaration of public policy.

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for the efficient development of natural gas contained in underground shales and other geologic formations;

(2) These practices have resulted in a new type and scale of natural gas development that utilize horizontal drilling techniques, allow the development of multiple wells from a single surface location, and may involve fracturing processes that use and produce large amounts of water;

(3) In some instances these practices may require the construction of large impoundments or pits for the storage of water or wastewater;

(4) Existing laws and regulations developed for conventional oil and gas operations do not adequately address these new technologies and practices;

(5) The secretary should have broad authority to condition the issuance of well work permits when, in the secretary’s discretion, it is necessary to protect the safety of persons, to prevent inadequate or ineffective erosion and sediment control plans, to prevent damage to publicly owned lands or resources, to protect fresh water sources or supplies or to otherwise protect the environment;

(6) Concomitant with the broad powers to condition the issuance of well work permits, the secretary should also have broad authority to waive certain minimum requirements of this article when, in his or her discretion, such waiver is appropriate: Provided, That the secretary shall submit a
written report of the number of waivers granted to the Legislature commencing January 1, 2013, and each year thereafter;

(7) Practices involving reuse of water in the fracturing and stimulating of horizontal wells should be considered and encouraged by the department, as appropriate; and

(8) Allowing the responsible development of our state’s natural gas resources will enhance the economy of our state and the quality of life for our citizens while assuring the long term protection of the environment.

(b) The Legislature declares that the establishment of a new regulatory scheme to address new and advanced natural gas development technologies and drilling practices is in the public interest and should be done in a manner that protects the environment and our economy for current and future generations.

(c) The Legislature declares that in view of the urgent need for prompt decision of matters submitted to the secretary under this article, all actions which the secretary or oil and gas inspectors are required to take under this article shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

§22-6A-3. Applicability; exceptions.

Notwithstanding any other provision of this code to the contrary, the provisions of this article shall apply to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or utilizes more than two hundred ten thousand gallons of water in any thirty-day period: Provided, That this article does not apply to or affect any well work permitted for
a horizontal well or orders issued regarding horizontal wells or permit applications pending prior to the effective date of this article: Provided, further, That this article shall not apply to or affect any rights bargained for in any agreement between a surface owner and operator made prior to the effective date of this article.

§22-6A-3a. Karst terrain; rulemaking.

(a) Because drilling horizontal wells in naturally occurring karst terrain may require precautions not necessary in other parts of the state, the secretary may require additional safeguards to protect this geological formation. When drilling horizontal wells in naturally occurring karst terrain, such additional safeguards may include changing proposed well locations to avoid damage to water resources, special casing programs, and additional or special review of drilling procedures.

(b) In order to carry out the purposes of this section, the secretary, in consultation with the state geologist, shall propose emergency and legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to establish designated geographic regions of the state where the provisions of this section are applicable and to establish standards for drilling horizontal wells in naturally occurring karst terrain. For horizontal wells drilled into naturally occurring karst terrain in such designated geographic regions, the rules shall, at a minimum:

(1) Require operators to perform certain predrilling testing to identify the location of caves and other voids, faults and relevant features in the strata and the location of surface features prevalent in naturally occurring karst terrain such as sink holes; and

(2) Provide any other requirements deemed necessary by the secretary to protect the unique characteristics of naturally
occurring karst terrain, which requirements may include baseline water testing within an established distance from a drilling site.

(c) Nothing in this section allows the department to prevent drilling in naturally occurring karst terrain.

§22-6A-4. Definitions.

(a) All definitions set forth in article six of this chapter apply when those defined terms are used in this article, unless the context in which the term is used clearly requires a different meaning.

(b) Unless the context in which the term used clearly requires a different meaning, as used in this article:

(1) “Best management practices” means schedules of activities, prohibitions of practices, maintenance procedures and other management practices established by the department to prevent or reduce pollution of waters of this state. For purposes of this article, best management practices also includes those practices and procedures set out in the Erosion and Sediment Control Manual of the Office of Oil and Gas;

(2) “Department” means the Department of Environmental Protection;

(3) “Flowback Recycle Pit” means a pit used for the retention of flowback and freshwater and into which no other wastes of any kind are placed;

(4) “Freshwater Impoundment” means an impoundment used for the retention of fresh water and into which no wastes of any kind are placed;
(5) “Horizontal drilling” means a method of drilling a well for the production of natural gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to parallel a particular geologic formation;

(6) “Horizontal well” means any well site, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or utilizes more than two hundred ten thousand gallons of water in any thirty-day period;

(7) “Impoundment” means a man-made excavation or diked area for the retention of fluids;

(8) “Karst terrain” means a terrain, generally underlain by limestone or dolomite, in which the topography is formed chiefly by the dissolving of rock, and which may be characterized by sinkholes, sinking streams, closed depressions, subterranean drainage and caves;

(9) “Perennial stream” means a stream or portion of a stream that flows year-round, is considered a permanent stream and for which base flow is maintained by ground-water discharge to the streambed due to the ground-water elevation adjacent to the stream being higher than the elevation of the streambed;

(10) “Pit” means a man-made excavation or diked area that contains or is intended to contain an accumulation of process waste fluids, drill cuttings or any other liquid substance generated in the development of a horizontal well and which could impact surface or groundwater;

(11) “Secretary” means the Secretary of the Department of Environmental Protection as established in article one of
(12) “Water purveyor” means any person engaged in the business of selling water to another and who is regulated by the Bureau for Public Health pursuant to title sixty-four, series three of the West Virginia Code of State Rules.

§22-6A-5. Application of article six of this chapter to horizontal wells subject to this article.

(a) To the extent that horizontal wells governed by this article are similar to conventional oil and gas wells regulated under article six of this chapter, the following sections of article six of this chapter are hereby incorporated by reference in this article:

(1) The provisions of section three, article six of this chapter relating to the findings and orders of inspectors concerning violations, the determination of reasonable time for abatement, extensions of time for abatement, special inspections and notice of findings and orders;

(2) The provisions of section four, article six of this chapter providing for the review of findings and orders by the secretary, special inspections and applications for annulment or revision of orders by the secretary;

(3) The provisions of section five, article six of this chapter relating to the requirements for findings, orders and notices, notice to the operator of findings and orders and judicial review of final orders of the secretary;

(4) The provisions of section seven, article six of this chapter relating to the issuance of water pollution control
permits, the powers and duties of the secretary related thereto and penalties for violations of the same;

(5) The provisions of section eight, article six of this chapter relating to the prohibition of permits for wells on flat well royalty leases and requirements for permits;

(6) The provisions of section twelve, article six of this chapter pertaining to plats prerequisite to drilling or fracturing wells, the preparation and contents thereof, notice furnished to coal operators, owners or lessees, the issuance of permits and required performance bonds, with the following exceptions:

(A) Under subsection (a), section twelve, article six of this chapter, the plat also shall identify all surface tract boundaries within the scope of the plat proposed to be crossed by the horizontal lateral of the horizontal well and the proposed path of such horizontal lateral, and

(B) Under subsection (b), section twelve, article six of this chapter, any reference to a time period shall be thirty days in lieu of fifteen days;

(7) The provisions of section thirteen, article six of this chapter providing for notice of the operator’s intention to fracture wells, with the exception that under the third paragraph of section thirteen, article six of this chapter, the applicable periods shall be thirty days in lieu of fifteen days;

(8) The provisions of section fifteen, article six of this chapter pertaining to objections to proposed deep well drilling sites above seam or seams of coal, with the exception that the applicable time for filing objections is within thirty days of receipt by the secretary of the required plat and/or notice in lieu of fifteen days;
(9) The provisions of section seventeen, article six of this chapter pertaining to drilling of shallow gas wells, notice to be provided to the chair of the review board, orders issued by the review board and permits issued for such drilling, with the exception that the applicable time for filing objections is thirty days from the date of receipt by the secretary of the required plat and notice in lieu of fifteen days;

(10) The provisions of section eighteen, article six of this chapter providing for protective devices for when a well penetrates one or more workable coal beds and when gas is found beneath or between workable coal beds;

(11) The provisions of section nineteen, article six of this chapter providing for protective devices during the life of the well and for dry or abandoned wells;

(12) The provisions of section twenty, article six of this chapter providing for protective devices when a well is drilled through the horizon of a coalbed from which the coal has been removed;

(13) The provisions of section twenty-one, article six of this chapter requiring the installation of fresh water casings;

(14) The provisions of section twenty-two, article six of this chapter relating to the filing of a well completion log and the contents thereof, confidentiality and permitted use and the secretary’s authority to promulgate rules;

(15) The provisions of section twenty-seven, article six of this chapter regarding a cause of action for damages caused by an explosion;

(16) The provisions of section twenty-eight, article six of this chapter relating to supervision by the secretary over
drilling and reclamation operations, the filing of complaints, hearings on the same and appeals;

(17) The provisions of section twenty-nine, article six of this chapter providing for the Operating Permit and Processing Fund, the oil and gas reclamation fund and associated fees, with the exception that in the first paragraph of subsection (a), section twenty-nine, article six of this chapter, the fees to be credited to the Oil and Gas Operating Permit and Processing Fund are the permit fees collected pursuant to section seven of this article;

(18) The provisions of section thirty-one, article six of this chapter providing for preventing waste of gas, plans of operation for wasting gas in the process of producing oil and the secretary’s rejection thereof;

(19) The provisions of section thirty-two, article six of this chapter pertaining to the right of an adjacent owner or operator to prevent waste of gas and the recovery of costs;

(20) The provisions of section thirty-three, article six of this chapter relating to circuit court actions to restrain waste;

(21) The provisions of section thirty-six, article six of this chapter providing for the declaration of oil and gas notice by owners and lessees of coal seams and setting out the form of such notice;

(22) The provisions of section thirty-nine, article six of this chapter relating to petitions for injunctive relief; and

(23) The provisions of section forty, article six of this chapter relating to appeals from orders issuing or refusing to issue a permit to drill or fracture, and the procedure therefore.

(b) Notwithstanding any other provision of this code to the contrary, no provision of article six of this chapter shall
apply to horizontal wells subject to this article except as expressly incorporated by reference in this article. Any conflict between the provisions of article six and the provisions of this article shall be resolved in favor of this article.

§22-6A-6. Secretary of Department of Environmental Protection; powers and duties.

(a) The secretary is vested with jurisdiction over all aspects of this article, including, but not limited to, the following powers and duties:

(1) All powers and duties conferred upon the secretary pursuant to article six, chapter twenty-two of this code;

(2) To control and exercise regulatory authority over all gas operations regulated by this article;

(3) To utilize any oil and gas inspectors or other employees of the department in the enforcement of the provisions of this article;

(4) To propose any necessary legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article;

(5) To make investigations and inspections necessary to ensure compliance with the provisions of this article;

(b) Except for the duties and obligations conferred by statute upon the shallow gas well review board pursuant to article eight, chapter twenty-two-c of this code, the coalbed methane review board pursuant to article twenty-one of this chapter, and the oil and gas conservation commission pursuant to article nine, chapter twenty-two-c of this code, the secretary has sole and exclusive authority to regulate the
permitting, location, spacing, drilling, fracturing, stimulation, well completion activities, operation, any and all other drilling and production processes, plugging and reclamation of oil and gas wells and production operations within the state.

(c) The secretary shall, on a monthly basis, make a written report to the Governor disclosing, for all well work permits issued in a particular month, the average number of days elapsed between the date on which a complete application for a well work permit was filed and the date on which such well work permit was issued. This report shall be posted to the website required to be established and maintained pursuant to section twenty-one of this article.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified and shall contain the following information:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (h) of this section and (iii) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and
all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by subdivision (6), subsection (a), section five of this article, if any, if said owner or lessee is not yet operating said coal seams;

(3) The number of the well or such other identification as the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations
(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with section thirteen of this article;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of subdivision (7), subsection (a), section five of this article;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to section seven, article five-a, chapter fifteen of this code, for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that (i) it has provided the owners of the surface described in subdivisions (1), (2) and (4), subsection (b), section ten of this article, the information required by subsections (b) and (c), section sixteen of this article; (ii) that the requirement was deemed satisfied as a result of giving the surface owner notice of
entry to survey pursuant to subsection (a), section ten of this
article; or (iii) the notice requirements of subsection (b),
section sixteen of this article were waived in writing by the
surface owner; and

(15) Any other relevant information which the secretary
may reasonably require.

(c)(1) An erosion and sediment control plan shall
accompany each application for a well work permit under this
article. The plan shall contain methods of stabilization and
drainage, including a map of the project area indicating the
amount of acreage disturbed. The erosion and sediment
control plan shall meet the minimum requirements of the
West Virginia Erosion and Sediment Control Manual as
adopted and from time to time amended by the department.
The erosion and sediment control plan shall become part of
the terms and conditions of any well work permit that is
issued pursuant to this article and the provisions of the plan
shall be carried out where applicable in the operation. The
erosion and sediment control plan shall set out the proposed
method of reclamation which shall comply with the
requirements of section fourteen of this article.

(2) For well sites that disturb three acres or more of
surface, excluding pipelines, gathering lines and roads, the
erosion and sediment control plan submitted in accordance
with this section shall be certified by a registered professional
engineer.

(d) For well sites that disturb three acres or more of
surface, excluding pipelines, gathering lines and roads, the
operator shall submit a site construction plan that shall be
certified by a registered professional engineer and contains
information that the secretary may require by rule.

(e) In addition to the other requirements of this section,
if the drilling, fracturing or stimulating of the horizontal well
requires the use of water obtained by withdrawals from waters of this state in amounts that exceed two hundred ten thousand gallons during any thirty day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals, and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by subdivision (14), subsection (a), section five of this article;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;
(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal or otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise, repeal or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work, however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by section fifteen of this article, the applicable plat required by subdivision (6), subsection (a), section five of this article and a permit fee of $10,000 for the initial horizontal well drilled at a location and a permit fee of $5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article eleven of this chapter may be served, and upon
whom process may be served. Every well operator required
to designate an agent under this section shall, within five
days after the termination of the designation, notify the
secretary of the termination and designate a new agent.

(i) The well owner or operator shall install the permit
number as issued by the secretary and a contact telephone
number for the operator in a legible and permanent manner
to the well upon completion of any permitted work. The
dimensions, specifications, and manner of installation shall
be in accordance with the rules of the secretary.

(j) The secretary may waive the requirements of this
section and sections eight, ten, eleven and twenty-four of this
article in any emergency situation, if the secretary deems the
action necessary. In such case the secretary may issue an
emergency permit which is effective for not more than thirty
days, unless reissued by the secretary.

(k) The secretary shall deny the issuance of a permit if
the secretary determines that the applicant has committed a
substantial violation of a previously issued permit for a
horizontal well, including the applicable erosion and
sediment control plan associated with the previously issued
permit, or a substantial violation of one or more of the rules
promulgated under this article, and in each instance has failed
to abate or seek review of the violation within the time
prescribed by the secretary pursuant to the provisions of
subdivisions (1) and (2), subsection (a), section five of this
article and the rules promulgated hereunder, which time may
not be unreasonable.

(l) In the event the secretary finds that a substantial
violation has occurred and that the operator has failed to
abate or seek review of the violation in the time prescribed,
the secretary may suspend the permit on which said violation
exists, after which suspension the operator shall forthwith
cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of any such suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of subdivision (23), subsection (a), section five of this article. The secretary shall make a written finding of any such determination.

§22-6A-8. Review of application; issuance of permit; performance standards; copy of permits to county assessor.

(a) The secretary shall review each application for a well work permit and shall determine whether or not a permit is issued.

(b) No permit may be issued less than thirty days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging may be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of subsection (b), section ten of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the well plat, and further files written statements of no objection by all such persons, the secretary may issue the well work permit at any time.

(c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in default pursuant to the provisions of section
six-c, article two, chapter twenty-one-a of this code, and in compliance with section five, article two, chapter twenty-three of this code, with regard to any required subscription to the Unemployment Compensation Fund or mandatory Workers’ Compensation insurance, the payment of premiums and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the applicant is delinquent or defaulted, or has been terminated by the executive director or the Insurance Commissioner, the permit may not be issued until the applicant returns to compliance or is restored by the executive director or the Insurance Commissioner under a reinstatement agreement: Provided, That in all inquiries the Executive Director of Workforce West Virginia and the Insurance Commissioner shall make response to the Department of Environmental Protection within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the failure will not be used to preclude issuance of the permit.

(d) The secretary may cause such inspections to be made of the proposed well work location as necessary to assure adequate review of the application. The permit may not be issued, or may be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

(1) The proposed well work will constitute a hazard to the safety of persons;

(2) The plan for soil erosion and sediment control is not adequate or effective;

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.
(e) In addition to the considerations set forth in subsection (d) of this section, in determining whether a permit should be issued, issued with conditions, or denied, the secretary shall determine that:

(1) The well location restrictions of section twelve of this article have been satisfied, unless the requirements have been waived by written consent of the surface owner or the secretary has granted a variance to the restrictions, each in accordance with section twelve of this article;

(2) The water management plan submitted to the secretary, if required by subdivision (e), section seven of this article, has been received and approved.

(f) The secretary shall promptly review all written comments filed by persons entitled to notice pursuant to subsection (b), section ten of this article. If after review of the application and all written comments received from persons entitled to notice pursuant to subsection (b), section ten of this article, the application for a well work permit is approved, and no timely objection has been filed with the secretary by the coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, or made by the secretary under the provisions of section ten and eleven of this article, the permit shall be issued, with conditions, if any. This section does not supersede the provisions of section seven or subdivisions (6) through (9), subsection (a), section five of this article.

(g) Each permit issued by the secretary pursuant to this article shall require the operator at a minimum to:

(1) Plug all wells in accordance with the requirements of this article and the rules promulgated pursuant thereto when the wells become abandoned;
(2) With respect to disposal of cuttings at the well site, all drill cuttings and associated drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste facility, or if the surface owner consents, the drill cuttings and associated drilling mud may be managed on-site in a manner approved by the secretary;

(3) Grade, terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well where necessary to bind the soil and prevent substantial erosion and sedimentation;

(4) Take action in accordance with industry standards to minimize fire hazards and other conditions which constitute a hazard to health and safety of the public;

(5) Protect the quantity and the quality of water in surface and groundwater systems both during and after drilling operations and during reclamation by: (A) Withdrawing water from surface waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient in-stream flow immediately downstream of the withdrawal location. In no case shall an operator withdraw water from ground or surface waters at volumes beyond which the waters can sustain; (B) Casing, sealing or otherwise managing wells to keep returned fluids from entering ground and surface waters; (C) Conducting oil and gas operations so as to prevent, to the extent possible using the best management practices, additional contributions of suspended or dissolved solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law; and (D) Registering all water supply wells drilled and operated by the operator with the Office of Oil and Gas. All drinking water wells within one thousand five hundred feet of a water supply well shall be flow and quality tested by the operator upon request of the drinking well owner prior to operating the water supply well.
The secretary shall propose legislative rules to identify appropriate methods for testing water flow and quality.

(6) In addition to the other requirements of this subsection, an operator proposing to drill any horizontal well requiring the withdrawal of more than two hundred ten thousand gallons in a thirty-day period shall have the following requirements added to its permit:

(A) Identification of water withdrawal locations. Within forty-eight hours prior to the withdrawal of water, the operator shall identify to the department the location of withdrawal by latitude and longitude and verify that sufficient flow exists to protect designated uses of the stream. The operator shall use methods deemed appropriate by the secretary to determine if sufficient flow exists to protect designated uses of the stream.

(B) Signage for water withdrawal locations. All water withdrawal locations and facilities identified in the water management plan shall be identified with a sign that identifies that the location is a water withdrawal point, the name and telephone number of the operator and the permit numbers(s) for which the water withdrawn will be utilized.

(C) Recordkeeping and reporting. For all water used for hydraulic fracturing of horizontal wells and for flowback water from hydraulic fracturing activities and produced water from production activities from horizontal wells, an operator shall comply with the following record keeping and reporting requirements:

(i) For production activities, the following information shall be recorded and retained by the well operator:

(I) The quantity of flowback water from hydraulic fracturing the well;
(II) The quantity of produced water from the well; and

(III) The method of management or disposal of the flowback and produced water.

(ii) For transportation activities, the following information shall be recorded and maintained by the operator:

(I) The quantity of water transported;

(II) The collection and delivery or disposal locations of water; and

(III) The name of the water hauling company.

(iii) The information maintained pursuant to this subdivision shall be available for inspection by the department along with other required permits and records and maintained for three years after the water withdrawal activity.

(iv) This subdivision is intended to be consistent with and does not supersede, revise, repeal or otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise, repeal or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(h) The secretary shall mail a copy of the permit as issued or a copy of the order denying a permit to any person entitled to submit written comments pursuant to subsection (a), section eleven of this article and who requested a copy.

(i) Upon the issuance of any permit pursuant to the provisions of this article, the secretary shall transmit a copy of the permit to the office of the assessor for the county in which the well is located.
§22-6A-9. Certificate of approval required for large pits or impoundment construction; certificate of approval and annual registration fees; application required to obtain certificate; term of certificate; revocation or suspension of certificates; appeals; farm ponds.

(a) The Legislature finds that large impoundments and pits (i.e. impoundments or pits with a capacity of two hundred ten thousand gallons or more) not associated with a specific well work permit must be properly regulated and controlled. It is the intent of the Legislature by this section to provide for the regulation and supervision of large impoundments or pits not associated with a well work permit. This section does not apply to large pits or impoundments authorized under a well work permit.

(b) It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any freshwater impoundment or pit with capacity of two hundred ten thousand gallons or more used in association with any horizontal well operation until he or she has first secured from the secretary a certificate of approval for the same: Provided, That routine repairs that do not affect the safety of the impoundment are not subject to the application and approval requirements. A separate application for a certificate of approval shall be submitted by a person for each impoundment he or she desires to place, construct, enlarge, alter, repair, remove or abandon, but one application may be valid for more than one impoundment that supports one or more well pads.

(c) The application fee for placement, construction, enlargement, alteration, repair or removal of an impoundment pursuant to this section is $300, and the fee shall accompany the application for certificate of approval. Operators holding certificates of approval shall be assessed an annual
registration fee of $100, which is valid for more than one impoundment that supports one or more well pads.

(d) Any certificate of approval required by this section shall be issued or denied no later than sixty days from the submission of an application containing the information required by this section. However, if the application for a certificate of approval is submitted with the application for a horizontal well permit, the certificate shall be issued or denied no later than thirty days from the submission of the permit application.

(e) The initial term of a certificate of approval issued pursuant to this section is one year. Existing certificates of approval shall be extended for one year upon receipt of the annual registration fee, an inspection report, a monitoring and emergency action plan, and a maintenance plan: Provided, That where an approved, up-to-date inspection report, monitoring and emergency action plan, and maintenance plan are on file with the department, and where no outstanding violation of the requirements of the certificate of approval or any plan submitted pursuant to this article related to the impoundment exist, then the certificate of approval shall be extended without resubmission of the foregoing documents upon receipt of the annual registration fee.

(f) Every application for a certificate of approval shall be made in writing on a form prescribed by the secretary and shall be signed and verified by the applicant. The application shall include a monitoring and emergency action plan and a maintenance plan, the required contents of which shall be established by the secretary by legislative rule. The application shall contain and provide information that may reasonably be required by the secretary to administer the provisions of this article.

(g) Plans and specifications for the placement, construction, erosion and sediment control, enlargement,
alteration, repair or removal and reclamation of
impoundments shall be the charge of a registered professional
engineer licensed to practice in West Virginia. Any plans or
specifications submitted to the department shall bear the seal
of a registered professional engineer.

(h) Each certificate of approval issued by the secretary
pursuant to the provisions of this article may contain other
terms and conditions the secretary prescribes.

(i) The secretary may revoke or suspend any certificate
of approval whenever the secretary determines that the
impoundment for which the certificate was issued constitutes
an imminent danger to human life or property. If necessary to
safeguard human life or property, the secretary may also
amend the terms and conditions of any certificate by issuing
a new certificate containing the revised terms and conditions.

(1) Before any certificate of approval is amended,
suspended or revoked by the secretary without the consent of
the operator holding the certificate, the secretary shall hold a
hearing in accordance with the provisions of article five,
chapter twenty-nine-a of this code.

(2) Any person adversely affected by an order entered
following this hearing has the right to appeal to the
Environmental Quality Board pursuant to the provisions of
article one, chapter twenty-two-b of this code.

(j) Upon expiration of the certificate of approval, the
operator shall within six months, or upon its revocation by the
secretary, the operator shall within sixty days, fill all
impoundments that are not required or allowed by state or
federal law or rule or agreement between the operator and the
surface owner allowing the impoundment to remain open for
the use and benefit of the surface owner and reclaim the site in
accordance with the approved erosion and sediment control
plan.
(k) This section does not apply to:

(1) Farm ponds constructed by the operator with the written consent of the surface owner, which will be used after completion of the drilling activity primarily for agricultural purposes, including without limitation livestock watering, irrigation, retention of animal wastes and fish culture. Any impoundment that is intended to be left permanent as a farm pond under this subdivision shall meet the requirements set forth by the United States Department of Agriculture’s Natural Resources Conservation Service “Conservation Practice Standard - Ponds” (Code 378).

(2) Farm ponds subject to certificates of approval under article fourteen of this chapter.

(l) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary to effectuate the provisions of this section.

§22-6A-10. Notice to property owners.

(a) Prior to filing a permit application, the operator shall provide notice of planned entry on to the surface tract to conduct any plat surveys required pursuant to this article. Such notice shall be provided at least seven days but no more than forty-five days prior to such entry to: (1) The surface owner of such tract; (2) to any owner or lessee of coal seams beneath such tract that has filed a declaration pursuant to section thirty-six, article six, chapter twenty-two of this code; and (3) any owner of minerals underlying such tract in the county tax records. The notice shall include a statement that copies of the state Erosion and Sediment Control Manual and the statutes and rules related to oil and gas exploration and production may be obtained from the Secretary, which statement shall include contact information, including the address for a web page on the Secretary’s website, to enable the surface owner to obtain copies from the secretary.
(b) No later than the filing date of the application, the applicant for a permit for any well work or for a certificate of approval for the construction of an impoundment or pit as required by this article shall deliver, by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, copies of the application, the erosion and sediment control plan required by section seven of this article, and the well plat to each of the following persons:

1. The owners of record of the surface of the tract on which the well is or is proposed to be located;

2. The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if the surface tract is to be used for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to subsection (c), section seven of this article;

3. The coal owner, operator or lessee, in the event the tract of land on which the well proposed to be drilled is located is known to be underlain by one or more coal seams;

4. The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed well work, if the surface tract is to be used for the placement, construction, enlargement, alteration, repair, removal or abandonment of any impoundment or pit as described in section nine of this article;

5. Any surface owner or water purveyor who is known to the applicant to have a water well, spring or water supply source located within one thousand five hundred feet of the center of the well pad which is used to provide water for consumption by humans or domestic animals; and
(6) The operator of any natural gas storage field within which the proposed well work activity is to take place.

(c)(1) If more than three tenants in common or other co-owners of interests described in subsection (b) of this section hold interests in the lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code.

(2) Notwithstanding any provision of this article to the contrary, notice to a lien holder is not notice to a landowner, unless the lien holder is the landowner.

(d) With respect to surface landowners identified in subsection (b) or water purveyors identified in subdivision (5), subsection (b) of this section, notification shall be made on forms and in a manner prescribed by the secretary sufficient to identify, for those persons, the rights afforded them under sections eleven and twelve of this article, and the opportunity for testing their water well.

(e) Prior to filing an application for a permit for a horizontal well under this article, the applicant shall publish in the county in which the well is located or is proposed to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing notice of the public website required to be established and maintained pursuant to section twenty-one of this article and language indicating the ability of the public to submit written comments on the proposed permit, with the first publication date being at least ten days prior to the filing of the permit application. The secretary shall consider, in the same manner required by subsection (f), section eight of this article and subdivision one, subsection (c), section eleven of this article, written comments
submitted in response to the legal advertisement received by
the secretary within thirty days following the last required
publication date: Provided, That such parties submitting
written comments pursuant to this subsection are not
entitled to participate in the processes and proceedings that
exist under sections fifteen, seventeen or forty, article six of
this chapter, as applicable and incorporated into this article
by section five of this article.

(f) Materials served upon persons described in subsection
(b) of this section shall contain a statement of the time limits
for filing written comments, who may file written comments,
the name and address of the secretary for the purpose of
filing the comments and obtaining additional information,
and a statement that the persons may request, at the time of
submitting written comments, notice of the permit decision
and a list of persons qualified to test water.

(g) Any person entitled to submit written comments to the
secretary pursuant to subsection (a), section eleven of this
article, shall also be entitled to receive from the secretary a
copy of the permit as issued or a copy of the order modifying
or denying the permit if the person requests receipt of them
as a part of the written comments submitted concerning the
permit application.

(h) The surface owners described in subdivisions (1), (2)
and (4), subsection (b) of this section, and the coal owner,
operator or lessee described in subdivision (3) of that
subsection is also entitled to receive notice within seven days
but no less than two days before commencement that well
work or site preparation work that involves any disturbance
of land is expected to commence.

(i) Persons entitled to notice pursuant to subsection (b) of
this section may contact the department to ascertain the
names and locations of water testing laboratories in the subject area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling that list of names the department shall consult with the state Bureau for Public Health and local health departments.

(j) (1) Prior to conducting any seismic activity for seismic exploration for natural gas to be extracted using horizontal drilling methods, the company or person performing the activity shall provide notice to Miss Utility of West Virginia Inc. and to all surface owners, coal owners and lessees, and natural gas storage field operators on whose property blasting, percussion or other seismic-related activities will occur.

(2) The notice shall be provided at least three days prior to commencement of the seismic activity.

(3) The notice shall also include a reclamation plan in accordance with the erosion and sediment control manual that provides for the reclamation of any areas disturbed as a result of the seismic activity, including filling of shotholes used for blasting.

(4) Nothing in this subsection decides questions as to whether seismic activity may be secured by mineral owners, surface owners or other ownership interests.

§22-6A-10a. Method of Delivery of Notice.

Notwithstanding any provision of this article to the contrary, all notices required by this article shall be delivered by the method set forth in subsection (b), section ten of this article, which notice shall provide that further information may be obtained from the department’s website.
§22-6A-11. Procedure for filing written comments; procedures for considering objections and comments; issues to be considered; and newspaper notice.

(a) All persons described in subsection (b), section ten of this article may file written comments with the secretary as to the location or construction of the applicant’s proposed well work within thirty days after the application is filed with the secretary.

(b) The applicant shall tender proof of and certify to the secretary that the notice requirements of section ten of this article have been completed by the applicant. The certification of notice to the person may be made by affidavit of personal service, the return receipt card or other postal receipt for certified mailing.

(c) (1) The secretary shall promptly review all written comments filed by the persons entitled to notice under subsection (b), section ten of this article. The secretary shall notify the applicant of the character of the written comments submitted no later than fifteen days after the close of the comment period.

(2) Any objections of the affected coal operators and coal seam owners and lessees shall be addressed through the processes and procedures that exist under sections fifteen, seventeen and forty, article six of this chapter, as applicable and as incorporated into this article by section five of this article. The written comments filed by the parties entitled to notice under subdivisions (1), (2), (4), (5) and (6), subsection (b), section ten of this article shall be considered by the secretary in the permit issuance process, but the parties are not entitled to participate in the processes and proceedings that exist under sections fifteen, seventeen or forty, article six of this chapter, as applicable and as incorporated into this article by section five of this article.
(3) The secretary shall retain all applications, plats and other documents filed with the secretary, any proposed revisions thereto, all notices given and proof of service thereof and all orders issued and all permits issued. Subject to the provisions of article one, chapter twenty-nine-b of this code, the record prepared by the secretary is open to inspection by the public.

§22-6A-12. Well location restrictions.

(a) Wells may not be drilled within two hundred fifty feet measured horizontally from any existing water well or developed spring used for human or domestic animal consumption. The center of well pads may not be located within six hundred twenty-five feet of an occupied dwelling structure, or a building two thousand five hundred square feet or larger used to house or shelter dairy cattle or poultry husbandry. This limitation is applicable to those wells, developed springs, dwellings or agricultural buildings that existed on the date a notice to the surface owner of planned entry for surveying or staking as provided in section ten of this article or a notice of intent to drill a horizontal well as provided in subsection (b), section sixteen of this article was provided, whichever occurs first, and to any dwelling under construction prior to that date. This limitation may be waived by written consent of the surface owner transmitted to the department and recorded in the real property records maintained by the clerk of the county commission for the county in which such property is located. Furthermore, the well operator may be granted a variance by the secretary from these distance restrictions upon submission of a plan which identifies the sufficient measures, facilities or practices to be employed during well site construction, drilling and operations. The variance, if granted, shall include terms and conditions the department requires to ensure the safety and protection of affected persons and property. The terms and conditions may include insurance, bonding and indemnification, as well as technical requirements.
(b) No well pad may be prepared or well drilled within one hundred feet measured horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or within three hundred feet of a naturally reproducing trout stream. No wellpad may be located within one thousand feet of a surface or ground water intake of a public water supply. The distance from the public water supply as identified by the department shall be measured as follows:

(1) For a surface water intake on a lake or reservoir, the distance shall be measured from the boundary of the lake or reservoir.

(2) For a surface water intake on a flowing stream, the distance shall be measured from a semicircular radius extending upstream of the surface water intake.

(3) For a groundwater source, the distance shall be measured from the wellhead or spring. The department may, in its discretion, waive these distance restrictions upon submission of a plan identifying sufficient measures, facilities or practices to be employed during well site construction, drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any permit conditions as the secretary considers necessary.

(c) Notwithstanding the foregoing provisions of this section, nothing contained in this section prevents an operator from conducting the activities permitted or authorized by a Clean Water Act Section 404 permit or other approval from the United States Army Corps of Engineers within any waters of the state or within the restricted areas referenced in this section.

(d) The well location restrictions set forth in this section shall not apply to any well on a multiple well pad if at least
one of the wells was permitted or has an application pending prior to the effective date of this article.

(e) The secretary shall, by December 31, 2012, report to the Legislature on the noise, light, dust and volatile organic compounds generated by the drilling of horizontal wells as they relate to the well location restrictions regarding occupied dwelling structures pursuant to this section. Upon a finding, if any, by the secretary that the well location restrictions regarding occupied dwelling structures are inadequate or otherwise require alteration to address the items examined in the study required by this subsection, the secretary shall have the authority to propose for promulgation legislative rules establishing guidelines and procedures regarding reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal wells, including reasonable means of mitigating such factors, if necessary.


1 The secretary shall propose legislative rules for promulgation to govern the procedures for plugging horizontal wells, including rules relating to the methods of plugging the wells and the notices required to be provided in connection with plugging the wells.

§22-6A-14. Reclamation requirements.

1 (a) The operator of a horizontal well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

1 (1) Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required
or allowed by state or federal law or rule or agreement
between the operator and the surface owner that allows the
impoundment to remain open for the use and benefit of the
surface owner (i.e. a farm pond as described in section nine
of this article) and remove all concrete bases, drilling
supplies and drilling equipment: Provided, That
impoundments or pits for which certificates have been
approved pursuant to section nine of this article shall be
reclaimed at a time and in a manner as provided in the
applicable certificate and section nine. Within that six-month
period, the operator shall grade or terrace and plant, seed or
sod the area disturbed that is not required in production of the
horizontal well in accordance with the erosion and sediment
control plan. No pit may be used for the ultimate disposal of
salt water. Salt water and oil shall be periodically drained or
removed and properly disposed of from any pit that is
retained so the pit is kept reasonably free of salt water and
oil. Pits may not be left open permanently.

(2) For well pads designed to contain multiple horizontal
wells, partial reclamation shall begin upon completion of the
construction of the well pad. For purposes of this section, the
term partial reclamation means grading or terracing and
planting, or seeding the area disturbed that is not required in
drilling, completing or producing any of the horizontal wells
on the well pad in accordance with the erosion and sediment
control plan. This partial reclamation satisfies the reclamation
requirements of this section for a maximum of twenty-four
months between the drilling of horizontal wells on a well pad
designed to contain multiple horizontal wells: Provided,
That the maximum aggregate period in which partial
reclamation satisfies the reclamation requirements of this
section is five years from completion of the construction of
the well pad. Within six months after the completion of the
final horizontal well on the pad or the expiration of the five-
year maximum aggregate partial reclamation period,
whichever occurs first, the operator shall complete final
reclamation of the well pad as set forth in this subsection.
(3) Within six months after a horizontal well that has produced oil or gas is plugged or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

(4) The operator shall reclaim the area of land disturbed in siting, drilling, completing or producing the horizontal well in accordance with the erosion and sediment control plans approved by the secretary or the secretary’s designee pursuant to this article.

(b) The secretary, upon written application by an operator showing reasonable cause, may extend the period within which reclamation must be completed, but not to exceed a further six-month period. If the secretary refuses to approve a request for extension, the refusal shall be by order, which may be appealed pursuant to the provisions of subdivision twenty-three, subsection (a), section five of this article.

§22-6A-15. Performance bonds; corporate surety or other security.

(a) No permit may be issued pursuant to this article unless a bond as described in subsection (d) of this section which is required for a particular activity by this article is or has been furnished as provided in this section.

(b) A separate bond as described in subsection (d) of this section may be furnished for each horizontal well drilled. Each of these bonds shall be in the sum of $50,000 payable to the State of West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing and stimulating of horizontal wells and to
the plugging, abandonment and reclamation of horizontal wells and for furnishing reports and information required by the secretary.

(c) When an operator makes or has made application for permits to drill or stimulate a number of horizontal wells, the operator may, in lieu of furnishing a separate bond, furnish a blanket bond in the sum of $250,000 payable to the State of West Virginia, and conditioned as provided in subsection (b) of this section.

(d) The form of the bond required by this article shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding, including cash and securities, letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners’ loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states or of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the amount of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold them in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator is entitled to all interest and income earned on the collateral securities filed by the operator. The operator making the deposit is entitled from time to time to receive from the State Treasurer, upon the written approval of the
secretary, the whole or any portion of any cash, securities or
certificates so deposited, upon depositing with the State
Treasurer in lieu thereof, cash or other securities or
certificates of the classes herein specified having value equal
to or greater than the amount of the bond.

(e) When an operator has furnished a separate bond from a
corporate bonding or surety company to drill, fracture or
stimulate a horizontal well and the well produces oil or gas or
both, its operator may deposit with the secretary cash from the
sale of the oil or gas or both until the total deposited is $50,000.
When the sum of the cash deposited is $50,000, the separate
bond for the well shall be released by the secretary. Upon receipt
of that cash, the secretary shall immediately deliver that amount
to the State Treasurer, who shall hold the cash in the name of the
state in trust for the purpose for which the bond was furnished
and the deposit was made. The operator is entitled to all interest
and income which may be earned on the cash deposited so long
as the operator is in full compliance with all laws and rules
relating to the drilling, redrilling, deepening, casing, plugging,
abandonment and reclamation of the well for which the cash was
deposited and so long as the operator has furnished all reports
and information required by the secretary. The secretary may
establish procedures under which an operator may substitute a
new bond for an existing bond or provide a new bond under
certain circumstances specified in a legislative rule promulgated
in accordance with chapter twenty-nine-a of this code.

(f) Any separate bond furnished for a particular well prior
to the effective date of this article continues to be valid for all
work on the well permitted prior to the effective date of this
article; but no permit may be issued on such a particular well
without a bond complying with the provisions of this section.
Any blanket bond furnished prior to the effective date of this
article shall be replaced with a new blanket bond conforming
to the requirements of this section, at which time the prior
bond is discharged by operation of law; and if the secretary
determines that any operator has not furnished a new blanket
bond, the secretary shall notify the operator by registered
mail or by any method of delivery that requires a receipt or
signature confirmation of the requirement for a new blanket
bond, and failure to submit a new blanket bond within sixty
days after receipt of the notice from the secretary works a
forfeiture under subsection (i) of this section of the blanket
bond furnished prior to the effective date of this article.

(g) Any such bond shall remain in force until released by
the secretary, and the secretary shall release the same upon
satisfaction that the conditions thereof have been fully
performed. Upon the release of that bond, any cash or
collateral securities deposited shall be returned by the
secretary to the operator who deposited it.

(h) (1) Whenever the right to operate a well is assigned
or otherwise transferred, the assignor or transferor shall
notify the department of the name and address of the assignee
or transferee by registered mail or by any method of delivery
that requires a receipt or signature confirmation not later than
thirty days after the date of the assignment or transfer. No
assignment or transfer by the owner relieves the assignor or
transferor of the obligations and liabilities unless and until
the assignee or transferee files with the department the well
name and the permit number of the subject well, the county
and district in which the subject well is located, the names
and addresses of the assignor or transferor, and assignee or
transferee, a copy of the instrument of assignment or transfer
accompanied by the applicable bond, cash, collateral security
or other forms of security described in this section, and the
name and address of the assignee’s or transferee’s designated
agent if the assignee or transferee would be required to
designate an agent under this article if the assignee or
transferee were an applicant for a permit under this article.
Every well operator required to designate an agent under this
section shall, within five days after the termination of the
(2) Upon compliance with the requirements of this section by the assignor or transferor and assignee or transforee, the secretary shall release the assignor or transferor from all duties and requirements of this article and shall give written notice of release to the assignor or transferor of any bond and return to the assignor or transferor any cash or collateral securities deposited pursuant to this section.

(i) If any of the requirements of this article or rules promulgated pursuant thereto or the orders of the secretary has not been complied with within the time limit set by any notice of violation issued pursuant to this article, the performance bond shall then be forfeited.

(j) When any bond is forfeited pursuant to the provisions of this article or rules promulgated pursuant thereto, the secretary shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the Treasury of the State of West Virginia in the Oil and Gas Reclamation Fund as defined in section twenty-nine, article six of this chapter.


(a) The provisions of article seven of this chapter do not apply to horizontal wells governed by this article. In lieu thereof, the provisions of article six-b of this chapter shall provide for the compensation of surface owners for damage caused by drilling horizontal wells.
(b) At least ten days prior to filing a permit application, an operator shall, by certified mail return receipt requested or hand delivery, give the surface owner notice of its intent to enter upon the surface owner’s land for the purpose of drilling a horizontal well: Provided, That notice given pursuant to subsection (a), section ten of this article satisfies the requirements of this subsection as of the date the notice was provided to the surface owner: Provided, however, That the notice requirements of this subsection may be waived in writing by the surface owner. The notice, if required, shall include the name, address, telephone number, and if available, facsimile number and electronic mail address of the operator and the operator’s authorized representative.

(c) No later than the date for filing the permit application, an operator shall, by certified mail return receipt requested or hand delivery, give the surface owner whose land will be used for the drilling of a horizontal well notice of the planned operation. The notice required by this subsection shall include:

(1) A copy of this code section;

(2) The information required to be provided by subsection (b), section ten of this article to a surface owner whose land will be used in conjunction with the drilling of a horizontal well; and

(3) A proposed surface use and compensation agreement containing an offer of compensation for damages to the surface affected by oil and gas operations to the extent the damages are compensable under article six-b of this chapter.

(d) The notices required by this section shall be given to the surface owner at the address listed in the records of the sheriff at the time of notice.
§22-6A-17. Reimbursement of property taxes of encumbered properties.

In addition to any compensation owed by the operator to the surface owner pursuant to the provisions of article six-b of this chapter, the operator shall pay the surface owner a one-time payment of $2,500 to compensate for payment of real property taxes for surface lands and surrounding lands that are encumbered or disturbed by construction or operation of the horizontal well pad regardless of how many wells are drilled on a single pad or how many permits are issued for the pad.

§22-6A-18. Civil action for contamination or deprivation of fresh water source or supply; presumption; water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person’s interest in water resources affected by an oil or gas operation.

(b) Unless rebutted by one of the defenses established in subsection (c) of this section, in any action for contamination or deprivation of a fresh water source or supply within one thousand five hundred feet of the center of the well pad for horizontal well, there is a rebuttable presumption that the drilling and the oil or gas well or either was the proximate cause of the contamination or deprivation of the fresh water source or supply.

(c) In order to rebut the presumption of liability established in subsection (b) of this section, the operator must prove by a preponderance of the evidence one of the following defenses:
(1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration water well test.

(2) The landowner or water purveyor refused to allow the operator access to the property to conduct a predrilling or prealteration water well test.

(3) The water supply is not within one thousand five hundred feet of the well.

(4) The pollution occurred more than six months after completion of drilling or alteration activities.

(5) The pollution occurred as the result of some cause other than the drilling or alteration activity.

d) Any operator-electing to preserve its defenses under subdivision (1), subsection (c) of this section shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration water well test. A copy of the results of the test shall be submitted to the department and the surface owner or water purveyor in a manner prescribed by the secretary.

e) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of that owner’s supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source with a comparable water supply where the secretary determines that the water supply has been affected by contamination, diminution or interruption proximately caused by the oil or gas operation, unless waived in writing by that owner.

f) The secretary may order the operator conducting the oil or gas operation to:
(1) Provide an emergency drinking water supply within twenty-four hours;

(2) Provide temporary water supply within seventy-two hours;

(3) Within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be used in establishing a permanent supply. The total time in providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply cannot be completed within two years, the secretary may extend the time frame on case-by-case basis; and

(4) Pay all reasonable costs incurred by the real property owner in securing a water supply.

(g) A person as described in subsection (b) of this section aggrieved under the provisions of subsections (b), (e) or (f) of this section may seek relief in court.

(h) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(i) Notwithstanding the denial of the operator of responsibility for the damage to the real property owner’s water supply or the status of any appeal on determination of liability for the damage to the real property owner’s water supply, the operator may not discontinue providing the required water service until authorized to do so by the secretary or a court of competent jurisdiction.

§22-6A-19. Offenses; civil and criminal penalties.

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any
provision of this article or any rule or order promulgated
under this article or any permit issued pursuant to this article
is subject to a civil penalty not exceeding $5,000. Each day
a violation continues after notice by the department
constitutes a separate offense. The penalty shall be recovered
by a civil action brought by the department, in the name of
the state, before the circuit court of the county in which the
subject well or facility is located. All the civil penalties
collected shall be credited to the General Fund of the state.

(b) Notwithstanding the provisions of subsection (a) and
(c) of this section, any person or persons, firm, partnership,
partnership association or corporation who willfully disposes
of waste fluids, drill cuttings or any other liquid substance
generated in the development of a horizontal well in violation
of this article or any rule or order promulgated under this
article or in violation of any other state or federal statutes,
rules or regulations, and which disposal was found to have
had a significant adverse environmental impact on surface or
groundwater by the secretary, is subject to a civil penalty not
exceeding $100,000. The penalty shall be recovered by a
civil action brought by the department, in the name of the
state, before the circuit court of the county in which the
subject well or facility is located. All the civil penalties
collected shall be credited to the General Fund of the state.

(c) Notwithstanding the provisions of subsections (a) and
(b) of this section, any person or persons, firm, partnership,
partnership association or corporation willfully violating any
of the provisions of this article which prescribe the manner of
drilling and casing or plugging and filling any well or which
prescribe the methods of conserving gas from waste, shall be
guilty of a misdemeanor, and, upon conviction thereof shall
be punished by a fine not exceeding five thousand dollars, or
imprisonment in jail not exceeding twelve months, or both,
in the discretion of the court, and prosecution under this
section may be brought in the name of the State of West
Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this state.

(d) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the secretary under this article shall be fined not less than $1,000 nor more than $10,000.

§22-6A-20. Division of Highways certification.

As part of the permit application for horizontal wells, the operator shall submit a letter of certification from the Division of Highways that the operator has, pursuant to the Division of Highways Oil and Gas Road Policy, entered into an agreement with the Division of Highways pertaining to the state local service roads associated with the proposed well work set forth in the permit application or has certified that no such agreement is required by the Oil and Gas Road Policy and the reasons therefor.

§22-6A-21. Establishment of public website information and electronic notification registry regarding horizontal well permit applications.

(a) No later than ninety days after the effective date of this article, the secretary shall establish resources on the department’s public website which will list searchable information related to all horizontal well applications filed in this state, including information sufficient to identify the county and approximate location of each horizontal well for which a permit application is filed, the referenced well application number, date of application, name of the applicant, and any written comments submitted by the public.
(b) The secretary shall also establish a registration and e-notification process by which individuals, corporations and agencies may register to receive electronic notice of horizontal well applications filings and notices, by county of interest. Once established, individuals, agencies and corporations interested who are properly registered to receive e-notices of filings and actions on horizontal well permits shall receive electronic notifications of applications and notices of permits issued for horizontal drilling in their designated county or counties of interest.

§22-6A-22. Air quality study and rulemaking.

The secretary shall, by July 1, 2013, report to the Legislature on the need, if any, for further regulation of air pollution occurring from well sites, including the possible health impacts, the need for air quality inspections during drilling, the need for inspections of compressors, pits and impoundments, and any other potential air quality impacts that could be generated from this type of drilling activity that could harm human health or the environment. If he or she finds that specialized permit conditions are necessary, the secretary shall promulgate legislative rules establishing these new requirements.

§22-6A-23. Impoundment and pit safety study; rulemaking.

The secretary shall, by January 1, 2013, report to the Legislature on the safety of pits and impoundments utilized pursuant to section nine of this article including an evaluation of whether testing and special regulatory provision is needed for radioactivity or other toxins held in the pits and impoundments. Upon a finding that greater monitoring, safety and design requirements or other specialized permit conditions are necessary, the secretary shall propose for promulgation legislative rules establishing these new requirements.

(a) The operator may only drill through fresh groundwater zones in a manner that will minimize any disturbance of the zones. Further, the operator shall construct the well and conduct casing and cementing activities for all horizontal wells in a manner that will provide for control of the well at all times, prevent the migration of gas and other fluids into the fresh groundwater and coal seams, and prevent pollution of or diminution of fresh groundwater.

(b) The secretary shall propose legislative and emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this section.

(c) Rules promulgated by the secretary pursuant to this section shall include provisions to accomplish the following:

1. Effective control of the horizontal well by the operator;
2. Prevention of the migration of gas or other fluids into sources of fresh groundwater or into coal seams;
3. Prevention of pollution of or diminution of fresh groundwater;
4. Prevention of blowouts, explosions, or fires; and
5. Appropriate disposition of brines and discharges from the drilling or operation of horizontal well.

(d) Procedures for the filing, approval, and revision of casing program:
(1) The operator shall prepare a casing program demonstrating how the horizontal well is to be drilled, cased, and cemented. The program shall comply with rules promulgated by the secretary.

(2) The rules regarding the casing program shall require the following information:

(A) The anticipated depth and thickness of any producing formation, expected pressures, anticipated fresh groundwater zones, and the method or information by which the depth of the deepest fresh groundwater was determined;

(B) The diameter of the borehole;

(C) The casing type, whether the casing to be utilized is new or used, and the depth, diameter, wall thickness, and burst pressure rating for the casing;

(D) The cement type, yield, additives, and estimated amount of cement to be used;

(E) The estimated location of centralizers;

(F) The proposed borehole conditioning procedures; and

(G) Any alternative methods or materials required by the secretary as a condition of the well work permit.

(3) A copy of casing program shall be kept at the well site.

(4) Supervisory oil and gas inspectors and oil and gas inspectors may approve revisions to previously approved casing programs when conditions encountered during the drilling process so require: Provided, That any revisions to casing programs approved by inspectors as aforesaid shall ensure that
the revised casing programs are at least as protective of the
environment as the casing and cementing standards required by
this section. Any revisions to the casing program made as a
result of on-site modifications shall be documented in the
program by the inspector approving the modification. The
person making any revisions to the program shall initial and date
the revisions and make the revised program available for
inspection by the department.

(e) The rules promulgated by the secretary shall provide
procedures for the following:

1. Appropriate installation and use of conductor pipe,
which shall be installed in a manner that prevents the
subsurface infiltration of surface water or fluids;

2. Installation of the surface and coal protection casing
including remedial procedures addressing lost circulation
during surface or coal casing;

3. Installation of intermediate production casing;

4. Correction of defective casing and cementing,
including requirements that the operator report the defect to
the secretary within twenty-four hours of discovery by the
operator;

5. Investigation of natural gas migration, including
requirements that the operator promptly notify the secretary
and conduct an investigation of the incident; and

6. Any other procedure or requirements considered
necessary by the secretary.

(f) Minimum casing standards.
(1) All casing installed in the well, whether new or used, shall have a pressure rating that exceeds the anticipated maximum pressure to which the casing will be exposed and meet appropriate nationally recognized standards.

(2) The casing shall be of sufficient quality and condition to withstand the effects of tension and maintain its structural integrity during installation, cementing, and subsequent drilling and production operations.

(3) Centralizers shall be used, with the proper spacing for such well, during the casing installation to ensure that the casing is centered in the hole.

(4) Casing may not be disturbed for a period of at least eight hours after the completion of cementing operations.

(5) No gas or oil production or pressure may exist on the surface casing or the annulus or the coal protection casing annulus.

(g) Minimum cement standards.

(1) All cement used in the well must meet the appropriate nationally recognized standards and must secure the casing to the wellbore, isolate the wellbore from all fluids, contain all pressures during all phases of drilling and operation of the well, and protect the casing from corrosion and degradation.

(2) Cement used in conjunction with surface and coal protection casing must provide zonal isolation in the casing annulus.

(h) Notwithstanding the minimum casing and cementing standards set forth in subsections (f) and (g) of this section, the secretary may:
(1) Revise the casing and cementing standards applicable to horizontal wells from time to time through the legislative rulemaking process so long as the revised casing and cementing standards are at least as protective of the environment; and

(2) Approve alternative casing programs submitted with applications for well work permits so long as the secretary determines that the casing program submitted with the application is at least as protective of the environment as the casing and cementing standards required by this section.

ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE COMPENSATION.

§22-6B-1. Legislative findings and purpose; applicability.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) The surface owner of lands on which horizontal wells are drilled shall be compensated for damages to the surface of the land pursuant to the provisions of this article.

(b) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract of conveyance entered into after December 31, 2011.

(c) It is the purpose of this article to provide Constitutionally permissible protection and compensation to
surface owners of lands on which horizontal wells are drilled from the burden resulting from drilling operations commenced after January 1, 2012. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

(d) The provisions of this article apply to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads or uses more than two hundred ten thousand gallons of water in any thirty-day period. Article seven of this chapter does not apply to any damages associated with the drilling of a horizontal well.

§22-6B-2. Definitions.

In this article:

(1) “Drilling operations” means the actual drilling or redrilling of a horizontal well commenced subsequent to the effective date of this article, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(2) “Horizontal drilling” means a method of drilling a well for the production of natural gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to parallel a particular geologic formation;
“Horizontal well” means any well site, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or uses more than two hundred ten thousand gallons of water in any thirty-day period;

(4) “Oil and gas developer” means the person who secures the drilling permit required by article six-a of this chapter;

(5) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(6) “Surface estate” means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(7) “Surface owner” means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.

§22-6B-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer is obligated to pay the surface owner compensation for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller’s operation, or to which access is prevented by the drilling operation, to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land and commences drilling operations until the date reclamation is completed;
(2) The market value of crops, including timber, destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the market value of the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all co-owners. The resolution of a claim for compensation provided in this article operates as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22-6B-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article diminishes in any way the common law remedies, including
damages, of a surface owner or any other person against the
oil and gas developer for the unreasonable, negligent or
otherwise wrongful exercise of the contractual right, whether
express or implied, to use the surface of the land for the
benefit of the developer’s mineral interest.

(b) An oil and gas developer is entitled to offset
compensation agreed to be paid or awarded to a surface
owner under section three of this article against any damages
sought by or awarded to the surface owner through the
assertion of common law remedies respecting the surface
land actually occupied by the same drilling operation.

(c) An oil and gas developer is entitled to offset damages
agreed to be paid or awarded to a surface owner through the
assertion of common-law remedies against compensation
sought by or awarded to the surface owner under section
three of this article respecting the surface land actually
occupied by the same drilling operation.

§22-6B-5. Notification of claim.

Any surface owner, to receive compensation under
section three of this article, shall notify the oil and gas
developer of the damages sustained by the person within two
years after the date that the oil and gas developer files notice
that final reclamation is commencing under section fourteen,
article six-a of this chapter. The notice of reclamation shall
be given to surface owners by registered or certified mail,
return receipt requested, and is complete upon mailing. If
more than three tenants in common or other co-owners hold
interests in the lands, the oil and gas developer may give the
notice to the person described in the records of the sheriff
required to be maintained pursuant to section eight, article
one, chapter eleven-a of this code or publish in the county in
which the well is located or to be located a Class II legal
advertisement as described in section two, article three,
chapter fifty-nine of this code, containing the notice and information the secretary prescribes by rule.

§22-6B-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made: Provided, That the oil and gas developer may make a final offer within seventy-five days after receiving the notification of claim specified in section five of this article.

§22-6B-7. Rejection; legal action; arbitration; fees and costs.

(a) (1) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within seventy-five days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) Bring an action for compensation in the circuit court of the county in which the well is located; or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section seven, article six-a of this chapter, to have his, her or its compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

(2) Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer are not admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.
(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party’s notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall immediately submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county in which the surface estate lies.

(c) The following persons are considered interested and may not be appointed as arbitrators: Any person who is personally interested in the land on which horizontal drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, the land or the oil and gas development of the land. A person is not considered interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation in which the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits necessary to determine the amount of compensation to be paid to the surface owner.
However, no award of compensation may be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but is not required.

(e) Each party shall pay the compensation of the party’s arbitrator and one half of the compensation of the third arbitrator, or each party’s own court costs as the case may be.

§22-6B-8. Application of article.

The remedies provided by this article do not preclude any person from seeking other remedies allowed by law.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

§22C-8-2. Definitions.

As used in this article:

(1) “Board” means the Shallow Gas Well Review Board provided for in section four of this article;

(2) “Chair” means the chair of the Shallow Gas Well Review Board provided for in section four of this article;

(3) “Coal operator” means any person who proposes to or does operate a coal mine;

(4) “Coal seam” and “workable coal bed” are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the
division foreseeably be commercially worked and will require protection if wells are drilled through it;

(5) “Commission” means the Oil and Gas Conservation Commission provided for in section four, article nine of this chapter;

(6) “Commissioner” means the Oil and Gas Conservation Commissioner provided for in section four, article nine of this chapter;

(7) “Correlative rights” means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) “Deep well” means any well other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the “Onondaga Group”;  

(9) “Division” means the state Department of Environmental Protection provided for in chapter twenty-two of this code;

(10) “Director” means the Secretary of the Department of Environmental Protection as established in article one, chapter twenty-two of this code or other person to whom the secretary delegates authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code;

(11) “Drilling unit” means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;
(13) “Gas operator” means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for that person or for that person and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein is considered a “gas operator” to the extent of seven-eights of the gas in that portion of the pool underlying the tract owned by such person, and a “royalty owner” to the extent of one-eighth of the gas;

(14) “Just and equitable share of production” means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person’s acreage bears to the total acreage in the drilling unit;

(15) “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(16) “Owner” when used with reference to any coal seam, includes any person or persons who own, lease or operate the coal seam;

(17) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(18) “Plat” means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) “Pool” means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous
sandstone or limestone). It is characterized by a single natural-pressure system so that production of gas from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formation, so that it is effectively separated from any other pools which may be present in the same district or in the same geologic structure;

(20) “Royalty owner” means any owner of gas in place, or gas rights, to the extent that such owner is not a gas operator as defined in subdivision (13) of this section;

(21) “Shallow well” means any gas well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the “Onondaga Group”: Provided, That in no event may the “Onondaga Group” formation or any formation below the “Onondaga Group” be produced, perforated or stimulated in any manner;

(22) “Tracts comprising a drilling unit” means that all separately owned tracts or portions thereof which are included within the boundary of a drilling unit;

(23) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with the extraction, injection or placement. The term “well” does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(24) “Well operator” means any person who proposes to or does locate, drill, operate or abandon any well.
ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.

1 (a) As used in this article:

2 (1) “Commission” means the Oil and Gas Conservation
3 Commission and “commissioner” means the Oil and Gas
4 Conservation Commissioner as provided for in section four
5 of this article;

6 (2) “Director” means the Secretary of the Department of
7 Environmental Protection and “chief” means the Chief of the
8 Office of Oil and Gas;

9 (3) “Person” means any natural person, corporation,
10 partnership, receiver, trustee, executor, administrator,
11 guardian, fiduciary or other representative of any kind, and
12 includes any government or any political subdivision or any
13 agency thereof;

14 (4) “Operator” means any owner of the right to develop,
15 operate and produce oil and gas from a pool and to appropriate
16 the oil and gas produced therefrom, either for that person or for
17 that person and others; in the event that there is no oil and gas
18 lease in existence with respect to the tract in question, the owner
19 of the oil and gas rights therein is the “operator” to the extent of
20 seven-eighths of the oil and gas in that portion of the pool
21 underlying the tract owned by such owner, and as “royalty
22 owner” as to one-eighth interest in such oil and gas; and in the
23 event the oil is owned separately from the gas, the owner of the
24 substance being produced or sought to be produced from the
25 pool is the “operator” as to that pool;

26 (5) “Royalty owner” means any owner of oil and gas in
27 place, or oil and gas rights, to the extent that the owner is not
28 an operator as defined in subdivision (4) of this section;

29 (6) “Independent producer” means a producer of crude oil
or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on July 1, 1997;

(7) “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) “Pool” means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be present in the same district or on the same geologic structure;

(10) “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(11) “Shallow well” means any well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the “Onondaga Group”: Provided, That in no event may the “Onondaga Group” formation or any formation below the “Onondaga Group” be produced, perforated or stimulated in any manner;

(12) “Deep well” means any well, other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the “Onondaga Group;”
(13) “Drilling unit” means the acreage on which one well may be drilled;

(14) “Waste” means and includes:

(A) Physical waste, as that term is generally understood in the oil and gas industry;

(B) The locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or

(C) The drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, That this exclusion does not address ownership of the gas;

(15) “Correlative rights” means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and

(16) “Just and equitable share of production” means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying the person’s tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word “and” and the word “or” are interchangeable, as, for example, “oil and gas” means oil or gas or both.
DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2012

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>2521.</td>
<td>53</td>
<td>4139.</td>
<td>106</td>
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<td>70</td>
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<td>76</td>
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<td>105</td>
<td>4415.</td>
<td>206</td>
</tr>
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<td>4220.</td>
<td>107</td>
<td>4422.</td>
<td>39</td>
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<td>4236.</td>
<td>165</td>
<td>4424.</td>
<td>114</td>
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<td>140</td>
<td>4238.</td>
<td>69</td>
<td>4433.</td>
<td>60</td>
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<td>139</td>
<td>4239.</td>
<td>147</td>
<td>4438.</td>
<td>87</td>
</tr>
<tr>
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<td>72</td>
<td>4251.</td>
<td>198</td>
<td>4451.</td>
<td>67</td>
</tr>
<tr>
<td>4007.</td>
<td>195</td>
<td>4256.</td>
<td>96</td>
<td>4481.</td>
<td>85</td>
</tr>
<tr>
<td>4012.</td>
<td>19</td>
<td>4257.</td>
<td>68</td>
<td>4486.</td>
<td>95</td>
</tr>
<tr>
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<td>117</td>
<td>4260.</td>
<td>94</td>
<td>4493.</td>
<td>200</td>
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<td>73</td>
<td>4263.</td>
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<td>134</td>
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<td>121</td>
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<td>4567.</td>
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<td>164</td>
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<td>4315.</td>
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<td>4601.</td>
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<td>184</td>
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<td>4322.</td>
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<td>4634.</td>
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<td>122</td>
<td>4330.</td>
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<td>4648.</td>
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<td>4332.</td>
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<td>81</td>
<td>4338.</td>
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<td>4351.</td>
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<td>4396.</td>
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DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2012

SENATE BILLS

<table>
<thead>
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<th>Bill No.</th>
<th>Chapter</th>
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<th>Chapter</th>
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<td>173</td>
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<td>192</td>
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<td>138</td>
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<td>124</td>
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<td>126</td>
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<td>188</td>
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<th>Bill No.</th>
<th>Chapter</th>
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<td>83</td>
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<td>152</td>
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<td>113</td>
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<td>93</td>
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<td>26</td>
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<td>185</td>
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<td>128</td>
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<td>179</td>
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<td>112</td>
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<td>56</td>
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<td>47</td>
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<td>171</td>
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<td>143</td>
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<td>127</td>
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<td>187</td>
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<td>145</td>
</tr>
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<td>575.</td>
<td>32</td>
</tr>
</tbody>
</table>
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2012

SENATE BILLS
Page Two

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>579.</td>
<td>180</td>
</tr>
<tr>
<td>588.</td>
<td>203</td>
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<tr>
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<td>45</td>
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<td>22</td>
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<td>115</td>
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<td>116</td>
</tr>
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<th>Chapter</th>
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<tbody>
<tr>
<td>611.</td>
<td>66</td>
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<td>615.</td>
<td>30</td>
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<td>618.</td>
<td>129</td>
</tr>
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<td>619.</td>
<td>109</td>
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<td>621.</td>
<td>97</td>
</tr>
<tr>
<td>628.</td>
<td>71</td>
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<td>646.</td>
<td>58</td>
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<th>Bill No.</th>
<th>Chapter</th>
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<td>659.</td>
<td>154</td>
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<td>197</td>
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DISPOSITION OF BILLS

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2012

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. ...</td>
<td>185</td>
<td>28. ...</td>
<td>4063</td>
<td>55. ...</td>
<td>4330</td>
</tr>
<tr>
<td>2. ...</td>
<td>564</td>
<td>29. ...</td>
<td>4398</td>
<td>56. ...</td>
<td>512</td>
</tr>
<tr>
<td>3. ...</td>
<td>563</td>
<td>30. ...</td>
<td>615</td>
<td>57. ...</td>
<td>4119</td>
</tr>
<tr>
<td>4. ...</td>
<td>500</td>
<td>31. ...</td>
<td>4351</td>
<td>58. ...</td>
<td>646</td>
</tr>
<tr>
<td>5. ...</td>
<td>4376</td>
<td>32. ...</td>
<td>575</td>
<td>59. ...</td>
<td>436</td>
</tr>
<tr>
<td>6. ...</td>
<td>4652</td>
<td>33. ...</td>
<td>385</td>
<td>60. ...</td>
<td>4433</td>
</tr>
<tr>
<td>7. ...</td>
<td>4656</td>
<td>34. ...</td>
<td>566</td>
<td>61. ...</td>
<td>4072</td>
</tr>
<tr>
<td>8. ...</td>
<td>4657</td>
<td>35. ...</td>
<td>156</td>
<td>62. ...</td>
<td>4299</td>
</tr>
<tr>
<td>9. ...</td>
<td>4658</td>
<td>36. ...</td>
<td>4522</td>
<td>63. ...</td>
<td>371</td>
</tr>
<tr>
<td>10. ...</td>
<td>160</td>
<td>37. ...</td>
<td>4291</td>
<td>64. ...</td>
<td>4125</td>
</tr>
<tr>
<td>11. ...</td>
<td>650</td>
<td>38. ...</td>
<td>100</td>
<td>65. ...</td>
<td>4070</td>
</tr>
<tr>
<td>12. ...</td>
<td>673</td>
<td>39. ...</td>
<td>4422</td>
<td>66. ...</td>
<td>611</td>
</tr>
<tr>
<td>13. ...</td>
<td>677</td>
<td>40. ...</td>
<td>606</td>
<td>67. ...</td>
<td>4451</td>
</tr>
<tr>
<td>14. ...</td>
<td>678</td>
<td>41. ...</td>
<td>411</td>
<td>68. ...</td>
<td>4257</td>
</tr>
<tr>
<td>15. ...</td>
<td>536</td>
<td>42. ...</td>
<td>212</td>
<td>69. ...</td>
<td>4238</td>
</tr>
<tr>
<td>16. ...</td>
<td>224</td>
<td>43. ...</td>
<td>166</td>
<td>70. ...</td>
<td>4403</td>
</tr>
<tr>
<td>17. ...</td>
<td>337</td>
<td>44. ...</td>
<td>165</td>
<td>71. ...</td>
<td>628</td>
</tr>
<tr>
<td>18. ...</td>
<td>4274</td>
<td>45. ...</td>
<td>596</td>
<td>72. ...</td>
<td>4006</td>
</tr>
<tr>
<td>19. ...</td>
<td>4012</td>
<td>46. ...</td>
<td>331</td>
<td>73. ...</td>
<td>4028</td>
</tr>
<tr>
<td>20. ...</td>
<td>110</td>
<td>47. ...</td>
<td>517</td>
<td>74. ...</td>
<td>496</td>
</tr>
<tr>
<td>21. ...</td>
<td>4263</td>
<td>48. ...</td>
<td>369</td>
<td>75. ...</td>
<td>75</td>
</tr>
<tr>
<td>22. ...</td>
<td>597</td>
<td>49. ...</td>
<td>4605</td>
<td>76. ...</td>
<td>3128</td>
</tr>
<tr>
<td>23. ...</td>
<td>676</td>
<td>50. ...</td>
<td>51</td>
<td>77. ...</td>
<td>149</td>
</tr>
<tr>
<td>24. ...</td>
<td>4521</td>
<td>51. ...</td>
<td>4130</td>
<td>78. ...</td>
<td>353</td>
</tr>
<tr>
<td>25. ...</td>
<td>4523</td>
<td>52. ...</td>
<td>4648</td>
<td>79. ...</td>
<td>4107</td>
</tr>
<tr>
<td>26. ...</td>
<td>484</td>
<td>53. ...</td>
<td>2521</td>
<td>80. ...</td>
<td>202</td>
</tr>
<tr>
<td>27. ...</td>
<td>161</td>
<td>54. ...</td>
<td>4307</td>
<td>81. ...</td>
<td>4118</td>
</tr>
</tbody>
</table>
The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2012
Page Two

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>82.</td>
<td>4320</td>
<td>108.</td>
<td>434</td>
<td>134.</td>
<td>4504</td>
</tr>
<tr>
<td>83.</td>
<td>437</td>
<td>109.</td>
<td>619</td>
<td>135.</td>
<td>435</td>
</tr>
<tr>
<td>84.</td>
<td>109</td>
<td>110.</td>
<td>3174</td>
<td>136.</td>
<td>360</td>
</tr>
<tr>
<td>85.</td>
<td>4481</td>
<td>111.</td>
<td>4314</td>
<td>137.</td>
<td>191</td>
</tr>
<tr>
<td>86.</td>
<td>4327</td>
<td>112.</td>
<td>507</td>
<td>138.</td>
<td>418</td>
</tr>
<tr>
<td>87.</td>
<td>4438</td>
<td>113.</td>
<td>471</td>
<td>139.</td>
<td>4002</td>
</tr>
<tr>
<td>88.</td>
<td>4126</td>
<td>114.</td>
<td>4424</td>
<td>140.</td>
<td>4001</td>
</tr>
<tr>
<td>89.</td>
<td>498</td>
<td>115.</td>
<td>603</td>
<td>141.</td>
<td>4037</td>
</tr>
<tr>
<td>90.</td>
<td>4053</td>
<td>116.</td>
<td>605</td>
<td>142.</td>
<td>214</td>
</tr>
<tr>
<td>91.</td>
<td>4322</td>
<td>117.</td>
<td>4015</td>
<td>143.</td>
<td>535</td>
</tr>
<tr>
<td>92.</td>
<td>4328</td>
<td>118.</td>
<td>4046</td>
<td>144.</td>
<td>4077</td>
</tr>
<tr>
<td>93.</td>
<td>478</td>
<td>119.</td>
<td>336</td>
<td>145.</td>
<td>572</td>
</tr>
<tr>
<td>94.</td>
<td>4260</td>
<td>120.</td>
<td>551</td>
<td>146.</td>
<td>379</td>
</tr>
<tr>
<td>95.</td>
<td>4486</td>
<td>121.</td>
<td>4271</td>
<td>147.</td>
<td>4239</td>
</tr>
<tr>
<td>96.</td>
<td>4256</td>
<td>122.</td>
<td>4103</td>
<td>148.</td>
<td>4097</td>
</tr>
<tr>
<td>97.</td>
<td>621</td>
<td>123.</td>
<td>4338</td>
<td>149.</td>
<td>424</td>
</tr>
<tr>
<td>98.</td>
<td>3177</td>
<td>124.</td>
<td>428</td>
<td>150.</td>
<td>36</td>
</tr>
<tr>
<td>99.</td>
<td>4634</td>
<td>125.</td>
<td>30</td>
<td>151.</td>
<td>76</td>
</tr>
<tr>
<td>100.</td>
<td>4142</td>
<td>126.</td>
<td>429</td>
<td>152.</td>
<td>469</td>
</tr>
<tr>
<td>101.</td>
<td>253</td>
<td>127.</td>
<td>544</td>
<td>153.</td>
<td>365</td>
</tr>
<tr>
<td>102.</td>
<td>245</td>
<td>128.</td>
<td>493</td>
<td>154.</td>
<td>659</td>
</tr>
<tr>
<td>103.</td>
<td>321</td>
<td>129.</td>
<td>618</td>
<td>155.</td>
<td>387</td>
</tr>
<tr>
<td>104.</td>
<td>287</td>
<td>130.</td>
<td>4315</td>
<td>156.</td>
<td>4530</td>
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<tr>
<td>105.</td>
<td>4206</td>
<td>131.</td>
<td>4279</td>
<td>157.</td>
<td>4345</td>
</tr>
<tr>
<td>106.</td>
<td>4139</td>
<td>132.</td>
<td>343</td>
<td>158.</td>
<td>118</td>
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<td>4220</td>
<td>133.</td>
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<td>159.</td>
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</table>

House Bills = 4 Digits
Senate Bills = 2,3 Digits
### DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

**Regular Session, 2012**

*Page Three*

<table>
<thead>
<tr>
<th>House Bills = 4 Digits</th>
<th>Senate Bills = 2,3 Digits</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chapter Bill No.</strong></td>
<td><strong>Chapter Bill No.</strong></td>
</tr>
<tr>
<td>160. . . . . 4332</td>
<td>176. . . . . 373</td>
</tr>
<tr>
<td>161. . . . . 215</td>
<td>177. . . . . 4626</td>
</tr>
<tr>
<td>162. . . . . 205</td>
<td>178. . . . . 4281</td>
</tr>
<tr>
<td>163. . . . . 204</td>
<td>179. . . . . 497</td>
</tr>
<tr>
<td>164. . . . 4583</td>
<td>180. . . . . 579</td>
</tr>
<tr>
<td>165. . . . 4236</td>
<td>181. . . . . 4396</td>
</tr>
<tr>
<td>166. . . . 4101</td>
<td>182. . . . . 4086</td>
</tr>
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<td>167. . . . 4122</td>
<td>183. . . . . 4088</td>
</tr>
<tr>
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<td>184. . . . . 4087</td>
</tr>
<tr>
<td>169. . . . 186</td>
<td>185. . . . . 487</td>
</tr>
<tr>
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<td>186. . . . . 153</td>
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</tr>
<tr>
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<td>188. . . . . 430</td>
</tr>
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<td>173. . . . 382</td>
<td>189. . . . . 209</td>
</tr>
<tr>
<td>174. . . . 2740</td>
<td>190. . . . . 410</td>
</tr>
<tr>
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<td>191. . . . . 210</td>
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DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2012

HOUSE BILLS

<table>
<thead>
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<th>Bill No.</th>
<th>Chapter</th>
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<td>101.</td>
<td>. . . . . . 2</td>
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First Extraordinary Session, 2012

**SENATE BILLS**

<table>
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<tr>
<th>Bill No.</th>
<th>Chapter</th>
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<tbody>
<tr>
<td>1002.</td>
<td>. . . . 1</td>
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DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

**First Extraordinary Session, 2012**

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<th>Chapter</th>
<th>Bill No.</th>
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</thead>
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<tr>
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<tr>
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<td>101</td>
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House Bill = 3 Digits | Senate Bills = 4 Digits
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Fourth Extraordinary Session, 2011

HOUSE BILLS

<table>
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<th>Chapter</th>
<th>Bill No.</th>
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<td>401.</td>
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### DISPOSITION OF BILLS ENACTED

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**Fourth Extraordinary Session, 2011**

**HOUSE BILLS**

House Bills = 3 Digits

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Bill No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. . . . . 401</td>
</tr>
</tbody>
</table>
## INDEX

### REGULAR SESSION 2012
January 11, 2012 - March 16, 2012

<table>
<thead>
<tr>
<th>ADMINISTRATION:</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Fund</td>
<td>3</td>
</tr>
<tr>
<td>Creating</td>
<td>2</td>
</tr>
<tr>
<td>Chief Technology Officer</td>
<td>5</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>3</td>
</tr>
<tr>
<td>Employee Suggestion Award Program</td>
<td>1</td>
</tr>
<tr>
<td>Maximum cash award</td>
<td>1</td>
</tr>
<tr>
<td>Increasing</td>
<td>1</td>
</tr>
<tr>
<td>Fleet Management Office Fund</td>
<td>3</td>
</tr>
<tr>
<td>Creating</td>
<td>2</td>
</tr>
<tr>
<td>Information Services and Communication Division</td>
<td>11</td>
</tr>
<tr>
<td>Billing statements</td>
<td>4</td>
</tr>
<tr>
<td>Annual</td>
<td></td>
</tr>
<tr>
<td>Allowing</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ALCOHOLIC LIQUOR:</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional baseball stadiums</td>
<td>17</td>
</tr>
<tr>
<td>Wine sales</td>
<td></td>
</tr>
<tr>
<td>Permitting</td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPROPRIATIONS:</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget Bill</td>
<td>45</td>
</tr>
<tr>
<td>Index to, by accounts</td>
<td>50</td>
</tr>
<tr>
<td>Supplemental</td>
<td></td>
</tr>
<tr>
<td>Administration, Department of</td>
<td></td>
</tr>
<tr>
<td>Office of the Secretary</td>
<td>32</td>
</tr>
<tr>
<td>Agriculture, Department of</td>
<td>292</td>
</tr>
<tr>
<td>Children’s Health Insurance Agency</td>
<td>28</td>
</tr>
<tr>
<td>Coal Heritage Highway Authority</td>
<td>31</td>
</tr>
<tr>
<td>Consolidated Medical Services Fund</td>
<td>298</td>
</tr>
<tr>
<td>Corrections, Division of</td>
<td></td>
</tr>
<tr>
<td>Correctional Units</td>
<td>286, 300</td>
</tr>
<tr>
<td>Council for Community and Technical College</td>
<td></td>
</tr>
<tr>
<td>Education Control Account</td>
<td>302</td>
</tr>
</tbody>
</table>
APPROPRIATIONS - (Continued):

<table>
<thead>
<tr>
<th>Division/Program</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Culture and History, Division of.</td>
<td>14</td>
</tr>
<tr>
<td>Education, State Department of.</td>
<td>14</td>
</tr>
<tr>
<td>Environmental Protection, Division of.</td>
<td>6, 14</td>
</tr>
<tr>
<td>Mountaintop Removal Fund.</td>
<td>8</td>
</tr>
<tr>
<td>Stream Restoration Fund.</td>
<td>8</td>
</tr>
<tr>
<td>Finance, Division of.</td>
<td>14</td>
</tr>
<tr>
<td>Forestry, Division of.</td>
<td>14</td>
</tr>
<tr>
<td>Health, Division of</td>
<td>14</td>
</tr>
<tr>
<td>Central Office.</td>
<td>6, 14</td>
</tr>
<tr>
<td>West Virginia Safe Drinking Water Treatment.</td>
<td>6</td>
</tr>
<tr>
<td>Higher Education Policy Commission</td>
<td>14</td>
</tr>
<tr>
<td>Administration.</td>
<td>14</td>
</tr>
<tr>
<td>Highways, Division of</td>
<td>9</td>
</tr>
<tr>
<td>Human Services, Division of</td>
<td>6, 11, 13, 14</td>
</tr>
<tr>
<td>Separate State Two-Parent Program Fund.</td>
<td>8</td>
</tr>
<tr>
<td>Temporary Assistance for Needy Families.</td>
<td>7</td>
</tr>
<tr>
<td>Licensed Practical Nurses, WV State Board of Examiners for.</td>
<td>8</td>
</tr>
<tr>
<td>Public Defender Services.</td>
<td>14</td>
</tr>
<tr>
<td>Public Service Commission</td>
<td>14</td>
</tr>
<tr>
<td>Consumer Advocate.</td>
<td>8</td>
</tr>
<tr>
<td>Purchasing, Division of</td>
<td>14</td>
</tr>
<tr>
<td>Purchasing Improvement Fund.</td>
<td>8</td>
</tr>
<tr>
<td>Natural Resources, Division of.</td>
<td>14</td>
</tr>
<tr>
<td>Racing Commission</td>
<td>14</td>
</tr>
<tr>
<td>General Administration.</td>
<td>8</td>
</tr>
<tr>
<td>State Police, West Virginia</td>
<td>14</td>
</tr>
<tr>
<td>State Police Academy Post Exchange.</td>
<td>8</td>
</tr>
<tr>
<td>Veterans’ Assistance, Department of.</td>
<td>14</td>
</tr>
</tbody>
</table>

ARMED FORCES:

Current and former members                                 | Page(s) |
Licensure and registration of.                              | 141      | 1185

AUDITOR’S OFFICE:

Land Department                                             | Page(s) |
Credit, debit or charge card                                | 15       | 304
Permitting payments by.                                     | 15       |

BANKS AND BANKING:

Commissioner of Banking                                     | Page(s) |
Powers and duties.                                          | 17       | 307
Expanding.                                                 | 18       |
Financial Institutions, Division of Banking.                | Page(s) |
Banking, Division or Department of Banking                  | 16       | 305
Renaming.                                                  | 16       |
INDEX 1831

BARBERS AND COSMETOLOGISTS, BOARD OF:
Barbers
  Continuing education requirements
    Exempting. .................................. 149 1241
Hair styling
  License
    Creating. .................................. 148 1234

BOARDS AND COMMISSIONS:
Public Health, Bureau for
  Commissioner
    Certain boards
      Removing membership. .................... 19 320

BRAXTON COUNTY:
Braxton County Recreational Development Authority
  Membership
    Modifying. .............................. 204 1701

BROADBAND DEPLOYMENT COUNCIL:
Membership
  Increasing and modifying. ................... 20 330

BUY AMERICAN TASK FORCE:
Purchasing Division
  Buy American Task Force
    Creating. .................................. 21 335

CARBON MONOXIDE DETECTORS:
Public facilities, certain
  Requiring installation. ..................... 22 339

CHESAPEAKE BAY WATERSHED:
Grant funding application date
  Extending. ............................... 23 343

CHILD SUPPORT:
Division of Corrections
  Released from custody
    Inmates
      Child support payments
        Restructuring. .......................... 24 347
  Independent contractors
    Employment and income
      Reporting requirements. ................ 25 349
1832

INDEX

CHILD WELFARE:
Abuse and neglect
  Definitions ........................................ 26 355
  Reporting
    Mandatory ........................................ 27 412
Court appointed special advocate program
  Defining ........................................... 26 353

CLAIMS:
Claims against the State ............................... 29 417

CLEAN WATER ACT:
National Pollution Discharge Elimination System
  Compliance
    Clarifying ....................................... 30 440

COAL MINE SAFETY:
Mine safety anonymous tip hotline
  Maintaining ....................................... 31 448
Miners’ Health, Safety and Training, Office of
  Director
    Powers and duties ................................ 31 449
    Substance abuse
      Screening ....................................... 31 461
Miner Training, Education and Certification, Board of
  Powers and duties .................................. 31 492

CODE AMENDED:

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<th>Sec.</th>
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* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

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<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
<th>Page</th>
</tr>
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## CODE REPEALED:

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<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
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<tbody>
<tr>
<td>11</td>
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<td>Emergency Medical Services Retirement System</td>
<td>32</td>
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<td></td>
<td>Prior disability (§16-5V-22)</td>
<td>32</td>
<td></td>
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<td>COMPUTER CRIME:</td>
<td>Computer</td>
<td>33</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Definition</td>
<td>33</td>
<td></td>
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<tr>
<td></td>
<td>Expanding</td>
<td>33</td>
<td></td>
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<td>CORRECTIONS:</td>
<td>Commissioner of Corrections</td>
<td>34</td>
<td></td>
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<td>Nonprofit or charitable entities</td>
<td>34</td>
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<td>Placement of persons under custody</td>
<td>34</td>
<td></td>
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<td></td>
<td>Authorizing</td>
<td>34</td>
<td></td>
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<td>Correctional Industries Account</td>
<td>35</td>
<td></td>
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<tr>
<td></td>
<td>Continuing</td>
<td>35</td>
<td></td>
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<td>COURTS AND THEIR OFFICERS:</td>
<td>Circuit clerks</td>
<td>38</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fees collected by</td>
<td>38</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>County law libraries</td>
<td>37</td>
<td></td>
<td></td>
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<td>Establishment of</td>
<td>37</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family court judges</td>
<td>36</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contempt powers</td>
<td>36</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Providing additional</td>
<td>36</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CRANE OPERATOR CERTIFICATION:</td>
<td>Crane Operator Certification Act</td>
<td>39</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Definitions</td>
<td>39</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Modifying</td>
<td>39</td>
<td></td>
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<td>CRIMES AND THEIR PUNISHMENT:</td>
<td>Child erotica</td>
<td>45</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Penalties</td>
<td>45</td>
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<td>Prohibiting</td>
<td>45</td>
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<td>Computer crimes</td>
<td>40</td>
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<td>Forfeiture of property</td>
<td>40</td>
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<td>Disposition of property</td>
<td>40</td>
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<td>Procedures</td>
<td>40</td>
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<td>Communication and public utility services</td>
<td>40</td>
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<tr>
<td></td>
<td>Disruption of</td>
<td>42</td>
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<td></td>
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<tr>
<td></td>
<td>Penalty</td>
<td>42</td>
<td></td>
<td></td>
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<tr>
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<td>Correctional officers</td>
<td>43</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Disarming or attempting to disarm</td>
<td>43</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Felony</td>
<td>43</td>
<td></td>
<td></td>
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<tr>
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<td>Incarcerated persons</td>
<td>44</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>Sexual acts between</td>
<td>44</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prohibiting</td>
<td>44</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CRIMES AND THEIR PUNISHMENT - (Continued):
Crime victims
   Prosecutorial notification........................................ 46 553
Electronic cash register automated sales
   Possession of
      Penalty....................................................... 41 541
Minors
   Sexually explicit conduct
      Filming of.................................................. 40 526

CRIMINAL PROCEDURE:
Community Corrections Act
   Community beautification and reclamation programs
      Creating....................................................... 47 560

DENTAL HYGIENISTS:
Activities performed by
   Expanding...................................................... 144 1215

DEPUTY SHERIFF RETIREMENT:
Retirants
   Divorce, annulment or remarriage
      Retirement benefit options
         Modifying.................................................. 48 563

DOMESTIC RELATIONS:
Child or children
   Sale or purchase of
      Criminal penalties
         Increasing.................................................. 51 579
Marriage licenses
   Premarital education options
      Providing for.............................................. 49 567
      Requirements............................................... 49 569
Spousal support
   Genetic testing
      Results of
         Terminating or modifying............................... 50 576

DOMESTIC VIOLENCE:
Civil proceedings
   Practice and procedure
      Court rule
         Governed by............................................... 54 593
Domestic violence court pilot project
   Implementing.................................................. 52 585
Domestic violence orders
   Serving by certified mail
      Eliminating requirement................................. 53 591
INDEX 1849

**DRIVER'S LICENSES:**
Veterans
   Honorably discharged
   Designating. ............................... 55 595

**DUI ADMINISTRATIVE PROCEDURES:**
Administrative Hearing, Office of
   Procedures
   Updating provisions. ...................... 56 601

**EDUCATION:**
At-risk youth
   Community-based pilot demonstration program
   Developing ................................... 66 681
Boards of Education, County
   Another county
   Bus operators
   Services of
     Authorizing. .............................. 62 650
   Collaborative innovation zone
     Allowing flexibility. ........................ 63 660
   Meetings
     Eliminating certain requirements. ........ 61 648
Diplomas
   Veterans
     Criteria for awarding
     Modifying ................................. 60 646
General Educational Development (GED)
   Examination costs. .......................... 58 616
   Legislative findings. ........................ 58 616
   Testing materials and procedures........... 58 616
Higher education systems
   Public schools
     Facilitating collaboration .................. 59 619
School’s crisis response plan
   Notices to parents or guardians
     Modifying requirements ................... 64 675
Teachers
   Division of Rehabilitation
     County salary supplement equivalent pay rate
     Changing the basis for ..................... 65 679
ELECTIONS:
Absentee ballots
  Address Confidentiality Program
    Participants
      Providing. ............................... 69 691
Ballot commissioners
  Appointment of. ............................. 67 687
Fund-raising
  State party headquarters
    Allowing. ................................ 71 701
Voter registration
  Military members
    Permitting late registration. ............... 68 689
Write-in candidates
  Filing deadlines
    Changing. ................................. 70 698

ELEVATOR SAFETY:
Definitions. .................................. 72 706
Elevator mechanics
  License
    Issuance and renewal. ....................... 72 713
    Requirements. ............................. 72 708

EMERGENCY MEDICAL SERVICES:
Emergency Medical Services Act
  Commissioner of the Bureau of Public Health
    Powers and duties. ........................ 73 716

ENVIRONMENTAL PROTECTION:
Greenhouse gases
  Inventory emissions
    Requirements. ............................. 74 724

EQUINE RESCUE FACILITIES ACT:
Definitions. ................................. 75 725
Inspections. .................................. 75 726
Legislative rules. ............................. 75 726
Licensing. ................................. 75 726
Penalties ................................. 75 727

EXPUNGEMENT OF RECORDS:
Civil petition
  Persons found not guilty or charges dismissed
    Permitting. .............................. 76 728
<table>
<thead>
<tr>
<th>INDEX</th>
<th>1851</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FIREARMS:</strong></td>
<td></td>
</tr>
<tr>
<td>Deadly weapons</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>78</td>
</tr>
<tr>
<td>License to carry</td>
<td>78</td>
</tr>
<tr>
<td>How obtained</td>
<td>78</td>
</tr>
<tr>
<td>Forfeited or abandoned</td>
<td></td>
</tr>
<tr>
<td>Disposition of</td>
<td>77</td>
</tr>
<tr>
<td>Possession of</td>
<td></td>
</tr>
<tr>
<td>Persons prohibited from</td>
<td>78</td>
</tr>
<tr>
<td><strong>FIREFIGHTERS:</strong></td>
<td></td>
</tr>
<tr>
<td>State Fire Commission</td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>79</td>
</tr>
<tr>
<td>State Fire Marshal</td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>79</td>
</tr>
<tr>
<td>Volunteer firefighters</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td>79</td>
</tr>
<tr>
<td><strong>FORESTRY:</strong></td>
<td></td>
</tr>
<tr>
<td>Division of Forestry</td>
<td></td>
</tr>
<tr>
<td>Director</td>
<td></td>
</tr>
<tr>
<td>Duties</td>
<td>80</td>
</tr>
<tr>
<td>Stewardship contracts</td>
<td></td>
</tr>
<tr>
<td>Permitting</td>
<td>80</td>
</tr>
<tr>
<td><strong>FUNERAL SERVICES:</strong></td>
<td></td>
</tr>
<tr>
<td>Deceased persons</td>
<td></td>
</tr>
<tr>
<td>Disposition of</td>
<td>81</td>
</tr>
<tr>
<td>Funeral Service Examiners, Board of</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>81</td>
</tr>
<tr>
<td>Postmortem examinations</td>
<td></td>
</tr>
<tr>
<td>Permits required</td>
<td>81</td>
</tr>
<tr>
<td><strong>HARRISON COUNTY:</strong></td>
<td></td>
</tr>
<tr>
<td>Harrison County Commission</td>
<td></td>
</tr>
<tr>
<td>Special district tax</td>
<td></td>
</tr>
<tr>
<td>Authorizing levy</td>
<td>205</td>
</tr>
<tr>
<td><strong>HAZARDOUS WASTE:</strong></td>
<td></td>
</tr>
<tr>
<td>Hazardous Waste Management Act</td>
<td></td>
</tr>
<tr>
<td>Settlement of violations</td>
<td></td>
</tr>
<tr>
<td>Consent agreements</td>
<td>82</td>
</tr>
<tr>
<td><strong>HEALTH:</strong></td>
<td></td>
</tr>
<tr>
<td>Advanced practice registered nurses</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>145</td>
</tr>
<tr>
<td>Licensure</td>
<td></td>
</tr>
<tr>
<td>Eligibility</td>
<td>145</td>
</tr>
</tbody>
</table>
# HEALTH - (Continued):

Prescriptive authority
- Eligibility: 145 1219
- Expanding: 143 1195
- Termination of: 145 1220
- Notification: 145 1220

Chronic Pain Clinic Licensing Act
- Advertisement disclosure: 83 804
- Definitions: 83 789
- License
  - Application: 83 790
  - Fees and inspection: 83 790
  - Inspection: 83 798
  - Operational requirements: 83 791
  - Exemptions: 83 797
  - Purpose: 83 789
  - Rules: 83 802
  - Short title: 83 789
  - Suspension, revocation: 83 798
  - Violations: 83 800
  - Penalties: 83 800

Comprehensive Behavioral Health Commission: 85 842

Medication
- Administration of
  - Unlicensed personnel
  - Permitting: 84 836

Methamphetamine Laboratory Eradication Act
- Definitions: 83 822
- Reporting requirements: 83 832
- Restricted products: 83 831

Newborns
- Pulse oximetry testing
  - Requiring: 86 846

Registered professional nurses
- Alcohol or chemical dependency
  - Voluntary agreements: 146 1222

State Public Health System
- Secretary
  - Proposal of rules: 83 777

# HEALTH INSURANCE:

Provider Sponsored Networks
- Anti-trust exemption: 87 854
- Contracts: 87 852
- Definitions: 87 851
- Legislative purpose: 87 850
- Medicaid beneficiaries
  - Options: 87 853
  - Rule-making authority: 87 854
INDEX 1853

HIGHER EDUCATION:
Council for Community and Technical College Education
  Legislative rules
    Authorizing ................................ 88 861
Higher Education Policy Commission
  Legislative rules
    Authorizing. ............................ 88 858

HUMAN SERVICES:
Adult protective services
  Abuse, neglect or exploitation
    Reports
      Confidentiality. ........................ 89 863
      Mandatory. ............................. 89 862

HUMAN TRAFFICKING:
Governor’s Committee on Crime, Delinquency and Correction
  Investigating human trafficking offenses
    Training
      Standards governing. ..................... 90 867
    Penalties .................................. 90 873

HUNTING AND FISHING:
Hunting and trapping license
  Apprentice
    Creating. ................................. 93 886
  Night hunting
    Artificial light
    Coyote and fox
      Adding ................................... 91 876
  Tagging of game
    Bobcats
      Removing requirement ..................... 92 884

INSURANCE:
Autism spectrum disorders
  Insurance coverage
    Requiring. ............................... 94 891
Captive insurance
  Authority. ................................. 96 915
  Licensing. ................................. 96 915
Liability insurance coverage
  Disclosure. ............................... 95 912

LAND USE PLANNING:
Subdivisions or land development plans
  Access to state roads
    Division of Highways
      Requiring letter from .................... 97 920
# LEASES:
Vendor’s and trust deed liens
- Sale of real property
  - Preexisting tenancy. .......................... 98

## LEGISLATIVE AUDITS:
Alcohol Beverage Control Commission
- Fiscal audits
  - Increasing ..................................... 99
Children’s Trust Fund
- Fiscal audits
  - Increasing ................................. 99

## LEGISLATIVE RULES:
Promulgation of
- Alcohol Beverage Control Commission ............. 104
- Accountancy, Board of. .......................... 106
- Administration, Department of. .................. 100
- Agriculture Department of. ........................ 106
- Athletic Commission. ............................. 104
- Auditor ........................................... 106
- Banking, Division of. ............................. 104
- Barbers and Cosmetologists. ........................ 106
- Consolidated Public Retirement Board. ............ 100
- Corrections, Division of. ........................ 103
- Courthouse Facilities Improvement Authority. .... 106
- Deaf and Hard of Hearing, Commission for the. .... 102
- Dental Examiners, Board of. ........................ 106
- Development Office ................................ 107
- Environmental Protection, Department of. ......... 101
- Foresters, Board of Registration for. ............... 107
- Forestry, Division of. ............................. 107
- Governor’s Committee on Crime, Delinquency and Correction. .................................. 103
- Health and Human Resources, Department of. ...... 102
- Highways Commissioner. ............................ 105
- Human Rights Commission. .......................... 106
- Human Services, Division of. ........................ 102
- Insurance Commissioner. ........................... 104
- Labor, Division of. ................................ 107
- Massage Therapy Licensure Board. .................. 106
- Medicine, Board of. ................................ 106
- Miners’ Health, Safety and Training. ............... 107
- Motor Vehicles, Division of. ........................ 105
- Natural Resources, Division of. ...................... 107
- Nursing Home Administrators Licensing Board. .... 106
**LEGISLATIVE RULES - (Continued):**

<table>
<thead>
<tr>
<th>Board/Commission</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational Therapy, Board of</td>
<td>106</td>
</tr>
<tr>
<td>Osteopathy, Board of</td>
<td>106</td>
</tr>
<tr>
<td>Personnel, Division of</td>
<td>100</td>
</tr>
<tr>
<td>Pharmacy, Board of</td>
<td>106</td>
</tr>
<tr>
<td>Professional Surveyors, Board of</td>
<td>106</td>
</tr>
<tr>
<td>Public Health, Bureau of</td>
<td>102</td>
</tr>
<tr>
<td>Racing Commission</td>
<td>104</td>
</tr>
<tr>
<td>Secretary of State</td>
<td>106</td>
</tr>
<tr>
<td>State Police</td>
<td>103</td>
</tr>
<tr>
<td>State Tax Department</td>
<td>104</td>
</tr>
<tr>
<td>West Virginia Health Insurance Plan</td>
<td>104</td>
</tr>
</tbody>
</table>

**LICENSING BOARDS:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional</td>
<td></td>
</tr>
<tr>
<td>Annual seminars</td>
<td>139</td>
</tr>
<tr>
<td>Requirements</td>
<td>1180</td>
</tr>
<tr>
<td>Legislative rules</td>
<td></td>
</tr>
<tr>
<td>Authorizing</td>
<td>140</td>
</tr>
</tbody>
</table>

**LIENS:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suggestion and suggestee execution</td>
<td>108</td>
</tr>
<tr>
<td>Judgment debtor</td>
<td></td>
</tr>
<tr>
<td>Must contain certain information</td>
<td>996</td>
</tr>
</tbody>
</table>

**LIMITED LIABILITY COMPANIES:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of State</td>
<td></td>
</tr>
<tr>
<td>Fees and reports</td>
<td>109</td>
</tr>
<tr>
<td>Required filing</td>
<td>999</td>
</tr>
</tbody>
</table>

**LIQUOR SAMPLING:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquor</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>110</td>
</tr>
<tr>
<td>Sampling</td>
<td>110</td>
</tr>
<tr>
<td>Nonintoxicating beer</td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>110</td>
</tr>
<tr>
<td>Sampling</td>
<td>110</td>
</tr>
</tbody>
</table>

**MAGISTRATES:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of</td>
<td>111</td>
</tr>
</tbody>
</table>

**MENTAL HEALTH:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mentally ill persons</td>
<td></td>
</tr>
<tr>
<td>Involuntary hospitalization</td>
<td></td>
</tr>
<tr>
<td>Hearing requirements</td>
<td>112</td>
</tr>
<tr>
<td>Release</td>
<td>112</td>
</tr>
<tr>
<td>Voluntary hospitalization</td>
<td></td>
</tr>
<tr>
<td>Authority to receive</td>
<td>112</td>
</tr>
<tr>
<td>Right to release</td>
<td>112</td>
</tr>
</tbody>
</table>
MENTAL HYGIENE:
Commissioners
  Rate of compensation ........................................... 113  1038
Modified Mental Hygiene Procedures Pilot Project
  Termination date
    Extending .................................................. 114  1042

MILITARY PERSONNEL:
Military, law-enforcement or homeland-defense training
  Landowners
    Liability
      Limiting .................................................. 116  1053
Morale, welfare and recreation facilities
  Authorizing .................................................. 115  1051

MINORITY AFFAIRS:
Herbert Henderson Office of Minority Affairs
  Created ...................................................... 117  1059
  Duties and responsibilities ................................ 117  1059
  Fund
    Created ...................................................... 117  1061
    Purpose ..................................................... 117  1061

MISCELLANEOUS:
Obsolete code provisions
  Removing ..................................................... 118  1062

MORTGAGE LENDERS AND BROKERS:
Mortgage loans
  Primary and subordinate
    Prohibitions ............................................... 120  1078
Residential mortgage lenders and brokers
  License required
    Exemptions ............................................... 119  1075
    Reporting requirements ................................... 121  1085

MOTOR CARRIERS:
Motor carrier industry
  Consolidation of regulations
    Legislative findings ...................................... 122  1088

MOTOR VEHICLES:
Abandoned
  Maximum value amount
    Raising .................................................... 123  1091
Cell phone use
  Hands-free .................................................. 193  1525
  Prohibited .................................................. 193  1525
INDEX 1857

MOTOR VEHICLES - (Continued):
Diesel-Powered Motor Vehicle Idling Act
   Exceptions .................................. 127 1115
Governmental vehicles
   Registration plates
      Undercover activities..................... 124 1096
Law-enforcement vehicles
   Sun-screening restrictions
      Exempting .................................. 128 1117
Registrations
   Classifications ................................ 126 1108
   Fees ...................................... 126 1110
Texting
   Driving a motor vehicle
      Cell phone use
         Hands-free.................................. 193 1525
         Prohibited................................. 193 1525
         Texting prohibited...................... 193 1524
Wrecked or damaged
   Salvage certificates ................................ 125 1102
   Fee ...................................... 125 1102

MUNICIPALITIES:
Class IV towns or villages
   Form of government............................. 130 1140
   Changing...................................... 130 1141
Elected officers
   Staggering or changing terms of
      Authorizing.................................. 131 1143
Fire departments
   Volunteer and part-volunteer
      Municipal pensions and protection fund
         Including .................................. 132 1146
Governmental units
   Payments to
      Check or credit cards
         Authorizing.................................. 129 1123

NATIONAL GUARD:
Asset forfeiture and asset sharing
   Authorizing participation..................... 133 1149

NURSES:
Advanced practice registered nurses
   Definitions .................................. 145 1217
   Licensure
      Eligibility .................................. 145 1219
INDEX

NURSES - (Continued):
  Prescriptive authority
    Eligibility ........................................ 145 1219
    Expanding ........................................ 143 1195
    Termination of .................................. 145 1220
    Notification ..................................... 145 1220
    Nurse health programs ............................ 146 1224
    Definitions .................................... 146 1223
  Registered professional nurses
    Alcohol or chemical dependency
      Voluntary agreements ............................ 146 1222

NURSING HOMES:
  Nonprofit community health care organization
    Development and operation of
      Authorizing ..................................... 134 1150
  Residents of
    Personal funds
      Conveyance of .................................. 135 1152

PERSONAL PROPERTY:
  Tax Procedure and Administration Act
    Personal property
      Abandonment and removal ........................ 136 1154

PERSONAL SAFETY ORDERS:
  Appeals ............................................. 137 1172
  Definitions ....................................... 137 1159
  Fees and costs ..................................... 137 1174
  Hearings .......................................... 137 1169
  Modifications and rescission ..................... 137 1172
  Petition seeking relief ........................... 137 1163
  Proceedings
    Confidentiality .................................. 137 1161
    Records
      Sealing of ..................................... 137 1176
    Respondent
      Notice to ....................................... 137 1167
      Opportunity to be heard ........................ 137 1167
    Rules and forms .................................. 137 1175
    Service by law enforcement ...................... 137 1175
    Temporary ....................................... 137 1165
    Who may file ..................................... 137 1163
INDEX

PORNOPGRAPHIC MATERIAL:
Child erotica
   Penalties. ........................................ 45 552
   Prohibiting. .................................. 45 552
Minors
   Sexually explicit conduct
      Filming of. .................................... 40 526

PRINCE RAILROAD STATION AUTHORITY:
Railroad station building
   Acquiring and maintaining
      Authorizing. .................................. 206 1713

PROBATION AND PAROLE:
Parole Board
   Educational qualifications
      Expanding. .................................... 138 1179

PROFESSIONS AND OCCUPATIONS:
Advanced practice registered nurses
   Definitions. ..................................... 145 1217
   Licensure
      Eligibility. .................................... 145 1219
   Prescriptive authority
      Eligibility. .................................... 145 1219
      Expanding. .................................... 143 1195
      Termination of. .............................. 145 1220
      Notification. .................................. 145 1220
Armed forces
   Current and former members
      Licensure and registration of. .............. 141 1185
Barbers and Cosmetologists, Board of
   Barbers
      Continuing education requirements
         Exempting. .................................. 149 1241
   Hair styling
      License
         Creating. .................................... 148 1234
Dental hygienists
   Activities performed by
      Expanding. .................................... 144 1215
   Nurse health programs. ........................ 146 1224
   Definitions. .................................... 146 1223
Osteopathic physicians and surgeons
   Definitions. .................................... 147 1228
   License required. .............................. 147 1227
Professional licensing boards
PROFESSIONS AND OCCUPATIONS - (Continued):

Annual seminars
  Requirements ........................................ 139  1180
Legislative rules
  Authorizing ........................................... 140  1183

Registered professional nurses
  Alcohol or chemical dependency
    Voluntary agreements .................................. 146  1222

Sunset process
  Revising ............................................... 142  1190

PUBLIC CONSTRUCTION CONTRACTS:

Green Buildings Act
  Definitions ............................................. 151  1249
  Effective date ......................................... 151  1248
  Energy standards
    Minimum ................................................. 151  1249
    Findings and purpose .................................. 151  1248
    Short title ............................................ 151  1248

Subcontractors
  Disclosure
    Requiring ............................................... 150  1243

PUBLIC EMPLOYEES:

Other Post-Employment Benefits
  Select Committee on .................................... 152  1255

Public Employees Insurance Agency
  Composition of .......................................... 152  1251
  Director
    Compensation and duties ................................ 152  1251

Public Employees Insurance Fund
  Foundation allowance ..................................... 152  1258

PUBLIC EMPLOYEES INSURANCE:

Public Employees Insurance Agency
  Composition of .......................................... 152  1251
  Director
    Compensation and duties ................................ 152  1251
  Finance Board
    Continuing .............................................. 153  1261
    Members
      Qualifications ......................................... 153  1261
      Terms and removal of .................................. 153  1261

Public Employees Insurance Fund
  Foundation allowance ..................................... 152  1258
## INDEX

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PUBLIC SAFETY:</strong></td>
<td></td>
</tr>
<tr>
<td>Homeland Security and Emergency Management, Division of Disaster prevention.</td>
<td>155</td>
</tr>
<tr>
<td>Floodplain managers Training.</td>
<td>155</td>
</tr>
<tr>
<td>Protective Services, Division of Director and officers Duties and powers.</td>
<td>154</td>
</tr>
<tr>
<td><strong>PUBLIC SERVICE COMMISSION:</strong></td>
<td></td>
</tr>
<tr>
<td>Certain electric utilities Consumer rate relief bonds Authorizing.</td>
<td>156</td>
</tr>
<tr>
<td><strong>RAILROAD SCRAP METAL:</strong></td>
<td></td>
</tr>
<tr>
<td>Unauthorized sale of Prohibiting.</td>
<td>157</td>
</tr>
<tr>
<td><strong>REAL PROPERTY:</strong></td>
<td></td>
</tr>
<tr>
<td>Residential leases Tenant death Terminating.</td>
<td>158</td>
</tr>
<tr>
<td><strong>RETIREMENT:</strong></td>
<td></td>
</tr>
<tr>
<td>Consolidated Retirement Board Retiree association dues Payment of Voluntary deductions.</td>
<td>159</td>
</tr>
<tr>
<td>Public Employees Retirement System Emergency Medical Services Retirement System Transfer of service credit.</td>
<td>160</td>
</tr>
<tr>
<td><strong>ROADS AND TRANSPORTATION:</strong></td>
<td></td>
</tr>
<tr>
<td>Construction zones Posting requirements.</td>
<td>162</td>
</tr>
<tr>
<td>Traffic violations Penalties.</td>
<td>162</td>
</tr>
<tr>
<td>Roads and highways Removal of certain vehicles.</td>
<td>163</td>
</tr>
<tr>
<td>Unobligated moneys State Road Fund Reverting.</td>
<td>161</td>
</tr>
</tbody>
</table>
### SCHOOL PERSONNEL:

- **Professional personnel**
  - Evaluations
    - Excluding certain: 165 1333
  - Suicide prevention training
    - Requiring: 168 1377
  - Salary equity among counties
    - Supplement payments
      - Providing: 169 1380
  - School service personnel certification
    - Establishing criteria: 170 1396
  - Teacher education
    - Alternative programs: 167 1366
  - Teacher-in-residence programs
    - Authorizing: 166 1350
  - Termination, resignation and transfer
    - Deadlines
      - Changing: 164 1316

### SCRAP METAL:

- **Division of Labor**
  - Scrap metal dealers
    - Recycling activity
      - Requiring notice: 171 1402
  - Railroad scrap metal
    - Unauthorized sale of
      - Prohibiting: 157 1299

### SENIOR SERVICES:

- **In-Home Care registry**
  - Establishing: 172 1409

### SEX OFFENDER REGISTRATION ACT:

- **Registration**
  - 173 1412
- **Registry information**
  - Address verification: 173 1422
  - Changes: 173 1418
  - Distribution and disclosure: 173 1419

### SOLAR ENERGY SYSTEMS:

- **Solar energy covenants**
  - Unenforceable: 174 1424

### STATE PARKS:

- **Beech Fork State Park**
  - Capital improvements
    - Issuance of bonds
      - Authorizing: 175 1425
STATE PARKS - (Continued):
Cacapon Resort State Park
   Capital improvements
      Issuance of bonds
         Authorizing. ........................... 175  

STATE POLICE:
Principal supervisors
   Number
      Increasing................................ 177  
   Supplemental pay............................ 178  
Training academy
   Advanced training
      Fee. ................................. 176  
   Entry-level training
      Provided without a fee................. 176  

SURFACE MINE BOARD:
Attorney fees and costs
   Awarding of ................................ 179  

SURFACE MINING:
Surface Coal Mining and Reclamation Act
   Bonds
      Amount and method of bonding......... 180  
   Special reclamation tax
      Increasing............................ 180  

SURVIVOR BENEFITS:
WV Fire, EMS and Law-Enforcement Officer
   Survivor Benefit Act
      Death benefit for survivors........ 181  
      Effective date........................ 181  
      Legislative intent.................... 181  

TAXATION:
Coalbed methane gas severance tax
   Distribution of .......................... 185  
Consumers sales and service tax
   Exemptions
      Right to assert
         Limiting............................ 187  
Corporation Net Income Tax Act
   Updating terms.......................... 191  
Gambling winnings
   Backup withholdings
     要求ing............................... 190  
TAXATION - (Continued):
Manufacturing facilities
  Qualified capital additions
    Application and certification. ............... 182 1457
    Definitions. .................................. 182 1454
Personal Income Tax Act
  Updating terms. ................................ 189 1513
Sales and use tax administration
  Definitions. .................................. 188 1477
Streamlined Sales and Use Tax Agreement
  Defining. .................................... 188 1503
Tax credits
  Construction trades
    Apprenticeship training
      Increasing. ................................ 186 1470
Telecommunications Tax Act
  Repealing. ................................... 183 1459
Timber
  Severing
    Severance and business privilege tax
      Discontinuance
        Continuing. .......................... 184 1461
Water’s-edge corporations
  Taxation of. .................................. 192 1519

TEXTING:
Driving a motor vehicle
  Cell phone use
    Hands-free. .................................. 193 1525
    Prohibited. .................................. 193 1525
    Texting prohibited. .......................... 193 1524

UNEMPLOYMENT COMPENSATION:
Employer Coverage and Responsibility
  Joint and separate accounts. ................. 194 1529
Military personnel
  Spouses. ...................................... 195 1534
Recipients
  Fraudulent statements and actions
    Obtaining benefits
      Monetary penalties......................... 196 1541
Workforce West Virginia
  Certain governmental entities
    Providing data. ............................ 197 1543

UNIFORM COMMERCIAL CODE:
Amending. ...................................... 198 1547
Definitions
  Adding. ....................................... 198 1547
<table>
<thead>
<tr>
<th>INDEX</th>
<th>1865</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UNIFORM POWER OF ATTORNEY ACT:</strong></td>
<td></td>
</tr>
<tr>
<td>Applicability</td>
<td>199</td>
</tr>
<tr>
<td>Conservator or guardian</td>
<td></td>
</tr>
<tr>
<td>Nomination of</td>
<td>199</td>
</tr>
<tr>
<td>Definitions</td>
<td>199</td>
</tr>
<tr>
<td>Power of attorney</td>
<td></td>
</tr>
<tr>
<td>Durable</td>
<td>199</td>
</tr>
<tr>
<td>Execution of</td>
<td>199</td>
</tr>
<tr>
<td>Meaning and effect</td>
<td>199</td>
</tr>
<tr>
<td>Termination</td>
<td>199</td>
</tr>
<tr>
<td>Validity</td>
<td>199</td>
</tr>
<tr>
<td>When effective</td>
<td>199</td>
</tr>
<tr>
<td>Short title</td>
<td></td>
</tr>
</tbody>
</table>

| **VETERANS:** | | |
| Diplomas | | |
| Criteria for awarding | | |
| Modifying | 60 | 646 |
| Driver’s licenses | | |
| Honorably discharged | | |
| Designating | 55 | 595 |
| Memorial days | | |
| Special | | |
| Establishing | 200 | 1675 |

| **VOLUNTEER FOR NONPROFIT YOUTH ORGANIZATION ACT:** | | |
| Medical service professionals | | |
| Definitions | | |
| Expanding | 201 | 1677 |

| **WATER QUALITY:** | | |
| Narrative water quality standards | | |
| Establishing policy | 202 | 1681 |

| **WHOLESALE DRUG DISTRIBUTORS:** | | |
| Wholesale Drug Distribution Licensing Act | | |
| Definitions | 203 | 1686 |
| Disciplinary actions | 203 | 1698 |
| Licensing requirements | 203 | 1681 |
| Purpose | 203 | 1686 |
### APPROPRIATIONS:
Supplemental
Governor’s Office – Civil Contingent Fund ........... 1 1720

#### CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>13CC*</td>
<td>1</td>
<td>HB101.</td>
<td>1722</td>
</tr>
<tr>
<td>11</td>
<td>13CC*</td>
<td>2</td>
<td>HB101.</td>
<td>1723</td>
</tr>
<tr>
<td>11</td>
<td>13CC*</td>
<td>3</td>
<td>HB101.</td>
<td>1724</td>
</tr>
<tr>
<td>11</td>
<td>13CC*</td>
<td>3a</td>
<td>HB101.</td>
<td>1726</td>
</tr>
<tr>
<td>11</td>
<td>13CC*</td>
<td>4</td>
<td>HB101.</td>
<td>1726</td>
</tr>
<tr>
<td>11</td>
<td>13CC*</td>
<td>5</td>
<td>HB101.</td>
<td>1727</td>
</tr>
<tr>
<td>24</td>
<td>2</td>
<td>1j</td>
<td>HB101.</td>
<td>1728</td>
</tr>
</tbody>
</table>

#### TAXATION:

Energy Intensive Industrial Consumers Revitalization Tax Credit
Credits
- Amounts. ........................................2 1724
- Expiration....................................2 1727
- Limitations..................................2 1724
- Legislative findings and purpose..........2 1723

Public Service Commission
- Powers and duties. ............................2 1728
- Short title. ..................................2 1722

### FOURTH EXTRAORDINARY SESSION, 2011
December 11, 2011 – December 14, 2011

#### CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5B</td>
<td>2Bb</td>
<td>4a*</td>
<td>HB401.</td>
<td>1739</td>
</tr>
<tr>
<td>22</td>
<td>6</td>
<td>1</td>
<td>HB401.</td>
<td>1741</td>
</tr>
<tr>
<td>22</td>
<td>6</td>
<td>2</td>
<td>HB401.</td>
<td>1745</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## CODE AMENDED - (Continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>6</td>
<td>2a</td>
<td>HB401</td>
<td>1749</td>
</tr>
<tr>
<td>22</td>
<td>6A*</td>
<td>1</td>
<td>HB401</td>
<td>1750</td>
</tr>
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<td>22</td>
<td>6A*</td>
<td>2</td>
<td>HB401</td>
<td>1751</td>
</tr>
<tr>
<td>22</td>
<td>6A*</td>
<td>3</td>
<td>HB401</td>
<td>1752</td>
</tr>
<tr>
<td>22</td>
<td>6A*</td>
<td>3a</td>
<td>HB401</td>
<td>1753</td>
</tr>
<tr>
<td>22</td>
<td>6A*</td>
<td>4</td>
<td>HB401</td>
<td>1754</td>
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<td>6A*</td>
<td>5</td>
<td>HB401</td>
<td>1756</td>
</tr>
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<td>6</td>
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<td>1760</td>
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<td>22</td>
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<td>7</td>
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<td>1761</td>
</tr>
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<td>8</td>
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<td>9</td>
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<td>1774</td>
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<td>10</td>
<td>HB401</td>
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<td>6A*</td>
<td>16</td>
<td>HB401</td>
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<td>HB401</td>
<td>1793</td>
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<td>6A*</td>
<td>18</td>
<td>HB401</td>
<td>1793</td>
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<td>19</td>
<td>HB401</td>
<td>1795</td>
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<td>22</td>
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<td>1804</td>
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<td>5</td>
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<td>HB401</td>
<td>1808</td>
</tr>
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<td>6B*</td>
<td>7</td>
<td>HB401</td>
<td>1808</td>
</tr>
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<td>22</td>
<td>6B*</td>
<td>8</td>
<td>HB401</td>
<td>1810</td>
</tr>
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<td>8</td>
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<td>HB401</td>
<td>1810</td>
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<td>9</td>
<td>2</td>
<td>HB401</td>
<td>1814</td>
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</table>

## CODE REPEALED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Bill</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>22C</td>
<td>7</td>
<td>1</td>
<td>HB401</td>
<td>1735</td>
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<tr>
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<td>2</td>
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<td>1735</td>
</tr>
<tr>
<td>22C</td>
<td>7</td>
<td>3</td>
<td>HB401</td>
<td>1735</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
MARCELLUS SHALE:
Natural Gas Horizontal Wells Control Act
Establishing. ........................................... 1 1735