

**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**

**WEST VIRGINIA HOUSE OF DELEGATES**  
**HONORABLE RICHARD THOMPSON**  
**SPEAKER OF THE HOUSE**

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COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF  
**GREGORY M. GRAY**  
CLERK OF THE HOUSE



**OFFICE OF THE CLERK OF THE HOUSE**  
212 MAIN UNIT  
STATE CAPITOL  
CHARLESTON, WEST VIRGINIA

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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

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

\* Appointed January 28, 2012, to fill the vacancy created by the resignation of the Honorable Timothy Ennis.

\*\* Appointed January 16, 2012, to fill the vacancy created by the resignation of the Honorable Steven Kominar.

## MEMBERS OF THE HOUSE OF DELEGATES, Continued

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

(D) Democrats . . . . . 65  
 (R) Republicans . . . . . 35

TOTAL . . . . . 100

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

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

(D) Democrats	28
(R) Republicans	6
<b>TOTAL</b>	<b>34</b>



HOUSE OF DELEGATES COMMITTEES

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2012**

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**STANDING**

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**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, Iaquina, 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.

## HOUSE OF DELEGATES COMMITTEES

### 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.

## HOUSE OF DELEGATES COMMITTEES

### **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

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**JOINT COMMITTEES**

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**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**

White (*Cochair*), T. Campbell, Anderson, Andes, Ashley, Cann, Canterbury, Carmichael, Cowles, Evans, Guthrie, Iaquina, Mahan, Marshall, C. Miller, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Skaff, Stowers, Varner, Walters and Williams.

**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,

## HOUSE OF DELEGATES COMMITTEES

Householder, Howell, Jones, Kump, Martin, Nelson, R. Phillips, Romine, Snuffer, Staggers, Storch, Swartzmiller and Talbott.

### **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**

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**STANDING**

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**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.



## 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.

## SENATE COMMITTEES

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### JOINT COMMITTEES

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#### EDUCATION

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

#### ENROLLED BILLS

Tucker (*Cochair*), Jenkins (*Vice Cochair*), McCabe, Wells and Barnes.

#### FINANCE

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

#### GOVERNMENT AND FINANCE

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

#### GOVERNMENT OPERATIONS

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

#### GOVERNMENT ORGANIZATION

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

## 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.

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## 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.**

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

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

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

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

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

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

22 (6) “Freestanding liquor retail outlet” means a retail outlet  
23 that sells only liquor, beer, nonintoxicating beer and other  
24 alcohol-related products, as defined pursuant to section four,  
25 article three-a, chapter sixty of this code.

26           (7) “Nonintoxicating beer” means all cereal malt  
27 beverages or products of the brewing industry commonly  
28 referred to as beer, lager beer, ale and all other mixtures and  
29 preparations produced by the brewing industry, including  
30 malt coolers and nonintoxicating craft beers containing at  
31 least one half of one percent alcohol by volume, but not more  
32 than nine and six-tenths of alcohol by weight, or twelve  
33 percent by volume, whichever is greater, all of which are  
34 hereby declared to be nonintoxicating and the word “liquor”  
35 as used in chapter sixty of this code shall not be construed to  
36 include or embrace nonintoxicating beer nor any of the  
37 beverages, products, mixtures or preparations included within  
38 this definition.

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

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

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

54           (11) “Original container” means the container used by the  
55 brewer at the place of manufacturing, bottling or otherwise  
56 producing nonintoxicating beer for sale at wholesale.

57 (12) "Person" means and includes an individual, firm,  
58 partnership, limited partnership, association or corporation.

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

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

67 (15) "Tax Commissioner" means the Tax Commissioner  
68 of the State of West Virginia or the commissioner's designee.

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

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

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

10 (1) The day of the event;

11 (2) The location of the event;

12 (3) The times for the event;



13           (4) The names of up to three specific brands, types and  
14       flavors, if any, of the nonintoxicating beer to be sampled; and

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

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

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

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

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

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

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

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

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

36           (f) All servers at the nonintoxicating beer sampling event  
37       shall verify the age of the customer sampling nonintoxicating

38 beer by requiring and reviewing proper forms of  
39 identification. Servers at the nonintoxicating beer event may  
40 not serve any person who is:

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

42 (2) Intoxicated.

43 (g) A nonintoxicating beer sampling event shall:

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

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

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

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

60 (j) To implement the provisions of this section, the  
61 commissioner may promulgate emergency rules pursuant to  
62 the provisions of section fifteen, article three, chapter twenty-  
63 nine-a of this code or propose rules for legislative approval  
64 in accordance with the provisions of article three, chapter  
65 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.**

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

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

9           (1) The day of the event;

10          (2) the location of the event;

11          (3) The times for the event; and

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

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

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

21           (1) One separate and individual sample serving per  
22 customer verified to be twenty-one years of age or older; and

23 (2) One ounce in total volume.

24 (e) Servers at the liquor sampling event shall:

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

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

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

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

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

34 (2) Intoxicated.

35 (g) A liquor sampling event shall:

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

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

40 (h) Any liquor bottle used for sampling must be from the  
41 inventory of the licensee, and clearly and conspicuously  
42 labeled "SAMPLE, NOT FOR RESALE". If the seal is  
43 broken on any liquor bottle or if any liquor bottle is opened,  
44 then that liquor bottle must be removed from the licensed  
45 premises immediately following the event.

46 (i) Violations of this section are subject to the civil and  
47 criminal penalties set forth in sections twenty-four, twenty-  
48 five-a, twenty-six and twenty-seven of this article;

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

#### **§60-3A-4. Definitions.**

1 (a) “Active retail license” means a current license for a  
2 retail outlet that has been open and in continuous operation  
3 for a period of not less than twelve months prior to July 1,  
4 2010, or July 1 every ten years thereafter.

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

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

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

19 (e) “Board” means the Retail Liquor Licensing Board  
20 created by this article.

21 (f) “Class A retail license” means a retail license  
22 permitting the retail sale of liquor at a freestanding liquor  
23 retail outlet.

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

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

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

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

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

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

48 (m) “Liquor sampling event” means an event approved by  
49 the commissioner, for a Class A retail licensee to hold a

50 liquor sampling authorized pursuant to section three-a of this  
51 article.

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

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

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

62 (q) "Retail license" means a license issued under the  
63 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  
66 may be lawfully sold by a retail licensee under the provisions  
67 of this article.

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

72 (u) "West Virginia product" means all liquor types and  
73 classes as approved by the commissioner and maintained on  
74 the ABCA retail liquor product list.

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**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.**

**§50-1-6. Vacancy in office of magistrate.**

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

7        At a general election in which a magistrate is elected for  
8        an unexpired term, the circuit judge, or the chief judge



9    thereof if there is more than one judge of the circuit court,  
10 shall cause a notice of such election to be published prior to  
11 such election as a Class II-0 legal advertisement in  
12 compliance with the provisions of article three, chapter fifty-  
13 nine of this code, and the publication area for such  
14 publication shall be the county involved. If the vacancy  
15 occurs before the primary election held to nominate  
16 candidates to be voted for at the general election, at which  
17 any such vacancy is to be filled, candidates to fill such  
18 vacancy shall be nominated at such primary election in  
19 accordance with the time requirements and the provisions and  
20 procedures prescribed in article five, chapter three of this  
21 code. Otherwise, they shall be nominated by the county  
22 executive committee in the manner provided in section  
23 nineteen, article five, chapter three of this code, as in the case  
24 of filling vacancies in nominations, and the names of the  
25 persons so nominated and certified to the clerk of the circuit  
26 court of such county shall be placed upon the ballot to be  
27 voted at such next general election.

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## 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.**

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

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

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

14      (1) By the parents of such person;

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

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

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

20      (5) If the subject person under eighteen years of age is an  
21      emancipated minor, the admission of that person as a  
22      voluntary patient shall be conditioned upon the consent of the  
23      patient.

24 (c) No person under eighteen years of age may be  
25 admitted under this section to any state hospital unless person  
26 has first been reviewed and evaluated by a local mental  
27 health facility and recommended for admission.

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

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

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

1 A voluntary patient who requests his or her release or  
2 whose release is requested in writing by his or her parents,  
3 parent, guardian, spouse or adult next of kin shall be released  
4 immediately except that:

5 (a) If the patient was admitted on his or her own  
6 application, and request for release is made by a person other  
7 than the patient, release shall be conditioned upon the  
8 agreement of the patient thereto;

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

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

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

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

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

1 (a) *Involuntary commitment.* -- Except as provided in  
2 section three of this article, no individual may be  
3 involuntarily committed to a mental health facility except by  
4 order entered of record at any time by the circuit court of the  
5 county in which the person resides or was found, or if the  
6 individual is hospitalized in a mental health facility located

7 in a county other than where he or she resides or was found,  
8 in the county of the mental health facility and then only after  
9 a full hearing on issues relating to the necessity of  
10 committing an individual to a mental health facility. If the  
11 individual objects to the hearing being held in the county  
12 where the mental health facility is located, the hearing shall  
13 be conducted in the county of the individual's residence.

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

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

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

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

34 (3) The written application, certificate, affidavit and any  
35 warrants issued pursuant thereto, including any related  
36 documents, filed with a circuit court, mental hygiene  
37 commissioner or designated magistrate for the involuntary  
38 hospitalization of an individual are not open to inspection by

39 any person other than the individual, unless authorized by the  
40 individual or his or her legal representative or by order of the  
41 circuit court. The records may not be published unless  
42 authorized by the individual or his or her legal representative.  
43 Disclosure of these records may, however, be made by the  
44 clerk, circuit court, mental hygiene commissioner or  
45 designated magistrate to provide notice to the Federal  
46 National Instant Criminal Background Check System  
47 established pursuant to section 103(d) of the Brady Handgun  
48 Violence Prevention Act, 18 U.S.C. §922, and the central  
49 state mental health registry, in accordance with article seven-  
50 a, chapter sixty-one of this code. Disclosure may also be  
51 made to the prosecuting attorney and reviewing court in an  
52 action brought by the individual pursuant to section five,  
53 article seven-a, chapter sixty-one of this code to regain  
54 firearm and ammunition rights.

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

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

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

67 (2) A certificate is not necessary when an affidavit is filed  
68 by the applicant showing facts and the individual has refused  
69 to submit to examination by a physician or a psychologist.

70           (e) *Notice requirements; eight days notice required.* --  
71 Upon receipt of an application, the mental hygiene  
72 commissioner or circuit court shall review the application and  
73 if it is determined that the facts alleged, if any, are sufficient  
74 to warrant involuntary hospitalization, forthwith fix a date for  
75 and have the clerk of the circuit court give notice of the  
76 hearing:

77           (1) To the individual;

78           (2) To the applicant or applicants;

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

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

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

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

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

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

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

95           (3) The right to have counsel appointed;



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

98           (5) The time and place of the hearing.

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

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

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

117           (2) If the designated physician or psychologist reports to  
118   the circuit court or mental hygiene commissioner that the  
119   individual has refused to submit to an examination, the circuit  
120   court or mental hygiene commissioner shall order him or her  
121   to submit to the examination. The circuit court or mental  
122   hygiene commissioner may direct that the individual be  
123   detained or taken into custody for the purpose of an  
124   immediate examination by the designated physician or  
125   psychologist. All such orders shall be directed to the sheriff  
126   of the county or other appropriate law-enforcement officer.  
127   After the examination has been completed, the individual

128 shall be released from custody unless proceedings are  
129 instituted pursuant to section three of this article.

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

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

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

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

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

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

154 (i) *Duties of counsel representing individual; payment of*  
155 *counsel representing indigent. -*

156           (1) Counsel representing an individual shall conduct a  
157 timely interview, make investigation and secure appropriate  
158 witnesses, be present at the hearing and protect the interests  
159 of the individual.

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

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

166           (j) *Conduct of hearing; receipt of evidence; no*  
167 *evidentiary privilege; record of hearing. --*

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

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

175           (3) The circuit court or mental hygiene commissioner is  
176 bound by the rules of evidence promulgated by the Supreme  
177 Court of Appeals except that statements made to physicians  
178 or psychologists by the individual may be admitted into  
179 evidence by the physician's or psychologist's testimony,  
180 notwithstanding failure to inform the individual that this  
181 statement may be used against him or her. A psychologist or  
182 physician testifying shall bring all records pertaining to the  
183 individual to the hearing. The medical evidence obtained  
184 pursuant to an examination under this section, or section two  
185 or three of this article, is not privileged information for  
186 purposes of a hearing pursuant to this section.

187           (4) All final commitment proceedings shall be reported or  
188 recorded, whether before the circuit court or mental hygiene  
189 commissioner, and a transcript made available to the  
190 individual, his or her counsel or the prosecuting attorney  
191 within thirty days if requested for the purpose of further  
192 proceedings. In any case where an indigent person intends to  
193 pursue further proceedings, the circuit court shall, by order  
194 entered of record, authorize and direct the court reporter to  
195 furnish a transcript of the hearings.

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

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

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

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

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

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

213           (2) The findings of fact shall be incorporated into the  
214 order entered by the circuit court and must be based upon  
215 clear, cogent and convincing proof.

216 (1) *Orders issued pursuant to final commitment hearing;*  
217 *entry of order; change in order of court; expiration of order.*  
218 --

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

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

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

241 (4) An order for an indeterminate period expires of its  
242 own terms at the expiration of two years from the date of the  
243 last order of commitment unless prior to the expiration, the  
244 Department of Health and Human Resources, upon findings  
245 based on an examination of the patient by a physician or a  
246 psychologist, extends the order for indeterminate  
247 hospitalization. If the patient or his or her counsel requests  
248 a hearing, a hearing shall be held by the mental hygiene

249 commissioner or by the circuit court of the county as  
250 provided in subsection (a) of this section.

251 (m) *Dismissal of proceedings.* -- If the circuit court or  
252 mental hygiene commissioner finds that the individual is not  
253 mentally ill or addicted, the proceedings shall be dismissed.  
254 If the circuit court or mental hygiene commissioner finds that  
255 the individual is mentally ill or addicted but is not, because of  
256 the illness or addiction, likely to cause serious harm to self or  
257 others if allowed to remain at liberty, the proceedings shall be  
258 dismissed.

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

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

269 (1) If the circuit court or mental hygiene commissioner is  
270 satisfied that hospitalization should be ordered but finds that  
271 the individual is not a resident of the county in which the  
272 hearing is held and the individual is not currently a resident  
273 of a mental health facility, a transcript of the evidence  
274 adduced at the final commitment hearing of the individual,  
275 certified by the clerk of the circuit court, shall forthwith be  
276 forwarded to the clerk of the circuit court of the county of  
277 which the individual is a resident. The clerk shall  
278 immediately present the transcript to the circuit court or  
279 mental hygiene commissioner of the county.

280           (2) If the circuit court or mental hygiene commissioner of  
281 the county of the residence of the individual is satisfied from  
282 the evidence contained in the transcript that the individual  
283 should be hospitalized as determined by the standard set forth  
284 above, the circuit court shall order the appropriate  
285 hospitalization as though the individual had been brought  
286 before the circuit court or its mental hygiene commissioner in  
287 the first instance.

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

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

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

309           (r) *Report to the Secretary of the Department of Health*  
310 *and Human Resources.* --

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

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

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

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

331 (2) The county commission shall pay out of the county  
332 treasury all other expenses incurred in the hearings conducted  
333 under the provisions of this article whether or not  
334 hospitalization is ordered, including any fee allowed by the  
335 circuit court by order entered of record for any physician,  
336 psychologist and witness called by the indigent individual.  
337 The copying and mailing costs associated with providing  
338 notice of the final commitment hearing and issuance of the  
339 final order shall be paid by the county where the involuntary  
340 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.**

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

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

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

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

17           (3) A verified certificate of mental health examination by  
18 a licensed psychologist or psychiatrist occurring within thirty

19 days prior to filing of the petition which supports that the  
20 petitioner is competent and not likely to act in a manner  
21 dangerous to public safety.

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

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

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

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

32 (3) The petitioner's reputation developed through  
33 character witness statements, testimony, or other character  
34 evidence.

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

45 (f) All proceedings for relief to regain firearm or  
46 ammunition rights shall be reported or recorded and  
47 maintained for review.

48           (g) The prosecuting attorney or one of his or her  
49 assistants shall represent the state in all proceedings for relief  
50 to regain firearm rights and provide the court the petitioner's  
51 criminal history records.

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

65           (i) The circuit clerk of each county shall provide the  
66 Superintendent of the West Virginia State Police, or his or  
67 her designee, and the Administrator of the West Virginia  
68 Supreme Court of Appeals, or his or her designee, with a  
69 certified copy of any order entered pursuant to the provisions  
70 of this section which removes a petitioner's prohibition to  
71 possess firearms. If the order restores the petitioner's ability  
72 to possess a firearm, petitioner's name shall be promptly  
73 removed from the central state mental health registry and the  
74 superintendent or administrator shall forthwith inform the  
75 Federal Bureau of Investigation, the United States Attorney  
76 General, or other federal entity operating the National Instant  
77 Criminal Background Check System of the court action.

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## CHAPTER 113

**(Com. Sub. for S. B. 471 - By Senators  
Palumbo, Laird, Tucker, Edgell,  
Wills, Unger, Yost, Klempa, and  
Kessler, Mr. President)**

[Passed March 7, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 20, 2012.]

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.**

- 1 (a) *Appointment of Mental Hygiene Commissioners.* --
- 2 The chief judge in each judicial circuit of this state shall
- 3 appoint a competent attorney and may, if necessary, appoint
- 4 additional attorneys to serve as Mental Hygiene

5 Commissioners to preside over involuntary hospitalization  
6 hearings. Mental Hygiene Commissioners shall be persons  
7 of good moral character and of standing in their profession  
8 and they shall, before assuming the duties of such  
9 commissioner, take the oath required of other special  
10 commissioners as provided in article one, chapter six of this  
11 code.

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

30 (b) *Duties of Mental Hygiene Commissioners.* --

31 (1) Mental Hygiene Commissioners may sign and issue  
32 summonses for the attendance, at any hearing held pursuant  
33 to section four, article five of this chapter, of the individual  
34 sought to be committed; may sign and issue subpoenas for  
35 witnesses, including subpoenas duces tecum; may place any  
36 witness under oath; may elicit testimony from applicants,  
37 respondents and witnesses regarding factual issues raised in  
38 the petition; and may make findings of fact on evidence and

39 may make conclusions of law, but such findings and  
40 conclusions shall not be binding on the circuit court. All  
41 Mental Hygiene Commissioners shall be reasonably  
42 compensated at a uniform rate determined by the Supreme  
43 Court of Appeals. Mental Hygiene Commissioners shall  
44 submit all requests for compensation to the administrative  
45 director of the courts for payment. Mental Hygiene  
46 Commissioners shall discharge their duties and hold their  
47 offices at the pleasure of the chief judge of the judicial circuit  
48 in which he or she is appointed and may be removed at any  
49 time by such chief judge. It shall be the duty of a Mental  
50 Hygiene Commissioner to conduct orderly inquiries into the  
51 mental health of the individual sought to be committed  
52 concerning the advisability of committing the individual to a  
53 mental health facility. The Mental Hygiene Commissioner  
54 shall safeguard, at all times, the rights and interests of the  
55 individual as well as the interests of the state. The Mental  
56 Hygiene Commissioner shall make a written report of his or  
57 her findings to the circuit court. In any proceedings before  
58 any court of record as set forth in this article, the court of  
59 record shall appoint an interpreter for any individual who is  
60 deaf or cannot speak or who speaks a foreign language and  
61 who may be subject to involuntary commitment to a mental  
62 health facility.

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

71 (c) *Duties of prosecuting attorney.* -- It shall be the duty  
72 of the prosecuting attorney or one of his or her assistants to  
73 represent the applicants in all final commitment proceedings

74 filed pursuant to the provisions of this article. The  
75 prosecuting attorney may appear in any proceeding held  
76 pursuant to the provisions of this article if he or she deems it  
77 to be in the public interest.

78 (d) *Duties of sheriff.* -- Upon written order of the circuit  
79 court, Mental Hygiene Commissioner or magistrate in the  
80 county where the individual formally accused of being  
81 mentally ill or addicted is a resident or is found, the sheriff of  
82 that county shall take said individual into custody and  
83 transport him or her to and from the place of hearing and the  
84 mental health facility. The sheriff shall also maintain custody  
85 and control of the accused individual during the period of  
86 time in which the individual is waiting for the involuntary  
87 commitment hearing to be convened and while such hearing  
88 is being conducted: *Provided*, That an individual who is a  
89 resident of a state other than West Virginia shall, upon a  
90 finding of probable cause, be transferred to his or her state of  
91 residence for treatment pursuant to subsection (p), section  
92 four of this article: *Provided, however*, That where an  
93 individual is a resident of West Virginia but not a resident of  
94 the county in which he or she is found and there is a finding  
95 of probable cause, the county in which the hearing is held  
96 may seek reimbursement from the county of residence for  
97 reasonable costs incurred by the county attendant to the  
98 mental hygiene proceeding. Notwithstanding any provision  
99 of this code to the contrary, sheriffs may enter into  
100 cooperative agreements with sheriffs of one or more other  
101 counties, with the concurrence of their respective circuit  
102 courts and county commissions, whereby transportation and  
103 security responsibilities for hearings held pursuant to the  
104 provisions of this article during noncourt hours or on  
105 nonjudicial days may be shared in order to facilitate prompt  
106 hearings and to effectuate transportation of persons found in  
107 need of treatment.

108           (e) *Duty of sheriff upon presentment to mental health*  
109 *care facility.* -- Where a person is brought to a mental health  
110 care facility for purposes of evaluation for commitment under  
111 this article, if he or she is violent or combative, the sheriff or  
112 his or her designee shall maintain custody of the person in the  
113 facility until the evaluation is completed or the county  
114 commission shall reimburse the mental health care facility at  
115 a reasonable rate for security services provided by the mental  
116 health care facility for the period of time the person is at the  
117 hospital prior to the determination of mental competence or  
118 incompetence.

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

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## CHAPTER 114

**(Com. Sub. for H. B. 4424 - By Delegates  
Morgan, Stephens, Butcher,  
Stagers and Border)**

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

AN ACT to amend and reenact §27-5-11 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.**

1 (a) The Supreme Court of Appeals shall, in consultation  
2 with the Secretary of the Department of Health and Human  
3 Resources and local mental health services consumers and  
4 providers, implement throughout the state modified mental  
5 hygiene procedures that are consistent with the requirements  
6 set forth in this section. The judicial circuits selected for  
7 implementing the modified procedures shall be circuits in  
8 which the Supreme Court of Appeals determines, after  
9 consultation with the Secretary of the Department of Health  
10 and Human Resources and local mental health consumers and  
11 service providers, that adequate resources will be available to  
12 implement the modified procedures. After July 1, 2012, the  
13 Supreme Court of Appeals and the Secretary of the  
14 Department of Health and Human Resources in consultation  
15 with local mental health consumers and providers may add  
16 programs for modified mental hygiene procedures in any  
17 judicial circuit that establishes a need for the same.

18           (b) The Secretary of the Department of Health and  
19 Human Resources, after consultation with the Supreme Court  
20 of Appeals and local mental health services consumers and  
21 service providers, shall prescribe appropriate forms to  
22 implement the modified procedures and shall annually  
23 prepare reports on the efficacy of the modified procedures  
24 and transmit the report to the Legislature on or before the first  
25 day of the 2013 and 2014 regular sessions of the Legislature.

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

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

47           (A) That an individual, on two or more occasions within  
48 a twenty-four month period prior to the filing of the petition,  
49 as a result of mental illness or addiction or both, has been  
50 hospitalized pursuant to the provisions of this chapter; or that  
51 the individual has been convicted of one or more crimes of

52 violence against the person within a twenty-four month  
53 period prior to the filing of the petition and the individual's  
54 failure to take prescribed medication or follow another  
55 prescribed regimen to treat a mental illness or addiction or  
56 both was a significant aggravating or contributing factor in  
57 the circumstances surrounding the crime;

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

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

72 (2) Upon the filing of a petition seeking a treatment  
73 compliance order and the petition's review by a circuit judge  
74 or mental hygiene commissioner, counsel shall be appointed  
75 for the individual if the individual does not already have  
76 counsel and a copy of the petition and all supporting evidence  
77 shall be furnished to the individual and their counsel. If the  
78 circuit judge or mental hygiene commissioner determines on  
79 the basis of the petition that it is necessary to protect the  
80 individual or to secure their examination, a detention order  
81 may be entered ordering that the individual be taken into  
82 custody and examined by a psychiatrist or licensed  
83 psychologist. A hearing on the allegations in the petition,  
84 which may be combined with a hearing on a probable cause  
85 petition conducted pursuant to the provisions of section two

86 of this article or a final commitment hearing conducted  
87 pursuant to the provisions of section four of this article, shall  
88 be held before a circuit judge or mental hygiene  
89 commissioner. If the individual is taken into custody and  
90 remains in custody as a result of a detention order, the  
91 hearing shall be held within forty-eight hours of the time that  
92 the individual is taken into custody.

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

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

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

108 (C) That the individual's previous hospitalizations due to  
109 mental illness or addiction or both occurred as a result of the  
110 individual's failure to take prescribed medication or follow a  
111 regimen or course of treatment as prescribed by a physician  
112 or psychiatrist to treat the individual's mental illness or  
113 addiction; or that the individual has been convicted for crimes  
114 of violence against any person and the individual's failure to  
115 take medication or follow a prescribed regimen or course of  
116 treatment of the individual's mental illness or addiction or  
117 both was a significant aggravating or contributing factor in  
118 the commission of the crime;

119           (D) That a psychiatrist or licensed psychologist who has  
120 personally examined the individual within the preceding  
121 twenty-four months has issued a written opinion that the  
122 individual, without the aid of the medication or other  
123 prescribed treatment, is likely to cause serious harm to  
124 himself or herself or to others;

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

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

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

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

143           (4) The order may require an individual to take  
144 medication and treatment as prescribed and if appropriate to  
145 attend scheduled medication and treatment-related  
146 appointments: *Provided*, That a treatment compliance order  
147 shall be subject to termination or modification by a circuit  
148 judge or mental hygiene commissioner if a petition is filed  
149 seeking termination or modification of the order and it is  
150 shown in a hearing on the petition that there has been a

151 material change in the circumstances that led to the entry of  
152 the original order that justifies the order's modification or  
153 termination: *Provided, however,* That a treatment compliance  
154 order may be extended by a circuit judge or mental hygiene  
155 commissioner for additional periods of time not to exceed six  
156 months, upon the filing of a petition seeking an extension and  
157 after a hearing on the petition or upon the agreement of the  
158 individual.

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

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

183 (B) At a hearing on any petition filed pursuant to the  
184 provisions of paragraph (A) of this subdivision, the circuit

185 judge or mental hygiene commissioner shall determine  
186 whether the individual has complied with the terms of the  
187 medication and treatment compliance order. If the individual  
188 has complied with the order, the petition shall be dismissed.  
189 If the evidence presented to the circuit judge or mental  
190 hygiene commissioner shows that the individual has  
191 complied with the terms of the existing order, but the  
192 individual's prescribed medication, dosage or course of  
193 treatment needs to be modified, then the newly modified  
194 medication and treatment prescribed by a psychiatrist who  
195 personally examined the individual may be properly  
196 incorporated into a modified order. If the order has not been  
197 complied with, the circuit judge or mental hygiene  
198 commissioner, after inquiring into the reasons for  
199 noncompliance and whether any aspects of the order should  
200 be modified, may continue the individual upon the terms of  
201 the original order and direct the individual to comply with the  
202 order or may modify the order in light of the evidence  
203 presented at the hearing. If the evidence shows that the  
204 individual at the time of the hearing is likely to cause serious  
205 harm to himself or herself, herself or others as a result of the  
206 individual's mental illness, the circuit judge or mental  
207 hygiene commissioner may convert the proceeding into a  
208 probable cause proceeding and enter a probable cause order  
209 directing the involuntary admission of the individual to a  
210 mental health facility for examination and treatment. Any  
211 procedures conducted pursuant to this subsection must  
212 comply with and satisfy all applicable due process and  
213 hearing requirements of sections two and three of this article.

214 (d) The modified procedures may authorize that upon the  
215 certification of a qualified mental health professional, as  
216 described in subsection (e) of this section, that there is  
217 probable cause to believe that an individual who has been  
218 hospitalized two or more times in the previous twenty-four  
219 months because of mental illness is likely to cause serious

220 harm to himself or herself, herself or to others as a result of  
221 the mental illness if not immediately restrained and that the  
222 best interests of the individual would be served by immediate  
223 hospitalization, a circuit judge, mental hygiene commissioner  
224 or designated magistrate may enter a temporary probable  
225 cause order directing the involuntary hospitalization of the  
226 individual at a mental health facility for immediate  
227 examination and treatment.

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

248 (f) No involuntary hospitalization pursuant to a temporary  
249 probable cause determination issued pursuant to the  
250 provisions of this section shall continue in effect for more  
251 than forty-eight hours without the filing of a petition for  
252 involuntary hospitalization and the occurrence of a probable  
253 cause hearing before a circuit judge, mental hygiene



254 commissioner or designated magistrate. If at any time the  
255 chief medical officer of the mental health facility to which the  
256 individual is admitted determines that the individual is not  
257 likely to cause serious harm as a result of mental illness or  
258 addiction or both, the chief medical officer shall discharge the  
259 individual and immediately forward a copy of the  
260 individual's discharge to the circuit judge, mental hygiene  
261 commissioner or designated magistrate.

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## 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.**

**§15-1H-2. Morale, welfare and recreation facilities; nonappropriated fund instrumentalities.**

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

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

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

11 (1) Contract for goods and services;

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

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

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

21 (d) A nonappropriated fund instrumentality established  
22 under this section is solely responsible for its operations. No  
23 debt of the nonappropriated fund instrumentality is a debt of  
24 the state. No action of the nonappropriated fund

25 instrumentality is an action of the state, nor does it obligate  
26 the state in any manner.

**§15-1H-4. Use of funds.**

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

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**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.**

1           The purpose of this article is to encourage owners of land  
2 to make available to the public land and water areas for  
3 military, law-enforcement or homeland-defense training or  
4 recreational or wildlife propagation purposes by limiting their  
5 liability for injury to persons entering thereon and for injury  
6 to the property of persons entering thereon and limiting their  
7 liability to persons who may be injured or otherwise damaged  
8 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.**

1           Unless otherwise agreed in writing, an owner who grants  
2 a lease, easement or license of land to the federal government  
3 or any agency thereof, or the state or any agency thereof, or  
4 any county or municipality or agency thereof, for military,  
5 law-enforcement or homeland-defense training or  
6 recreational or wildlife propagation purposes owes no duty of  
7 care to keep that land safe for entry or use by others or to  
8 give warning to persons entering or going upon the land of  
9 any dangerous or hazardous conditions, uses, structures or  
10 activities thereon. An owner who grants a lease, easement or  
11 license of land to the federal government or any agency  
12 thereof, or the state or any agency thereof, or any county or  
13 municipality or agency thereof, for military, law-enforcement  
14 or homeland-defense training or recreational or wildlife  
15 propagation purposes does not by giving a lease, easement or  
16 license: (a) Extend any assurance to any person using the

17 land that the premises are safe for any purpose; or (b) confer  
18 upon those persons the legal status of an invitee or licensee  
19 to whom a duty of care is owed; or (c) assume responsibility  
20 for or incur liability for any injury to person or property  
21 caused by an act or omission of a person who enters upon the  
22 leased land. The provisions of this section apply whether the  
23 person entering upon the leased land is an invitee, licensee,  
24 trespasser or otherwise.

**§19-25-5. Definitions.**

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

3 (1) “Charge” means:

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

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

20 (2) “Land” includes, but shall not be limited to, roads,  
21 water, watercourses, private ways and buildings, structures  
22 and machinery or equipment thereon when attached to the  
23 realty;

24           (3) “Noncommercial recreational activity” shall not  
25 include any activity for which there is any charge which  
26 exceeds \$50 per year per participant;

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

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

38           (6) “Wildlife propagation purposes” applies to and  
39 includes all ponds, sediment control structures, permanent  
40 water impoundments or any other similar or like structure  
41 created or constructed as a result of or in connection with  
42 surface mining activities as governed by article three, chapter  
43 twenty-two of this code or from the use of surface in the  
44 conduct of underground coal mining as governed by said  
45 article and rules promulgated thereunder, which ponds,  
46 structures or impoundments are hereafter designated and  
47 certified in writing by the Director of the Division of  
48 Environmental Protection and the owner to be necessary and  
49 vital to the growth and propagation of wildlife, animals, birds  
50 and fish or other forms of aquatic life and finds and  
51 determines that the premises have the potential of being  
52 actually used by the wildlife for those purposes and that the  
53 premises are no longer used or necessary for mining  
54 reclamation purposes. The certification shall be in form  
55 satisfactory to the director and shall provide that the  
56 designated ponds, structures or impoundments shall not be

57 removed without the joint consent of the director and the  
58 owner; and

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

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

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

9 Notwithstanding the provisions of section four of this  
10 article to the contrary, an owner of land who either directly  
11 or indirectly invites or permits, either with or without charge,  
12 any person to use the property for military, law-enforcement  
13 or homeland-defense training purposes does not thereby: (a)  
14 Extend any assurance that the premises are safe for any  
15 purpose; (b) confer upon those persons the legal status of an  
16 invitee or licensee to whom a duty of care is owed; or (c)

17 assume responsibility for or incur liability for any injury to  
18 person or property caused by an act or omission of those  
19 persons.

**§19-25-7. Insurance policies.**

1 Any policy or contract of liability insurance providing  
2 coverage for liability sold, issued or delivered in this state to  
3 any owner of lands covered under the provisions of this  
4 article shall be read so as to contain a provision or  
5 endorsement whereby the company issuing such policy  
6 waives or agrees not to assert as a defense on behalf of the  
7 policyholder or any beneficiary thereof, to any claim covered  
8 by the terms of such policy within the policy limits, the  
9 immunity from liability of the insured by reason of the use of  
10 such insured's land for recreational, wildlife propagation or  
11 military, law-enforcement or homeland-defense purposes,  
12 unless such provision or endorsement is rejected in writing by  
13 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.**

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

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

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

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

12 (4) Make recommendations in areas of policy and  
13 allocation of resources;

14           (5) Apply for grants, and accept gifts from private and  
15 public sources for research to improve and enhance minority  
16 affairs;

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

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

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

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

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

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

39           (1) The extent to which programs and services for  
40 minorities are available in the state, and to which funding for  
41 providing those programs and services is available;

42           (2) The most appropriate means for the planning, delivery  
43 and evaluation of existing and needed programs and services  
44 for minority groups in the manner that best promotes  
45 diversity and regional, cultural and ethnic sensitivity;

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

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

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

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

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

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

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

1           There is hereby created in the State Treasury a Special  
2 Revenue Fund to be known as the “Minority Affairs Fund,”  
3 which shall consist of all gifts, grants, bequests, transfers,  
4 appropriations or other donations or payments received by  
5 the Herbert Henderson Office of Minority Affairs from any  
6 governmental entity or unit or any person, firm, foundation

7 or corporation for the purposes of this article and all interest  
8 or other return earned from investment of the fund.  
9 Expenditures from the fund shall be made by the Executive  
10 Director of the Herbert Henderson Office of Minority Affairs  
11 to provide matching funds to obtain federal funds for the  
12 delivery of programs and services to minorities in this state,  
13 to award grants, loans and loan guaranties for minority affairs  
14 programs and activities and for performance of the duties of  
15 the office prescribed in this article. Expenditures from the  
16 fund shall be for the purposes set forth in this article and are  
17 not authorized from collections but are to be made only in  
18 accordance with appropriation by the Legislature and in  
19 accordance with the provisions of article two, chapter twelve  
20 of this code and upon the fulfillment of the provisions of  
21 article two, chapter eleven-b of this code.



## CHAPTER 118

**(Com. Sub. for H. B. 4046 - By Delegates  
Morgan, Swartzmiller, Hartman,  
Givens, Manypenny and Stagers)**

[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.**

#### **§5A-1-11. State Americans with disabilities coordinator.**

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

7           (1) The Developmental Disabilities Council;

8           (2) The Statewide Independent Living Council;

9           (3) The Mental Health Planning Council; and

10          (4) The State Rehabilitation Council.

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

16           (c) The coordinator shall:

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

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

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

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

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

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

35           (7) Consult with state equal employment opportunity  
36 officers on the hiring of persons with disabilities; and

37           (8) Be available to inspect and advise the leasing section  
38 of the Division of Purchasing on all physical properties  
39 owned or leased by the State of West Virginia for compliance  
40 with 42 U.S.C. §12101, *et seq.*, the federal Americans with  
41 Disabilities Act.

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

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

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

60           (1) All moneys received from state spending units for the  
61 costs and expenses incurred by the state Americans with  
62 Disabilities Coordinator for providing services related to the  
63 state’s implementation and compliance with 42 U.S.C.  
64 §12101, *et seq.*, the federal Americans with Disabilities Act;

65           (2) Any gifts, grants, bequests, transfers or donations  
66 which may be received from any governmental entity or unit  
67 or any person, firm, foundation or corporation; and

68           (3) All interest or return on investment accruing to the  
69 fund.

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

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

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; P O W E R S , D U T I E S A N D RESPONSIBILITIES GENERALLY.**

#### **§9-2-1a. 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



3 one, chapter five-f of this code. The secretary shall appoint  
4 any such board, commission or council over the division to  
5 the extent required by federal law to qualify for federal funds  
6 for providing rehabilitation services for disabled persons.  
7 The secretary and such boards, commissions or councils as he  
8 or she is required by federal law to appoint are authorized  
9 and directed to cooperate with the federal government to the  
10 fullest extent in an effort to provide rehabilitation services for  
11 disabled persons.

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

## **CHAPTER 19. AGRICULTURE.**

### **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

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

1 The duties of the Marketing and Development Division  
2 are to establish marketing, promotional and development  
3 programs to advance West Virginia agriculture in the  
4 domestic and international markets; to provide grading,  
5 inspection and market news services to the various elements  
6 of the West Virginia agricultural industry; and to regulate and  
7 license individuals involved in the marketing of agricultural  
8 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  
2   the compact be executed for and on behalf of this state only  
3   from and after the approval, ratification, adoption and  
4   entering into thereof by the states of New York,  
5   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  
2   Weight and Safety Enforcement Advisory Committee, the  
3   purpose of which is to study the implementation of the  
4   commercial motor vehicle weight and safety enforcement  
5   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  
8   Highways, to be appointed by the Commissioner of  
9   Highways;

10          (2) One member who is an employee of the Public  
11   Service Commission, to be appointed by the Chairman of the  
12   Public Service Commission;

13           (3) One member who is a State Police officer, to be  
14 appointed by the Superintendent of the State Police;

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

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

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

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

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

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

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

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

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

36           (d) The committee shall annually nominate from its  
37 members a chair, who shall hold office for one year.

38 (e) The committee shall hold at least four meetings each  
39 year or more often as may, in the discretion of the chair, be  
40 necessary to effectuate the purposes of this article.

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

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

52 (h) On or before January 1 of each year the committee  
53 shall submit to the Governor and to the Legislature a report  
54 of its recommendations for improving the effectiveness of the  
55 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.**

1 (a) The Legislature finds and declares that:

2 (1) Changes in the permissible charges on loans, credit  
3 sales or transactions, forbearance or other similar transactions  
4 requires specialized knowledge of the needs of the citizens of  
5 West Virginia for credit for personal and commercial  
6 purposes and knowledge of the availability of such credit at

7 reasonable rates to the citizens of this state while affording a  
8 competitive return to persons extending such credit;

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

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

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

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

36 (1) The director of the Governor's office of Economic  
37 and Community Development;

38 (2) The West Virginia State Treasurer;

39 (3) The West Virginia Banking Commissioner;

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

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

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

61 (d) The West Virginia Lending and Credit Rate Board is  
62 authorized and directed to meet after December 31, 1983, on the  
63 first Tuesday of April and on the first Tuesday of October of  
64 each year or more or less frequently as required by the  
65 circumstances and to prescribe by order a maximum rate of  
66 interest and finance charge for the next succeeding six months,  
67 effective on June 1 and on December 1, for any loans, credit  
68 sales or transactions, forbearance or similar transactions made  
69 pursuant to this section. In fixing said maximum rates of interest

70 and finance charge, the board shall take into consideration  
71 prevailing economic conditions, including the monthly index of  
72 long-term United States government bond yields for the  
73 preceding calendar month, yields on conventional commercial  
74 short-term loans and notes throughout West Virginia and  
75 throughout the United States and on corporate interest-bearing  
76 securities of high quality, the availability of credit at reasonable  
77 rates to the citizens of this state which afford a competitive  
78 return to persons extending credit and other factors as the board  
79 may determine.

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

96 (f) The board shall prescribe by order issued not later  
97 than April 20 and not later than October 20, in accordance  
98 with the provisions of subsection (d) of this section, the  
99 maximum rates of interest and finance charge for the next  
100 succeeding six months for any loan, credit sale, forbearance  
101 or similar transaction made pursuant to this section and shall  
102 cause the maximum rate of interest and finance charge to be  
103 issued and disseminated to the public, to be effective on June  
104 1 and December 1 for the next succeeding six months.

105 (g) Notwithstanding the other provisions of this chapter,  
106 the West Virginia Lending and Credit Rate Board shall not be  
107 required to meet if no petition has been filed with the board  
108 requesting a hearing and interest rates and economic  
109 conditions have not changed sufficiently to indicate that any  
110 change in the existing rate order would be required, and there  
111 are not at least two board members who concur that a meeting  
112 of the board is necessary. If the board does not meet, the  
113 maximum rates of interest and finance charges prescribed by  
114 the board in the existing rate order shall remain in full force  
115 and effect until the next time the board meets and prescribes  
116 different maximum rates of interest and finance charges.

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

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

138 (j) In setting the maximum interest rates and finance  
139 charges, the board may set varying rates based on the type of



140 credit transaction, the term of transaction, the type of debtor,  
141 the type of creditor and other factors relevant to determining  
142 the rates. In addition, the board may set varying rates for  
143 ranges of principal balances within a single category of credit  
144 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.**

- 1 (a) A person may not engage in this state in the business
- 2 of lender or broker unless and until he or she first obtains a

3 license to do so from the commissioner, which license  
4 remains unexpired, unsuspended and unrevoked, and no  
5 foreign corporation may engage in business in this state  
6 unless it is registered with the Secretary of State to transact  
7 business in this state.

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

12 (c) Brokerage fees, additional charges and finance  
13 charges imposed by licensed mortgage brokers, lenders and  
14 loan originators are exempt from the tax imposed by article  
15 fifteen, chapter eleven of this code beginning on January 1,  
16 2004.

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

19 (1) Federally insured depository institutions;

20 (2) Regulated consumer lender licensees;

21 (3) Insurance companies;

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

25 (5) By a nonprofit community development organization  
26 making mortgage loans to promote home ownership or  
27 improvements for the disadvantaged which loans are subject  
28 to federal, state, county or municipal government supervision  
29 and oversight; or

30           (6) Habitat for Humanity International, Inc., and its  
31 affiliates providing low-income housing within this state.  
32 Loans made subject to this exemption may be assigned,  
33 transferred, sold or otherwise securitized to any person and  
34 shall remain exempt from the provisions of this article, except  
35 as to reporting requirements in the discretion of the  
36 commissioner where the person is a licensee under this  
37 article. Nothing herein shall prohibit a broker licensed under  
38 this article from acting as broker of an exempt loan and  
39 receiving compensation as permitted under the provisions of  
40 this article.

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

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

53           (g) The placement or sale for securitization of a primary  
54 or subordinate mortgage loan into a secondary market by a  
55 licensee may not subject the warehouser or final  
56 securitization holder or trustee to the provisions of this  
57 article: *Provided*, That the warehouser, final securitization  
58 holder or trustee under an arrangement is either a licensee or  
59 person or entity entitled to make exempt loans of that type  
60 under this section, or the loan is held with right of recourse to  
61 a licensee.

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## CHAPTER 120

(Com. Sub. for S. B. 551 -  
By Senator Snyder)

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

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.**

- 1 (a) The maximum rate of finance charges on or in
- 2 connection with any subordinate mortgage loan may not
- 3 exceed eighteen percent per year on the unpaid balance of the
- 4 amount financed.

5           (b) A borrower shall have the right to prepay his or her  
6 debt, in whole or in part, at any time and shall receive a  
7 rebate for any unearned finance charge, exclusive of any  
8 points, investigation fees and loan origination fees, which  
9 rebate shall be computed under the actuarial method.

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

19           (d) Where loan origination fees, investigation fees or  
20 points have been charged by the licensee, the charges may  
21 not be imposed again in any refinancing of that loan or any  
22 additional loan on that property made within twenty-four  
23 months thereof, unless the new loan has a reasonable,  
24 tangible net benefit to the borrower considering all of the  
25 circumstances, including the terms of both the new and the  
26 refinanced loans, the cost of the new loan and the borrower's  
27 circumstances. The licensee shall document this benefit in  
28 writing on a form prescribed by the commissioner and  
29 maintain the documentation in the loan file. To the extent  
30 this subdivision overrides the preemption on limiting points  
31 and other charges on first lien residential mortgage loans  
32 contained in the United States Depository Institutions  
33 Deregulation and Monetary Control Act of 1980, 12 U. S. C.  
34 §1735f-7a, the state law limitations contained in this section  
35 shall apply.

36           (e) Notwithstanding other provisions of this section, a  
37 delinquent charge or late charge may be charged on any  
38 installment made ten or more days after the regularly

39 scheduled due date in accordance with section one hundred  
40 twelve or one hundred thirteen, article three, chapter  
41 forty-six-a of this code, whichever is applicable. The charge  
42 may be made only once on any one installment during the  
43 term of the primary or subordinate mortgage loan.

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

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

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

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

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

66 (i) No licensee shall induce or permit any borrower to  
67 become obligated to the licensee under this article, directly or  
68 contingently, or both, under more than one subordinate  
69 mortgage loan at the same time for the purpose or with the

70 result of obtaining greater charges than would otherwise be  
71 permitted under the provisions of this article.

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

74 (1) Any power of attorney to confess judgment;

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

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

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

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

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

93 (k) No licensee shall charge a borrower or receive from  
94 a borrower money or other valuable consideration as  
95 compensation before completing performance of all services  
96 the licensee has agreed to perform for the borrower unless the

1082                   MORTGAGE LENDER AND BROKERS                   [Ch. 120]  
1097   licensee also registers and complies with all requirements set  
1098   forth for credit service organizations in article six-c, chapter  
1099   forty-six-a of this code, including all additional bonding  
1100   requirements as may be established therein.

1101           (1) No licensee shall make or broker revolving loans  
1102   secured by a primary or subordinate mortgage lien for the  
1103   retail purchase of consumer goods and services by use of a  
1104   lender credit card.

1105           (m) In making any primary or subordinate mortgage loan,  
1106   no licensee may, and no primary or subordinate mortgage  
1107   lending transaction may, contain terms which:

1108           (1) Collect a fee not disclosed to the borrower; collect  
1109   any attorney fee at closing in excess of the fee that has been  
1110   or will be remitted to the attorney; collect a fee for a product  
1111   or service where the product or service is not actually  
1112   provided; misrepresent the amount charged by or paid to a  
1113   third party for a product or service; or collect duplicate fee or  
1114   points to act as both broker and lender for the same mortgage  
1115   loan, however, fees and points may be divided between the  
1116   broker and the lender as they agree, but may not exceed the  
1117   total charges otherwise permitted under this article: *Provided*,  
1118   That the fact of any fee, point or compensation is disclosed to  
1119   the borrower consistent with the solicitation representation  
1120   made to the borrower;

1121           (2) Compensate, whether directly or indirectly, coerce or  
1122   intimidate an appraiser for the purpose of influencing the  
1123   independent judgment of the appraiser with respect to the  
1124   value of real estate that is to be covered by a deed of trust or  
1125   is being offered as security according to an application for a  
1126   primary or subordinate mortgage loan;

1127           (3) Make or assist in making any primary or subordinate  
1128   mortgage loan with the intent that the loan will not be repaid



129 and that the lender will obtain title to the property through  
130 foreclosure: *Provided*, That this subdivision shall not apply  
131 to reverse mortgages obtained under the provisions of article  
132 twenty-four, chapter forty-seven of this code;

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

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

161 (6) Allow or require a primary or subordinate mortgage  
162 loan to be accelerated because of a decrease in the market  
163 value of the residential dwelling that is securing the loan;

164           (7) Require terms of repayment which do not result in  
165 continuous monthly reduction of the original principal  
166 amount of the loan: *Provided*, That the provisions of this  
167 subdivision may not apply to reverse mortgage loans  
168 obtained under article twenty-four, chapter forty-seven of this  
169 code, home equity, open-end lines of credit, bridge loans  
170 used in connection with the purchase or construction of a new  
171 residential dwelling or commercial loans for multiple  
172 residential purchases;

173           (8) Secure a primary or subordinate mortgage loan in a  
174 principal amount that, when added to the aggregate total of  
175 the outstanding principal balances of all other primary or  
176 subordinate mortgage loans secured by the same property,  
177 exceeds the fair market value of the property on the date that  
178 the latest mortgage loan is made. For purposes of this  
179 paragraph, a broker or lender may rely upon a bona fide  
180 written appraisal of the property made by an independent  
181 third-party appraiser, duly licensed or certified by the West  
182 Virginia Real Estate Appraiser Licensing and Certification  
183 Board and prepared in compliance with the uniform standards  
184 of professional appraisal practice: *Provided*, That  
185 commencing January 1, 2012, and continuing until January  
186 1, 2015, this prohibition does not apply to any mortgage  
187 modification or refinancing loan made in participation with  
188 and in compliance with the federal Homes Affordable  
189 Modification Program, a part of the federal Making Home  
190 Affordable program, or any other mortgage modification or  
191 refinancing loan funded through any other federal or state  
192 program or litigation settlement;

193           (9) Advise or recommend that the consumer not make  
194 timely payments on an existing loan preceding loan closure  
195 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.

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## 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.**

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

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

23           (c) The commissioner may, at his or her discretion, make  
24 or cause to be made an examination of the books, accounts

25 and records of every lender or broker licensee pertaining to  
26 primary and subordinate mortgage loans made in this state  
27 under the provisions of this article, for the purpose of  
28 determining whether each lender and broker licensee is  
29 complying with the provisions hereof and for the purpose of  
30 verifying each lender or broker licensee's annual report. If the  
31 examination is made outside this state, the licensee shall pay  
32 the cost thereof in like manner as applicants are required to  
33 pay the cost of investigations outside this state.

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

38 (e) The commissioner may enter into cooperative and  
39 information-sharing agreements with regulators in other  
40 states or with federal authorities to discharge his or her  
41 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.**

1       (a) The Legislature finds that responsibility for delivery  
2 of government services and the enforcement of laws  
3 pertaining to the motor carrier industry currently resides in  
4 several state agencies, divisions and departments including  
5 the Division of Motor Vehicles, Public Service Commission,  
6 Division of Highways, State Tax Department and the State  
7 Police. The Division of Motor Vehicles currently administers  
8 numerous provisions of this code relating to the regulation of  
9 the motor carrier industry in this state, including chapter  
10 seventeen-a of this code, which prescribes the process for  
11 titling and registration of all motor vehicles, the provisions  
12 for commercial drivers licenses set forth in chapter  
13 seventeen-b of this code, and has numerous other  
14 responsibilities relating to the motor carrier industry. The  
15 Division of Motor Vehicles also has significant interaction  
16 with the various federal agencies and other state agencies  
17 responsible for the administration of government functions  
18 relative to the industry. It further appears to the Legislature  
19 that a significant portion of the responsibility, in terms of

20 volume of transactions and its database, routine contact with  
21 the industry and assignment of staff pertaining to regulating  
22 the motor carrier industry, is currently vested in the Division  
23 of Motor Vehicles. Therefore, the Legislature finds that the  
24 Division of Motor Vehicles is the appropriate agency to plan  
25 the consolidation of the administration and enforcement of  
26 the various state laws pertaining to the motor carrier industry.

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

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

45 (d) Therefore, it is the purpose of this article to facilitate  
46 the consolidation of the administration of government  
47 services pertaining to the motor carrier industry and to  
48 designate the division as the lead agency in planning the  
49 consolidation of state government services and enforcement  
50 of laws pertaining to the regulation and taxation of the motor  
51 carrier industry.

**§17A-2B-2. Development of plan of consolidation of government services and regulation applicable to the motor carrier industry.**

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

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

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

**§17A-2B-3. Report to the Joint Committee on Government and Finance.**

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

7 (b) The report shall make recommendations pertaining to  
8 changes in laws, administration, personnel and procedure in the  
9 provision of government services applicable to the motor carrier  
10 industry and shall include drafts of recommended legislation  
11 necessary to implement the proposed consolidation.



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## CHAPTER 123

**(Com. Sub. for H. B. 4338 - By Delegates Butcher,  
Stowers, Barill, Barker, R. Phillips, Hunt,  
Barner, Perdue, Moore, D. Poling and Cann)**

[Passed March 7, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 14, 2012.]

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  
2 possession an abandoned motor vehicle or junked motor

3 vehicle shall, within fifteen days after taking custody and  
4 possession thereof, notify the last-known registered owner of  
5 the motor vehicle and all lienholders of record that the motor  
6 vehicle has been taken into custody and possession, the  
7 notification to be by registered or certified mail, return  
8 receipt requested. The notice shall:

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

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

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

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

31 (b) If the identity of the last registered owner of the  
32 abandoned motor vehicle or junked motor vehicle cannot be

33 determined or if the certificate of registration or certificate of  
34 title contains no address for the owner or if it is impossible to  
35 determine with reasonable certainty the identity and  
36 addresses of all lienholders, notice shall be published as a  
37 Class I legal advertisement in compliance with the provisions  
38 of article three, chapter fifty-nine of this code, the publication  
39 area shall be the county wherein the motor vehicle was  
40 located at the time the enforcement agency took custody and  
41 possession thereof and the notice shall be sufficient to meet  
42 all requirements of notice pursuant to this article. Any notice  
43 by publication may contain multiple listings of abandoned  
44 motor vehicles and junked motor vehicles. The notice shall  
45 be published within fifteen days after the motor vehicle is  
46 taken into custody and possession and shall have the same  
47 contents required for a notice pursuant to subsection (a) of  
48 this section, except that the ten-day period shall run from the  
49 date the notice is published as aforesaid.

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

60 (d) The person or entity hired by an enforcement agency  
61 to take into custody or possession an abandoned motor  
62 vehicle or junked motor vehicle shall, within thirty days after  
63 the possession, notify the registered owner of the vehicle and  
64 all lienholders of record, if any, as identified by the  
65 enforcement agency pursuant to subsection (c) of this section,  
66 by registered mail, return receipt requested, that the motor

67 vehicle has been taken into custody and possession. The  
68 notice shall have the same contents required for a notice  
69 pursuant to subsection (a) of this section, including the ten-  
70 day period the owner or lienholder has to reclaim the motor  
71 vehicle. Upon the issuance of the notice, the identified owner  
72 of the motor vehicle is liable and responsible for all costs for  
73 towing, preservation and storage of the motor vehicle:  
74 *Provided*, That failure to issue the notice required by this  
75 subsection within thirty days after possession of the motor  
76 vehicle relieves the identified owner of the motor vehicle of  
77 any liability for charges for towing, preservation and storage  
78 in excess of the sum of the first five days of the charges:  
79 *Provided, however*, That the requirements of this subsection  
80 do not apply to motor vehicles for which the registered owner  
81 thereof cannot be ascertained by due diligence or  
82 investigation.

83 (e) For an abandoned motor vehicle or junked vehicle  
84 having a loan value of \$7,500 or less, as ascertained by  
85 values placed upon motor vehicles using a standard industry  
86 reference book, a person or entity hired by an enforcement  
87 agency to tow the abandoned motor vehicle or junked motor  
88 vehicle may, if the motor vehicle is not claimed by the owner  
89 or a lienholder after notice within the time set forth in  
90 subsection (d) of this section or if the identity of the last  
91 registered owner of the abandoned motor vehicle or junked  
92 motor vehicle cannot be determined or if the certificate of  
93 registration or certificate of title contains no address of the  
94 owner or if it is impossible to determine with reasonable  
95 certainty the identity and address of all lienholders after  
96 publication as set forth in subsection (b) of this section, file  
97 an application with the Division of Motor Vehicles for a  
98 certificate of title and registration which, upon payment of the  
99 appropriate fees, shall be issued. The person or entity may  
100 then sell the motor vehicle at private sale or public auction.

101 (f) For an abandoned motor or junked motor vehicle  
102 having a loan value of \$7,500 or less, as ascertained by  
103 values placed upon motor vehicles using a standard industry  
104 reference book, a licensed motor vehicle dealer, as defined in  
105 section one, article one, chapter seventeen-a of this code, a  
106 motor vehicle repair facility or a towing company registered  
107 with the Public Service Commission pursuant to section two-  
108 a, article two, chapter twenty-four-a of this code may, if a  
109 motor vehicle is abandoned on the property or place of  
110 business of the dealer or a motor vehicle repair facility or  
111 towing company and is not claimed by the owner or a  
112 lienholder after notice within the time set forth in subsection  
113 (d) of this section or if the identity of the last registered  
114 owner of the abandoned motor vehicle cannot be determined  
115 or if the certificate of registration or certificate of title  
116 contains no address of the owner or if it is impossible to  
117 determine with reasonable certainty the identity and address  
118 of all lienholders after publication as set forth in subsection  
119 (b) of this section, file an application with the Division of  
120 Motor Vehicles for a certificate of title and registration  
121 which, upon payment of the appropriate fees, shall be issued.  
122 The dealer or motor vehicle repair facility or towing company  
123 may then sell the motor vehicle at private sale or public  
124 auction.

125 (g) For purposes of this section motor vehicle repair  
126 facilities and towing companies are not used motor vehicle  
127 dealers as that term is defined by subdivision (2), subsection  
128 (a), section one, article six, chapter seventeen-a of this code.

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## CHAPTER 124

**(S. B. 428 - By Senators Beach 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 §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.**

- 1 (a) Any motor vehicle designed to carry passengers,
- 2 owned or leased by the State of West Virginia, or any of its

3 departments, bureaus, commissions or institutions, except  
4 vehicles used by the Governor, Treasurer, three vehicles per  
5 elected office of the Board of Public Works, vehicles  
6 operated by the State Police, not to exceed five vehicles  
7 operated by the Office of the Secretary of Military Affairs  
8 and Public Safety, not to exceed five vehicles operated by the  
9 Division of Homeland Security and Emergency Management,  
10 vehicles operated by natural resources police officers of the  
11 Division of Natural Resources, not to exceed ten vehicles  
12 operated by the arson investigators of the Office of State Fire  
13 Marshal, not to exceed two vehicles operated by the Division  
14 of Protective Services, not to exceed sixteen vehicles  
15 operated by inspectors of the Office of the Alcohol Beverage  
16 Control Commissioner and vehicles operated by probation  
17 officers employed under the Supreme Court of Appeals may  
18 not be operated or driven by any person unless it has  
19 displayed and attached to the front thereof, in the same  
20 manner as regular motor vehicle registration plates are  
21 attached, a plate of the same size as the regular registration  
22 plate, with white lettering on a green background bearing the  
23 words "West Virginia" in one line and the words "State Car"  
24 in another line and the lettering for the words "State Car"  
25 shall be of sufficient size to be plainly readable from a  
26 distance of one hundred feet during daylight.

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

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

34       (c) Registration plates issued to a city or municipality  
35 shall be white on blue with the word "City" on top and the  
36 words "West Virginia" on the bottom.

37 (d) Registration plates issued to a city or municipality  
38 law-enforcement department shall include blue lettering on  
39 a white background with the word "West Virginia" on top of  
40 the plate and shall be further designed by the commissioner  
41 to include a law-enforcement shield together with other  
42 insignia or lettering sufficient to identify the motor vehicle as  
43 a municipal law-enforcement department motor vehicle. The  
44 colors may not be reversed and shall be of reflectorized  
45 material. The registration plates issued to counties,  
46 municipalities and other governmental agencies authorized to  
47 receive colored plates hereunder shall be affixed to both the  
48 front and rear of the vehicles.

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

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

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

68 (h) The commissioner is authorized to issue a maximum  
69 of five Class A license plates to be used on vehicles assigned



70 to the Division of Motor Vehicle investigators for  
71 commercial driver examination fraud investigation and  
72 driver's license issuance fraud detection and fraud  
73 prevention.

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

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

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

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

97 (m) The commissioner is authorized to issue a maximum  
98 of two Class A plates to the Division of Protective Services  
99 for state-owned vehicles used by the Division of Protective  
100 Services in fulfilling its mission.

101 (n) The commissioner is authorized to issue Class A  
102 registration plates for vehicles used by the Medicaid Fraud  
103 Control Unit created by section seven, article seven, chapter  
104 nine of this code.

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

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

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

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

121 (s) The commissioner may issue special registration  
122 plates for motor vehicles titled in the name of the Division of  
123 Public Transit or in the name of a public transit authority as  
124 defined in this subsection and operated by a public transit  
125 authority or a public transit provider to transport persons in  
126 the public interest. For purposes of this subsection, "public  
127 transit authority" means an urban mass transportation  
128 authority created pursuant to the provisions of article twenty-  
129 seven, chapter eight of this code or a nonprofit entity exempt  
130 from federal and state income taxes under the Internal  
131 Revenue Code and whose purpose is to provide mass  
132 transportation to the public at large. The special registration

133 plate shall be designed by the commissioner and shall display  
134 the words “public transit” or words or letters of similar effect  
135 to indicate the public purpose of the use of the vehicle. The  
136 special registration plate shall be issued without charge.

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

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## CHAPTER 125

### (S. B. 30 - By Senators Beach and Klempa)

[Passed February 21, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 1, 2012.]

AN ACT to amend and reenact §17A-4-10 of the Code of West Virginia, 1931, as amended, relating to vehicles scrapped, 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.**

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

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

29 (c) If the insurance company or insurer determines that  
30 the vehicle is repairable, the division shall issue a salvage

31 certificate, on a form prescribed by the commissioner, in the  
32 name of the insurance company, the insurer or the vehicle  
33 owner if the owner has chosen to retain the vehicle. The  
34 certificate shall contain, on the reverse, spaces for one  
35 successive assignment before a new certificate at an  
36 additional fee is required. Upon the sale of the vehicle, the  
37 insurance company, insurer or vehicle owner if the owner has  
38 chosen to retain the vehicle, shall complete the assignment of  
39 ownership on the salvage certificate and deliver it to the  
40 purchaser. The vehicle may not be titled or registered for  
41 operation on the streets or highways of this state unless there  
42 is compliance with subsection (g) of this section. The  
43 division shall charge a fee of \$15 for each salvage title  
44 issued.

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

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

63 (2) If the insured or claimant owner elects not to take  
64 possession of the vehicle and the insurance company or

65 insurer retains possession, the division shall issue a cosmetic  
66 total loss salvage certificate to the insurance company or  
67 insurer. The division shall charge a fee of \$15 for each  
68 cosmetic total loss salvage certificate issued. The division  
69 shall, upon surrender of the cosmetic total loss salvage  
70 certificate issued under the provisions of this paragraph and  
71 payment of the five percent motor vehicle sales tax on the fair  
72 market value of the vehicle as determined by the  
73 commissioner, issue a title branded “cosmetic total loss”  
74 without further inspection.

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

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

91 (g) Any person who purchases or acquires a vehicle as  
92 salvage or scrap, to be dismantled, compressed or destroyed,  
93 shall, within forty-five days, surrender to the division the  
94 certificate of title, nonrepairable motor vehicle certificate,  
95 salvage certificate or a statement of cancellation signed by  
96 the seller, on a form prescribed by the commissioner.  
97 Subsequent purchasers of salvage or scrap are not required to  
98 comply with the notification requirement.

99 (h) If the motor vehicle is a “reconstructed vehicle” as  
100 defined in this section or section one, article one of this  
101 chapter, it may not be titled or registered for operation until  
102 it has been inspected by an official state inspection station  
103 and by the Division of Motor Vehicles. Following an  
104 approved inspection, an application for a new certificate of  
105 title may be submitted to the division. The applicant is  
106 required to retain all receipts for component parts, equipment  
107 and materials used in the reconstruction. The salvage  
108 certificate shall also be surrendered to the division before a  
109 certificate of title may be issued with the appropriate brand.

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

122 (j) If application is made for title to a motor vehicle, the  
123 title to which has previously been branded reconstructed,  
124 salvage, cosmetic total loss, cosmetic total loss salvage,  
125 flood, fire or other brand by the Division of Motor Vehicles  
126 under this section and said application is accompanied by a  
127 title from another state which does not carry the brand, the  
128 division shall, before issuing the title, affix the brand  
129 “reconstructed”, “cosmetic total loss”, “cosmetic total loss  
130 salvage”, “flood”, “fire” or other brand to the title. The  
131 motor vehicle sales tax paid on a motor vehicle titled as  
132 reconstructed, cosmetic total loss, flood, fire or other brand  
133 under the provisions of this section shall be based on fifty

134 percent of the fair market value of the vehicle as determined  
135 by a nationally accepted used car value guide to be used by  
136 the commissioner.

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

160 (l) As used in this section:

161 (1) "Reconstructed vehicle" means the vehicle was  
162 totaled under the provisions of this section or by the  
163 provisions of another state or jurisdiction and has been rebuilt  
164 in accordance with the provisions of this section or in  
165 accordance with the provisions of another state or jurisdiction  
166 or meets the provisions of subsection (m), section one, article  
167 one of this chapter.



168 (2) "Flood-damaged vehicle" means that the vehicle was  
169 submerged in water to the extent that water entered the  
170 passenger or trunk compartment.

171 (3) "Other brand" means a brand consistent with the  
172 intent of the National Motor Vehicle Title Information  
173 System established pursuant to 49 U. S. C. §30502 and rules  
174 promulgated by the United States Department of Justice to  
175 alert consumers, motor vehicle dealers or the insurance  
176 industry of the history of a vehicle.

177 (m) Every vehicle owner shall comply with the branding  
178 requirements for a totaled vehicle whether or not the owner  
179 receives an insurance claim settlement for a totaled vehicle.

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

184 (o) Any person who knowingly provides false or  
185 fraudulent information to the division that is required by this  
186 section in an application for a title, a cosmetic total loss title,  
187 a reconstructed vehicle title or a salvage certificate or who  
188 knowingly fails to disclose to the division information  
189 required by this section to be included in the application or  
190 who otherwise violates the provisions of this section is guilty  
191 of a misdemeanor and, upon conviction thereof, shall for each  
192 incident be fined not less than \$1,000 nor more than \$2,500,  
193 or imprisoned in jail for not more than one year, or both fined  
194 and imprisoned.

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**CHAPTER 126**

**(Com. Sub. for S. B. 429 - By Senators  
Beach and Klempa)**

[Passed March 2, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 14, 2012.]

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  
2 this chapter shall be placed in the following classes for the  
3 purpose of registration:

4 Class A. Motor vehicles of passenger type and trucks  
5 with a gross weight of ten thousand pounds or less;

6 Class B. Motor vehicles designated as trucks with a  
7 gross weight of more than ten thousand pounds, truck tractors  
8 or road tractors;

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

13 Class G. Motorcycles and parking enforcement  
14 vehicles;

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

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

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

24 Class R. House trailers;

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

28 Class X. Motor vehicles designated as trucks having a  
29 minimum gross weight of more than eight thousand pounds  
30 and a maximum gross weight of eighty thousand pounds,  
31 used exclusively in the conduct of a farming business,  
32 engaged in the production of agricultural products by means  
33 of: (a) The planting, cultivation and harvesting of  
34 agricultural, horticultural, vegetable or other products of the

35 soil; or (b) the raising, feeding and care of livestock, poultry,  
36 bees and dairy cattle. A farm truck may be used only for the  
37 transportation of agricultural products produced by the owner  
38 of the truck, for the transportation of agricultural supplies  
39 used in the production or for private passenger use.

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

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

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

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

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

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

20 (A) For declared gross weights of ten thousand one  
21 pounds to sixteen thousand pounds -- \$28 plus \$5 for each  
22 one thousand pounds or fraction of one thousand pounds that  
23 the gross weight of the vehicle or combination of vehicles  
24 exceeds ten thousand pounds.

25 (B) For declared gross weights greater than sixteen  
26 thousand pounds, but less than fifty-five thousand pounds --  
27 \$78.50 plus \$10 for each one thousand or fraction of one  
28 thousand pounds that the gross weight of the vehicle or  
29 combination of vehicles exceeds sixteen thousand pounds.

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

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

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

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

54 (6) *Class M.* -- The registration fee for all vehicles of this  
55 class is \$17.50.

56 (7) *Class X.* -- The registration fee for all motor vehicles  
57 of this class is as follows:

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

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

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

64 (D) For farm trucks of declared gross weights of twenty-  
65 eight thousand one pounds to thirty-four thousand pounds --  
66 \$115.

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

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

71 (G) For farm trucks of declared gross weights of fifty-  
72 four thousand one pounds to eighty thousand pounds -- \$250:  
73 *Provided*, That the provisions of subsection (a), section eight,  
74 article one, chapter seventeen-e of this code do not apply if  
75 the vehicle exceeds sixty-four thousand pounds and is a truck  
76 tractor or road tractor.

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

81 (1) *Class R.* -- The annual registration fee for all vehicles  
82 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,  
Klempa 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.**

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

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

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

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

22 (2) When a vehicle must idle to operate defrosters,  
23 heaters, air conditioners or cargo refrigeration equipment, or  
24 to install equipment, in order to prevent a safety or health  
25 emergency, and not for the purpose of a rest period, or as



26 otherwise necessary to comply with manufacturers' operating  
27 requirements, specifications and warranties in accordance  
28 with federal or state motor carrier safety regulations or local  
29 requirements.

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

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

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

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

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

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

54 (9) When a vehicle must idle due to mechanical  
55 difficulties over which the driver has no control, if the vehicle

56 owner submits the repair paperwork or product repair  
57 verifying that the mechanical problem has been fixed, by mail  
58 to the commission within thirty days of the repair.

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

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

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

85 (13) When idling by a school bus off school grounds  
86 during queuing for the sequential discharge or pickup of  
87 students is necessary because the physical configuration of a  
88 school or the school's surrounding streets does not allow for  
89 stopping.

90 (14) When idling is necessary for maintaining safe  
91 operating conditions while waiting for a police escort when  
92 transporting a load that requires the issuance of a permit in  
93 accordance with section eleven, article seventeen of this  
94 chapter.

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

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

106 (17) When a diesel-powered motor vehicle is powered by  
107 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.**

### **§17C-15-36a. Sun-screening devices; penalty.**

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

15           (b) A sun-screening device when used in conjunction  
16 with the windshield must be nonreflective and may not be  
17 red, yellow or amber in color. A sun-screening device may  
18 be used only along the top of the windshield and may not  
19 extend downward beyond the ASI line or more than five  
20 inches from the top of the windshield whichever is closer to  
21 the top of the windshield.

22 (c) A sun-screening device when used in conjunction  
23 with the automotive safety glazing materials of the side wings  
24 or side windows located at the immediate right and left of the  
25 driver shall be a nonreflective type with reflectivity of not  
26 more than twenty percent and have a light transmission of not  
27 less than thirty-five percent. The side windows behind the  
28 driver and the rear most windows may have a sun-screening  
29 device that is designed to be used on automotive safety  
30 glazing materials that has a light transmission of not less than  
31 thirty-five percent and a reflectivity of not more than twenty  
32 percent. If a sun-screening device is used on glazing behind  
33 the driver, one right and one left outside rear view mirror is  
34 required.

35 (d) Each manufacturer shall:

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

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

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

51 (e) No person may:

52 (1) Offer for sale or for use any sun-screening product  
53 or material for motor vehicle use not in compliance with this  
54 section; or

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

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

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

72 (h) As used in this section:

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

75 (2) "Light transmission" means the ratio of the amount  
76 of total light to pass through a product or material to the  
77 amount of the total light falling on the product or material.

78 (3) "Luminous reflectants" means the ratio of the  
79 amount of total light that is reflected outward by the product  
80 or material to the amount of the total light falling on the  
81 product or materials.

82           (4) “Manufacturer” means any person engaged in the  
83 manufacturing or assembling of sun-screening products or  
84 materials designed to be used in conjunction with vehicle  
85 glazing materials for the purpose of reducing the effects of  
86 the sun.

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

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

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

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

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

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

108           (i) Any person violating the provisions of this section is  
109 guilty of a misdemeanor and, upon conviction thereof, shall  
110 be fined not more than \$200.

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**CHAPTER 129****(Com. Sub. for S. B. 618 - By Senators  
Snyder, Beach and Browning)**

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

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.**

1 Notwithstanding any code provision to the contrary,  
2 county officers required or authorized to collect fines, fees,  
3 taxes or other moneys provided by law may accept credit or  
4 check cards as a form of payment. County officers may set  
5 a fee to be added to each transaction equal to the charge paid  
6 by the county officers for the use of the credit or check card  
7 by the payor: *Provided*, That the county officer is required to  
8 obtain three bids and use the lowest qualified bid received:  
9 *Provided, however*, That if a county officer has obtained  
10 credit card services, another county officer may be added to  
11 that service without receiving bids for that service. The  
12 county officer shall disclose the amount of the fee to the  
13 payor prior to the transaction and no other fees for the use of  
14 a credit or check card may be imposed upon the payor.  
15 Acceptance of a credit or check card as a form of payment  
16 shall be in accordance with the rules and requirements set  
17 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.**

1 (a) A municipal court may accept credit cards in payment  
2 of all costs, fines, forfeitures or penalties. A municipal court  
3 may collect a substantial portion of all costs, fines, forfeitures  
4 or penalties at the time such amount is imposed by the court

5 so long as the court requires the balance to be paid within one  
6 hundred eighty days from the date of judgment and in  
7 accordance with a payment plan: *Provided*, That all costs,  
8 fines, forfeitures or penalties imposed by the municipal court  
9 upon a nonresident of this state by judgment entered upon a  
10 conviction for a motor vehicle violation defined in section  
11 three-a, article three, chapter seventeen-b of this code must be  
12 paid within eighty days from the date of judgment. The  
13 payment plan shall specify: (1) The number of additional  
14 payments to be made; (2) the dates on which such payments  
15 and amounts shall be made; and (3) amounts due on such  
16 dates.

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

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

1 (a) If costs, fines, forfeitures or penalties imposed by the  
2 municipal court upon conviction of a person for a criminal  
3 offense as defined in section three-c, article three, chapter  
4 seventeen-b of this code are not paid in full within one

5 hundred eighty days of the judgment, the municipal court  
6 clerk or, upon a judgment rendered on appeal, the circuit  
7 clerk shall notify the Division of Motor Vehicles of the  
8 failure to pay: *Provided*, That notwithstanding any other  
9 provision of this code to the contrary, for residents of this  
10 state, the municipal court shall wait at least ninety days from  
11 the date that all costs, fines, forfeitures or penalties are due in  
12 full before notifying the Division of Motor Vehicles thereof:  
13 *Provided, however*, That at the time the judgment is imposed,  
14 the judge shall provide the person with written notice that  
15 failure to pay the same as ordered may result in the  
16 withholding of any income tax refund due the licensee and  
17 shall result in the suspension of the person's license or  
18 privilege to operate a motor vehicle in this state and that the  
19 suspension could result in the cancellation of, the failure to  
20 renew or the failure to issue an automobile insurance policy  
21 providing coverage for the person or the person's family:  
22 *Provided further*, That the failure of the judge to provide  
23 notice does not affect the validity of any suspension of the  
24 person's license or privilege to operate a motor vehicle in this  
25 state. For purposes of this section, payment shall be stayed  
26 during any period an appeal from the conviction which  
27 resulted in the imposition of costs, fines, forfeitures or  
28 penalties is pending.

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

33       (b) Notwithstanding the provisions of this section to the  
34 contrary, the notice of the failure to pay costs, fines,  
35 forfeitures or penalties may not be given where the municipal  
36 court, upon application of the person upon whom the costs,  
37 fines, forfeitures or penalties were imposed filed prior to the  
38 expiration of the period within which these are required to be  
39 paid, enters an order finding that the person is financially

40 unable to pay all or a portion of the costs, fines, forfeitures or  
41 penalties: *Provided*, That where the municipal court, upon  
42 finding that the person is financially unable to pay a portion  
43 of the costs, fines, forfeitures or penalties, requires the person  
44 to pay the remaining portion, the municipal court shall notify  
45 the Division of Motor Vehicles of the person's failure to pay  
46 if not paid within the period of time ordered by the court.

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

59 (d) On and after July 1, 2008, if the licensee fails to  
60 respond to the Division of Motor Vehicles order of  
61 suspension within ninety days of receipt of the certified letter,  
62 the municipal court of original jurisdiction shall notify the  
63 Tax Commissioner that the licensee has failed to pay the  
64 costs, fines, forfeitures or penalties assessed by the court or  
65 has failed to respond to the citation. The notice provided by  
66 the municipal court to the Tax Commissioner must include  
67 the licensee's Social Security number. The Tax  
68 Commissioner, or his or her designee, shall withhold from  
69 any personal income tax refund due and owing to a licensee  
70 the costs, fines, forfeitures or penalties due to the  
71 municipality, the Tax Commissioner's administration fee for  
72 the withholding and any and all fees that the municipal court  
73 would have collected had the licensee appeared: *Provided*,  
74 That the Tax Commissioner's administration fee may not

75 exceed \$25: *Provided, however,* That the Tax Commissioner  
76 may change this maximum amount limitation for this fee for  
77 fiscal years beginning on or after July 1, 2008, by legislative  
78 rule promulgated in accordance with the provisions of article  
79 three, chapter twenty-nine-a of this code: *Provided further,*  
80 That the administrative fees deducted shall be deposited in  
81 the special revolving fund hereby created in the State  
82 Treasury, which shall be designated as the Municipal Fines  
83 and Fees Collection Fund, and the Tax Commissioner shall  
84 make such expenditures from the fund as he or she deems  
85 appropriate for the administration of this subsection. After  
86 deduction of the Tax Commissioner's administration fee, the  
87 Tax Commissioner shall remit to the municipality all  
88 remaining amounts withheld pursuant to this section and the  
89 municipal court shall distribute applicable costs, fines,  
90 forfeitures or penalties owed to the municipality, the  
91 Regional Jail Authority Fund, the Crime Victims  
92 Compensation Fund, the Community Corrections Fund, the  
93 Governor's subcommittee on law-enforcement training or any  
94 other fund or payee that may be applicable. After the costs,  
95 fines, forfeitures or penalties are withheld, the Tax  
96 Commissioner shall refund any remaining balance due the  
97 licensee. If the refund is not sufficient to cover all the costs,  
98 fines, forfeitures or penalties being withheld pursuant to this  
99 section, the Tax Commissioner's administration fee shall be  
100 retained by the Tax Commissioner and the remaining money  
101 withheld shall be remitted by the Tax Commissioner to the  
102 municipality. The municipality shall then allocate the money  
103 so remitted to the municipality in the following manner: (1)  
104 Any costs, fines, forfeitures or penalties due to the  
105 municipality; (2) seventy-five percent of the remaining  
106 balance shall be paid to the appropriate Regional Jail  
107 Authority Fund; (3) fifteen percent of the remaining balance  
108 shall be paid to the Crime Victims Compensation Fund; (4)  
109 six percent of the remaining balance shall be paid into the  
110 Community Corrections Fund; and (5) the final four percent

111 shall be paid to the Governor's subcommittee on law-  
112 enforcement training. When the costs, fines, forfeitures or  
113 penalties exceed the licensee's income tax refund, the Tax  
114 Commissioner shall withhold the remaining balance in  
115 subsequent years until such time as the costs, fines,  
116 forfeitures or penalties owed are paid in full. The Tax  
117 Commissioner shall remit the moneys that he or she collects  
118 to the appropriate municipality no later than July 1, of each  
119 year. If the municipal court or the municipality subsequently  
120 determines that any such costs, fines, forfeitures or penalties  
121 were erroneously imposed, the municipality shall promptly  
122 notify the Tax Commissioner. If the refunds have not been  
123 withheld and remitted, the Tax Commissioner may not  
124 withhold and remit payment to the municipality and shall so  
125 inform the municipality. If the refunds have already been  
126 withheld and remitted to the municipality, the Tax  
127 Commissioner shall so inform the municipality. In either  
128 event, all refunds for erroneously imposed costs, fines,  
129 forfeitures or penalties shall be made by the municipality and  
130 not by the Tax Commissioner.

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

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

**ARTICLE 13. TAXATION AND FINANCE.****§8-13-15. Collection of municipal taxes, fines and assessments.**

1 Unless otherwise provided, it shall be the duty of the  
2 treasurer of the municipality or other individual who may be  
3 designated by general law, by charter provisions or by the  
4 governing body, to collect and promptly pay into the  
5 municipal treasury all taxes, fines, special assessments or  
6 other moneys due the municipality. All such taxes, fines,  
7 special assessments (except assessments for permanent or  
8 semipermanent public improvements) and other moneys due  
9 the municipality are hereby declared to be debts owing to the  
10 municipality, for which the debtor shall be personally liable,  
11 and the treasurer, or other individual so designated, may  
12 enforce this liability by appropriate civil action in any court  
13 of competent jurisdiction, and is hereby vested with the same  
14 rights to distrain for the same as is vested in the sheriff for the  
15 collection of taxes. Such treasurer or other individual shall  
16 give a bond, conditioned according to law, in such penalty  
17 and with such security as the governing body may require:  
18 *Provided.* That nothing in this article shall prohibit the  
19 payment of taxes, fines, special assessments or other moneys  
20 due the municipality by credit or check card. The  
21 municipality or municipal court may set a fee to be added to  
22 each transaction equal to the charge paid by the municipality  
23 for the use of the credit or check card by the debtor:  
24 *Provided, however,* That the municipality is required to  
25 obtain three bids and use the lowest qualified bid received.  
26 *Provided, further,* That if a municipality has obtained credit  
27 card services, the municipal court may be added to that  
28 service without receiving bids for that service. The  
29 municipality or municipal court shall disclose the amount of  
30 the fee to the debtor prior to the transaction and no other fees  
31 for the use of a credit or check card may be imposed upon the  
32 debtor. Acceptance of a credit or check card as a form of  
33 payment shall be in accordance with the rules and

34 requirements set forth by the credit or check card provider.  
35 Allowing for the collection of these funds by credit or check  
36 card shall be at the discretion of the municipality or  
37 municipal court.

## 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.**

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

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

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



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

60 otherwise respond may have to hunt in this state, including  
61 any hunting license issued to the person by the Division of  
62 Natural Resources, until all the costs, fines, fees, forfeitures,  
63 restitution or penalties are paid in full.

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

79 (d) (1) If a person charged with any criminal violation of  
80 this code fails to appear or otherwise respond in court, the  
81 magistrate court shall notify the Commissioner of the  
82 Division of Motor Vehicles thereof within ninety days of the  
83 scheduled date to appear unless the person sooner appears or  
84 otherwise responds in court to the satisfaction of the  
85 magistrate. Upon notice, the Division of Motor Vehicles  
86 shall suspend any privilege the person failing to appear or  
87 otherwise respond may have to operate a motor vehicle in this  
88 state, including any driver's license issued to the person by  
89 the Division of Motor Vehicles, until final judgment in the  
90 case and, if a judgment of guilty, until all costs, fines, fees,  
91 forfeitures, restitution or penalties imposed are paid in full.  
92 The suspension shall be imposed in accordance with the  
93 provisions of section six, article three, chapter seventeen-b of  
94 this code.

95       (2) In addition to the provisions of subdivision (1) of this  
96 subsection, if a person charged with any hunting violation  
97 described in chapter twenty of this code fails to appear or  
98 otherwise respond in court, the magistrate court shall notify  
99 the Director of the Division of Natural Resources of the  
100 failure thereof within fifteen days of the scheduled date to  
101 appear unless the person sooner appears or otherwise  
102 responds in court to the satisfaction of the magistrate. Upon  
103 notice, the Director of the Division of Natural Resources  
104 shall suspend any privilege the person failing to appear or  
105 otherwise respond may have to hunt in this state, including  
106 any hunting license issued to the person by the Division of  
107 Natural Resources, until final judgment in the case and, if a  
108 judgment of guilty, until all costs, fines, fees, forfeitures,  
109 restitution or penalties imposed are paid in full.

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

125       (e) In every criminal case which involves a misdemeanor  
126 violation, a magistrate may order restitution where  
127 appropriate when rendering judgment.

128 (f) (1) If all costs, fines, fees, forfeitures, restitution or  
129 penalties imposed by a magistrate court and ordered to be  
130 paid are not paid within one hundred eighty days from the  
131 date of judgment and the expiration of any stay of execution,  
132 the clerk of the magistrate court shall notify the prosecuting  
133 attorney of the county of nonpayment and provide the  
134 prosecuting attorney with an abstract of judgment. The  
135 prosecuting attorney shall file the abstract of judgment in the  
136 office of the clerk of the county commission in the county  
137 where the defendant was convicted and in any county  
138 wherein the defendant resides or owns property. The clerks  
139 of the county commissions shall record and index the  
140 abstracts of judgment without charge or fee to the prosecuting  
141 attorney and when so recorded, the amount stated to be owing  
142 in the abstract shall constitute a lien against all property of  
143 the defendant.

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

159 (g) Notwithstanding any provision of this code to the  
160 contrary, except as authorized by this section, payments of all  
161 costs, fines, fees, forfeitures, restitution or penalties imposed  
162 by the magistrate court in civil or criminal matters shall be

163 made in full. Partial payments of costs, fines, fees,  
164 forfeitures, restitution or penalties made pursuant to this  
165 section shall be credited to amounts due in the following  
166 order:

- 167 (1) Regional Jail Fund;
- 168 (2) Worthless Check Payee;
- 169 (3) Restitution;
- 170 (4) Magistrate Court Fund;
- 171 (5) Worthless Check Fund;
- 172 (6) Per Diem Regional Jail Fee;
- 173 (7) Community Corrections Fund;
- 174 (8) Regional Jail Operational Fund;
- 175 (9) Law Enforcement Training Fund;
- 176 (10) Crime Victims Compensation Fund;
- 177 (11) Court Security Fund;
- 178 (12) Courthouse Improvement Fund;
- 179 (13) Litter Control Fund;
- 180 (14) Sheriff arrest fee;
- 181 (15) Teen Court Fund;
- 182 (16) Other costs, if any;
- 183 (17) Fine.

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## CHAPTER 130

**(H. B. 4315 - By Delegates Cann,  
Manchin, Doyle, Fragale, Iaquina,  
Lawrence, Longstreth, Miley,  
Morgan and Varner)**

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

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.**

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

12   For Incorporation

13   Against Incorporation

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

16 (b) The election shall be held and conducted under the  
17 supervision of the commissioners and clerks of election  
18 appointed by the county commission and shall be conducted  
19 as nearly as may be in accordance with the laws of this state  
20 governing general elections. The results of the election shall  
21 be certified as in general elections, and the returns shall be  
22 canvassed and the results declared by the county commission.  
23 If any commissioner or clerk designated to serve in the  
24 election shall fail or refuse to serve, the vacancy may be filled  
25 in like manner as vacancies in the positions are filled in  
26 general elections under the laws of this state governing  
27 general elections. A recount may be had, as in general  
28 elections, upon the party or parties desiring a recount  
29 providing adequate assurance to the county commission that  
30 the party or parties will pay all costs of the recount.

31

Class IV town or village

32 (c) Each qualified elector of the territory sought to be  
33 incorporated as a Class IV town or village may cast his or her  
34 vote for or against the incorporation at the precinct in which  
35 he or she resides, by depositing a ballot in a ballot box or by  
36 use of a voting machine to be provided by the county  
37 commission for that purpose, on the date named in the notice  
38 for the taking of the vote. Each ballot, or ballot label where  
39 voting machines are used, shall be without party designation  
40 and shall have written or printed thereon the following words:

41   For Incorporation

42   Against Incorporation

43 The form of governance:

44   Plan I -- "*Mayor-Council Plan*"

45   Plan II -- "*Strong-Mayor Plan*"

46   Plan III -- "*Manager Plan*"

47   Plan IV -- "*Manager-Mayor Plan*"

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

50 (d) The election shall be held and conducted under the  
51 supervision of the commissioners and clerks of election  
52 appointed by the county commission and shall be conducted  
53 as nearly as may be in accordance with the laws of this state  
54 governing general elections. The results of the election shall  
55 be certified as in general elections, and the returns shall be  
56 canvassed and the results declared by the county commission.  
57 If any commissioner or clerk designated to serve in the  
58 election fails or refuses to serve, the vacancy may be filled in  
59 like manner as vacancies in such positions are filled in



60 general elections under the laws of this state governing  
61 general elections. A recount may be had, as in general  
62 elections, upon the party or parties desiring the recount  
63 providing adequate assurance to the county commission that  
64 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.**

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

16 (b) *Class IV town or village.* -- If the proceeding be for  
17 the incorporation of a town or village, and it appears to the  
18 county commission, upon the returns being canvassed, that a  
19 majority of the legal votes cast on the question of  
20 incorporation were in favor of the incorporation and the  
21 commission is satisfied that all of the applicable provisions of  
22 this article have been complied with, the commission shall by  
23 order duly made and entered of record, direct the clerk of the  
24 commission to issue a certificate of incorporation in form or  
25 in substance as follows:

26        “It appearing to the commission that under the provisions  
 27 of article two, chapter eight of the Code of West Virginia,  
 28 1931, as amended, at an election duly held on the ..... day  
 29 of ....., 20....., a majority of the legal votes cast on the  
 30 question of incorporation by the qualified voters of the  
 31 following territory, to wit: Beginning, etc. (here recite the  
 32 boundaries), were cast in favor of the incorporation of the  
 33 town or village of ....., in the County of  
 34 ....., bounded as herein set forth; adopting the  
 35 ..... form of government, and it appearing to the  
 36 satisfaction of the commission that all of the provisions of  
 37 article two, chapter eight of the Code of West Virginia, as  
 38 amended, have been complied with by the petitioners for  
 39 incorporation, the town or village is declared to be a body  
 40 corporate, duly authorized to exercise all of the corporate  
 41 powers conferred upon towns or villages by chapter eight of  
 42 the Code of West Virginia, 1931, as amended, from and after  
 43 the date of this certificate. (Signed) ....., Clerk  
 44 County Commission.”

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

48        (d) If, on the returns being canvassed on the question of  
 49 incorporation, a majority of the legal votes cast be against  
 50 incorporation, the proceeding shall be dismissed, and no  
 51 subsequent proceeding for incorporation of the same or any  
 52 portion of the territory shall be considered or election had  
 53 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.**

1        In the absence of any charter or official declaration to the  
 2 contrary, a Class IV town or village shall be the mayor-

3 council form of government, as set out in section two, article  
4 three of this chapter. The Class IV town or village form of  
5 government may be changed pursuant to the provisions of  
6 section two of this article.

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

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

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

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

9 Plan I -- "*Mayor-Council Plan*". Under this plan:

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

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

17 Plan II -- "*Strong-Mayor Plan*". Under this plan:

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

22 (2) The council shall be the governing body;

23 (3) The mayor shall be the administrative authority; and

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

28 Plan III -- "*Manager Plan*". Under this plan:

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

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

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

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

49 Plan IV -- "*Manager-Mayor Plan*". Under this plan:

50 (1) There shall be a council of not less than five nor more  
51 than eleven members, elected either at large or from the  
52 geographical districts as may be established by ordinance, or  
53 partly at large and partly from the geographical districts, and

54 the ordinance may empower the council to change these  
55 geographical districts without amending the ordinance:  
56 *Provided*, That the change of these geographical districts may  
57 not take effect during the terms of office of the members of  
58 the council making the change;

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

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

65 (4) The manager shall be the administrative authority and  
66 shall manage the affairs of the town or village under the  
67 supervision of the council and shall be responsible to the  
68 council. The manager shall appoint or employ, in accordance  
69 with this chapter, all subordinates and employees for whose  
70 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  
2 village, the regular election of officers shall be held on the  
3 second Tuesday in June of the appropriate year, unless  
4 otherwise provided in the charter of the city or the special  
5 legislative charters of the towns or villages.

6 (b) A municipal election date established by a charter  
7 provision may fall on the same day as the county-state  
8 primary election or general election only when the voting  
9 precinct boundaries in the municipality coincide with the  
10 voting precinct boundaries established by the county  
11 commission or when the charter provides for separate  
12 registration books. If a municipal election falls on the same  
13 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.

48 (1) A municipality whose officers serve two-year terms,  
49 may lengthen the term to four years for half of the elected  
50 officers, except that the lengthening of terms cannot be  
51 implemented until following the subsequent election for that  
52 office;

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

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

59 (4) Selection of elected officers whose term is shortened  
60 shall be determined by a random chance with an equal chance  
61 for each officials term to be shortened.

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## 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.**

**§8-15-8a. Eligibility for allocation from municipal pensions and protection fund and the Fire Protection Fund.**

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

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

8 (2) Complete or be in the process of receiving firefighters  
9 training, including section one of the West Virginia  
10 University fire service extension or its equivalent. The fire  
11 company or department must have at least ten members  
12 certified as having completed the training or if a volunteer  
13 fire company or department has twenty or fewer members,  
14 fifty percent of the active volunteer members must have  
15 completed such training; and

16 (3) Comply with all applicable federal and state laws.

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

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



## CHAPTER 133

**(Com. Sub. for H. B. 4601 - By Delegates Iaquina,  
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  
2 participate in asset forfeiture and seizure programs  
3 established by the United States government relating to drug  
4 interdiction and counter-drug activities, pursuant to the  
5 provisions of 32 U. S. C. §112.

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

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

17       (3) Expenditures from the fund shall be for the purposes  
18 set forth in this section and are not authorized from collections,

19 but are to be made only in accordance with appropriation by  
20 the Legislature and in accordance with the provisions of article  
21 three, chapter twelve of this code and upon the fulfillment of  
22 the provisions set forth in article two, chapter eleven-b of this  
23 code: *Provided*, That for fiscal year ending June 30, 2013,  
24 expenditures are authorized from collections rather than  
25 pursuant to an appropriation by the Legislature. Expenditures  
26 from the fund shall be for facilities, equipment, administrative  
27 expenses and to defray any other necessary expenses incidental  
28 to and associated with the program.

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

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## CHAPTER 134

**(Com. Sub. for H. B. 4504 - By Delegates  
Border, Anderson, Ellem, Perdue, Boggs,  
D. Poling, Azinger and Staggers)**

[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.**

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

9           (1) The nursing bed facility will be located in the county  
10 of that county commission;

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

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

17           (4) The nonprofit community group develops and  
18 operates no more than thirty-six nursing home beds pursuant  
19 to this section; and

20           (5) The nonprofit community group applies for a license  
21 to operate the nursing home within twenty-four months after  
22 the effective date of this section.

23           (b) The establishment of a nursing home and nursing beds  
24 under this section shall be required to apply for a certificate of  
25 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.**

1           (a) Each nursing home subject to the provisions of this  
2 article shall hold in a separate account and in trust each  
3 resident's personal funds deposited with the nursing home.

4           (b) No person may use or cause to be used for any purpose  
5 the personal funds of any resident admitted to any such nursing  
6 home unless consent for the use thereof has been obtained from  
7 the resident or from a committee or guardian or relative.

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

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

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

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

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## 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.**

- 1           (a) *Certificate of sale.* -- In the case of property sold as
- 2   provided in section thirteen-c the Tax Commissioner shall



3 provide to the purchaser a certificate of sale upon payment in full  
4 of the purchase price. In the case of real property, such  
5 certificate shall set forth the real property purchased, for whose  
6 taxes the same was sold, the name of the purchaser and the price  
7 paid therefor.

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

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

23 (d) *Removal of personal property.* -- Following the  
24 execution of a deed to real property pursuant to this section, and  
25 after the previous owner has vacated the property either  
26 voluntarily or following an eviction proceeding, any personal  
27 property remaining on the real property may be deemed  
28 abandoned if the purchaser of the real property provides notice,  
29 pursuant to this subsection, and the personal property remains on  
30 the real property at the conclusion of the notice period. The  
31 notice shall state that the personal property will be deemed  
32 abandoned if it is not removed from the real property before the  
33 end of the thirtieth day following the postmark date of the notice.  
34 If the locks are changed or the previous owner is otherwise  
35 prevented from accessing the personal property, the purchaser  
36 shall provide the previous owner access to the personal property

37 on reasonable terms. The notice shall state a phone number, a  
38 mailing address, and a physical address where the purchaser or  
39 an agent for the purchaser who can provide access to the  
40 personal property can be contacted; and shall further state that  
41 the previous owner may contact the purchaser, and that  
42 purchaser will provide the previous owner access to the personal  
43 property on reasonable terms. The notice shall be sent to the  
44 former owner(s) of the real property at their usual place of  
45 business or their usual place of abode or last known address. If  
46 the purchaser has received notice in writing or by electronic  
47 record that personal property belongs to another or that another  
48 person or entity has a security interest in the personal property,  
49 and if that person's mailing address is also received by the  
50 purchaser in writing or by electronic record, notice shall be sent  
51 to that person or entity as well. The notice shall be made to all  
52 required persons, as stated in this section, by both certified mail  
53 and regular mail. The notice is complete when mailed,  
54 notwithstanding the fact that the notice may be returned as  
55 unclaimed or refused. If the notice period passes and the  
56 personal property remains on the real property, then the personal  
57 property shall be deemed abandoned and the purchaser of the  
58 real property may dispose of the remaining personal property in  
59 his or her discretion. The notice required by this section may not  
60 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.**

1 Following a foreclosure on residential real property pursuant  
2 to this article, and after the previous owner has vacated the  
3 property either voluntarily or following an eviction proceeding,  
4 any personal property remaining on the real property may be  
5 deemed abandoned if the purchaser of the real property provides

6 notice, pursuant to this section, and the personal property  
7 remains on the real property at the conclusion of the notice  
8 period. The notice shall state that the personal property will be  
9 deemed abandoned if it is not removed from the real property  
10 before the end of the thirtieth day following the postmark date of  
11 the notice. If the locks are changed or the previous owner is  
12 otherwise prevented from accessing the personal property, the  
13 purchaser shall provide the previous owner access to the  
14 personal property on reasonable terms. The notice shall state a  
15 phone number, a mailing address, and a physical address where  
16 the purchaser or an agent for the purchaser who can provide  
17 access to the personal property can be contacted; and shall  
18 further state that the previous owner may contact the purchaser,  
19 and that purchaser will provide the previous owner access to the  
20 personal property on reasonable terms. The notice shall be sent  
21 to the former owner(s) of the real property at all the address(es)  
22 to which notice of foreclosure sale was sent as set forth in the  
23 trustee's report of sale, as well as the last known address, if  
24 different. If the purchaser has received notice in writing or by  
25 electronic record that personal property belongs to another or  
26 that another person or entity has a security interest in the  
27 personal property, and if that person's or entity's mailing address  
28 is also received by the purchaser in writing or by electronic  
29 record, notice shall be sent to that person or entity as well. The  
30 notice shall be made to all required persons, as stated in this  
31 section, by both certified mail and regular mail. The notice is  
32 complete when mailed, notwithstanding the fact that the notice  
33 may be returned as unclaimed or refused. If the notice period  
34 passes and the personal property remains on the real property,  
35 then the personal property shall be deemed abandoned and the  
36 purchaser of the real property may dispose of the remaining  
37 personal property in the purchaser's discretion. The notice  
38 required by this section may not be waived before the property  
39 is vacated.

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## CHAPTER 137

**(Com. Sub. for S. B. 191 - By Senators  
Kessler, Mr. President, Stollings,  
Unger, Laird and Jenkins)**

[Passed March 7, 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 §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  
2           indicated.

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

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

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

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

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

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

25          (7) *Respondent.* -- “Respondent” means an individual  
26          alleged in a petition to have committed an act specified in  
27          subsection (a), section four of this article against a petitioner.

28       (8) *School*. -- “School” means an educational facility  
29       comprised of one or more buildings, including school  
30       grounds, a school bus or any school-sponsored function or  
31       extracurricular activities. For the purpose of this subdivision,  
32       “school grounds” includes the land on which a school is built  
33       together with such other land used by students for play,  
34       recreation or athletic events while attending school.  
35       “Extracurricular activities” means voluntary activities  
36       sponsored by a school, a county board or an organization  
37       sanctioned by a county board or the State Board of Education  
38       and include, but are not limited to, preparation for and  
39       involvement in public performances, contests, athletic  
40       competitions, demonstrations, displays, organizations and  
41       clubs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§53-8-2. Confidentially of proceedings.**

1 (a) *General Provisions.* -- All orders, findings,  
2 pleadings, recordings, exhibits, transcripts or other  
3 documents contained in a court file are confidential and are  
4 not available for public inspection: *Provided,* That unless the  
5 file is sealed pursuant to section \*eighteen of this article or  
6 access is otherwise prohibited by order, any document in the  
7 file shall be available for inspection and copying by the

8 parties, attorneys of record, guardians ad litem, designees  
9 authorized by a party in writing and law enforcement. A  
10 magistrate or circuit judge may open and inspect the entire  
11 contents of the court file in any case pending before the  
12 magistrate's or judge's court. When sensitive information  
13 has been disclosed in a hearing, pleading or document filing,  
14 the court may order such information sealed in the court file.  
15 Sealed court files shall be opened only pursuant to section  
16 \*eighteen of this article.

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

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

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

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

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\*CLERK'S NOTE: On lines 5 and 15, the reference to "section eighteen of this article" should have read "section seventeen of this article".



37 records contained in the court file may not be obtained by  
38 subpoena but only by court order and upon full compliance  
39 with statutory and case law requirements.

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

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

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

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

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

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

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

**§53-8-4. Petition seeking relief.**

1 (a) *Underlying acts.* -- A petitioner may seek relief under  
2 this article by filing with a magistrate court a petition that  
3 alleges the commission of any of the following acts against  
4 the petitioner by the respondent:

5 (1) A sexual offense or attempted sexual offense as  
6 defined in section one of this article; or

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

9 (b) *Contents.* --

10 The petition shall:

11 (1) Be verified and provide notice to the petitioner that an  
12 individual who knowingly provides false information in the  
13 petition is guilty of a misdemeanor and on conviction is  
14 subject to the penalties specified in subsection (d) of this  
15 section;

16 (2) Subject to the provisions of subsection (c) of this  
17 section, contain the address of the petitioner; and

18 (3) Include all information known to the petitioner of:

19 (A) The nature and extent of the act specified in  
20 subsection (a) of this section for which the relief is being  
21 sought, including information known to the petitioner  
22 concerning previous harm or injury resulting from an act  
23 specified in subsection (a) of this section by the respondent;

24 (B) Each previous and pending action between the parties  
25 in any court; and

26 (C) The whereabouts of the respondent.

27 (c) *Address may be stricken.* -- If, in a proceeding under  
28 this article, a petitioner alleges, and the court finds, that the  
29 disclosure of the address of the petitioner would risk further  
30 harm to the petitioner or a member of the petitioner's  
31 household, that address may be stricken from the petition and

32 omitted from all other documents filed with, or transferred to,  
33 a court.

34 (d) *Providing false information.* -- An individual who  
35 knowingly provides false information in a petition filed under  
36 this section is guilty of a misdemeanor and, upon conviction  
37 thereof, shall be fined not less than \$50 nor more than \$1,000  
38 or confined in jail not more than ninety days, or both.

39 (e) *Withdrawal or dismissal of a petition prior to*  
40 *adjudication operates as a dismissal without prejudice.* -- No  
41 action for a personal safety order may be dismissed because  
42 the respondent is being prosecuted for a crime against the  
43 petitioner. For any action commenced under this article,  
44 dismissal of a case or a finding of not guilty, does not require  
45 dismissal of the action for a civil protection order.

#### §53-8-5. Temporary personal safety orders.

1 (a) *Authorized; forms of relief available.* --

2 (1) If after a hearing on a petition, whether ex parte or  
3 otherwise, a magistrate finds that there is reasonable cause to  
4 believe that the respondent has committed an act specified in  
5 subsection (a), section four of this article, against the  
6 petitioner, the magistrate shall issue a temporary personal  
7 safety order to protect the petitioner.

8 (2) The temporary personal safety order may include any  
9 or all of the following relief:

10 (A) Order the respondent to refrain from committing or  
11 threatening to commit an act specified in subsection (a),  
12 section four of this article against the petitioner;

13 (B) Order the respondent to refrain from contacting,  
14 attempting to contact or harassing the petitioner directly,

15 indirectly or through third parties regardless of whether those  
16 third parties know of the order;

17 (C) Order the respondent to refrain from entering the  
18 residence of the petitioner;

19 (D) Order the respondent to remain away from the place  
20 of employment, school or residence of the petitioner:  
21 *Provided*, That when the respondent is alleged to have  
22 committed an act specified in subdivision (2), subsection (a),  
23 section four of this article, the magistrate may not prohibit the  
24 respondent from entering the respondent's place of  
25 employment;

26 (E) Order the respondent not to visit, assault, molest or  
27 otherwise interfere with the petitioner and, if the petitioner is  
28 a child, the petitioner's siblings and minors residing in the  
29 household of the petitioner;

30 (F) The court, in its discretion, may prohibit a respondent  
31 from possessing a firearm as defined in section seven, article  
32 seven, chapter sixty-one of this code if:

33 (i) A weapon was used or threatened to be used in the  
34 commission of the offense predicated the petitioning for the  
35 personal safety order;

36 (ii) The respondent has violated any prior order as  
37 specified under this article; or

38 (iii) The respondent has been convicted of an offense  
39 involving the use of a firearm; and

40 (G) Order either party to pay filing fees and costs of a  
41 proceeding pursuant to section thirteen of this article.

42 (3) If the magistrate issues an order under this section, the  
43 order shall contain only the relief necessary to protect the  
44 petitioner.

45 (b) *Immediate.* -- The temporary personal safety order  
46 shall be immediately served on the respondent by law  
47 enforcement, or at the option of the petitioner, pursuant to  
48 rules promulgated pursuant to section fifteen of this article.

49 (c) *Length of effectiveness.* --

50 (1) The temporary personal safety order shall be effective  
51 for not more than ten days after service of the order.

52 (2) The magistrate may extend the temporary personal  
53 safety order to effectuate service of the order or for other  
54 good cause. The failure to obtain service upon the respondent  
55 does not constitute a basis to dismiss the petition.

56 (d) *Final personal safety order hearing.* -- The magistrate  
57 may proceed with a final personal safety order hearing  
58 instead of a temporary personal safety order hearing if:

59 (1) (A) The respondent appears at the hearing; or

60 (B) The court otherwise has personal jurisdiction over the  
61 respondent; and

62 (2) The petitioner and the respondent expressly consent  
63 to waive the temporary personal safety order hearing.

**§53-8-6. Respondent's opportunity to be heard; notice to respondent.**

1 (a) *Respondent's opportunity to be heard.* -- A  
2 respondent shall have an opportunity to be heard on the

3 question of whether the magistrate should issue a final  
4 personal safety order subject to the provisions of this section.

5 (b) *Personal safety order hearing.* -- Date and time;  
6 notice.

7 (1) (A) The temporary personal safety order shall state  
8 the date and time of the final personal safety order hearing.

9 (B) Unless continued for good cause, the final personal  
10 safety order hearing shall be held no later than ten days after  
11 the temporary personal safety order is served on the  
12 respondent.

13 (2) The temporary personal safety order shall include  
14 notice to the respondent:

15 (A) In at least ten-point bold type, that if the respondent  
16 fails to appear at the final personal safety order hearing, the  
17 respondent may be served by first-class mail at the  
18 respondent's last known address with the final personal  
19 safety order and all other notices concerning the final  
20 personal safety order;

21 (B) Specifying all the possible forms of relief under  
22 subsection (d) of section seven, that the final personal safety  
23 order may contain;

24 (C) That the final personal safety order shall be effective  
25 for the period stated in the order, not to exceed two years;  
26 and

27 (D) In at least ten-point bold type, that the respondent  
28 must notify the court in writing of any change of address.

**§53-8-7. Personal safety hearing; forms of relief.**

1           (a) *Final personal safety order hearing.* --

2           *Proceeding; issuance of order.* -- If the respondent  
3 appears for the final personal safety order hearing, has been  
4 served with a temporary personal safety order or the  
5 respondent waives personal service, the magistrate:

6           (1) May proceed with the final personal safety order  
7 hearing; and

8           (2) May issue a final personal safety order to protect the  
9 petitioner if the court finds by a preponderance of the  
10 evidence that:

11           (A) (i) The respondent has committed an act specified in  
12 subsection (a), section four of this article against the  
13 petitioner; and

14           (ii) The petitioner has a reasonable apprehension of  
15 continued unwanted or unwelcome contacts by the  
16 respondent; or

17           (B) The respondent consents to the entry of a personal  
18 safety order.

19           (b) A final personal safety order may be issued only to an  
20 individual who has filed a petition or on whose behalf a  
21 petition was filed under section three of this article.

22           (c) In cases where both parties file a petition under  
23 section four of this article, the court may issue mutual  
24 personal safety orders if the court finds by a preponderance  
25 of the evidence that:

26 (1) Each party has committed an act specified in  
27 subsection (a), section four of this article against the other  
28 party; and

29 (2) Each party has a reasonable apprehension of  
30 continued unwanted or unwelcome contacts by the other  
31 party.

32 (d) *Personal safety order - Forms of relief.* --

33 (1) The final personal safety order may include any or all  
34 of the following relief:

35 (A) Order the respondent to refrain from committing or  
36 threatening to commit an act specified in subsection (a),  
37 section four of this article against the petitioner;

38 (B) Order the respondent to refrain from contacting,  
39 attempting to contact or harassing the petitioner directly,  
40 indirectly, or through third parties regardless of whether those  
41 third parties know of the order;

42 (C) Order the respondent to refrain from entering the  
43 residence of the petitioner;

44 (D) Order the respondent to remain away from the place  
45 of employment, school or residence of the petitioner;

46 (E) Order the respondent not to visit, assault, molest or  
47 otherwise interfere with the petitioner and, if the petitioner is  
48 a child, the petitioner's siblings and minors residing in the  
49 household of the petitioner;

50 (F) The court, in its discretion, may prohibit a respondent  
51 from possessing a firearm as defined in section seven, article  
52 seven, chapter sixty-one of this code if:



53 (i) A weapon was used or threatened to be used in the  
54 commission of the offense predicated the petitioning for the  
55 personal safety order;

56 (ii) The respondent has violated any prior order as  
57 specified under this article; or

58 (iii) The respondent has been convicted of an offense  
59 involving the use of a firearm; and

60 (G) Order either party to pay filing fees and costs of a  
61 proceeding pursuant to section thirteen of this article.

62 (2) If the magistrate issues an order under this section, the  
63 order shall contain only the relief necessary to protect the  
64 petitioner.

65 (e) *Personal safety order - Service.* --

66 (1) A copy of the final personal safety order shall be  
67 served on the petitioner, the respondent, the appropriate law-  
68 enforcement agency and any other person the court  
69 determines is appropriate, including a county board of  
70 education, in open court or, if the person is not present at the  
71 final personal safety order hearing, by first-class mail to the  
72 person's last known address or by other means in the  
73 discretion of the court.

74 (2) (A) A copy of the final personal safety order served  
75 on the respondent in accordance with subdivision (1) of this  
76 subsection or the hearing of the announcement of the court's  
77 ruling in court, constitutes actual notice to the respondent of  
78 the contents of the final personal safety order.

79 (B) Service is complete upon mailing.

80 (f) *Length of effectiveness.* -- All relief granted in a final  
81 personal safety order shall be effective for the period stated  
82 in the order, not to exceed two years.

**§53-8-8. Modification and rescission.**

1 (a) A personal safety order may be modified or rescinded  
2 during the term of the personal safety order after:

3 (1) Giving notice to the petitioner and the respondent;  
4 and

5 (2) A hearing.

6 (b) Modification may include extending the term of the  
7 personal safety order if the order was previously issued for a  
8 term of less than the two-year maximum term set forth in  
9 section seven of this article.

**§53-8-9. Appeals.**

1 (a) If a magistrate grants or denies relief under a petition  
2 filed under this article, a respondent or a petitioner may  
3 appeal to the circuit court for the county where the magistrate  
4 court is located.

5 (b) An appeal taken under this section shall be heard de  
6 novo in the circuit court.

7 (c) (1) If an appeal is filed under this section, the  
8 magistrate court judgment shall remain in effect until  
9 superseded by a judgment of the circuit court; and

10 (2) Unless the circuit court orders otherwise, modification  
11 or enforcement of the magistrate court order shall be by the  
12 magistrate court.

**§53-8-10. Statement concerning violations.**

1 A temporary personal safety order and final personal  
2 safety order issued under this article shall state that a  
3 violation of the order may result in:

4 (1) Criminal prosecution; and

5 (2) Incarceration, fine or both.

**§53-8-11. Penalties.**

1 (a) *Fines or incarceration.* -- An individual who fails to  
2 comply with the relief granted in a temporary personal safety  
3 order or a final personal safety order entered pursuant to this  
4 article is guilty of a misdemeanor and, upon conviction  
5 thereof, shall:

6 (1) For a first offense, be fined not more than \$1,000 or  
7 confined in jail not more than ninety days, or both; and

8 (2) For a second or subsequent offense, be fined not more  
9 than \$2,500 or confined in jail not more than one year, or  
10 both.

11 (b) *Arrest.* -- A law-enforcement officer shall arrest with  
12 or without a warrant and take into custody an individual who  
13 the officer has probable cause to believe is in violation of a  
14 temporary or final personal safety order in effect at the time  
15 of the violation.

**§53-8-12. Priority of petitions.**

1 Any petition filed in magistrate court under the  
2 provisions of this article shall be given priority over any other  
3 civil action before the court, except actions pursuant to article  
4 twenty-seven, chapter forty-eight of this code and those in

5 which trial is in progress, and shall be docketed immediately  
6 upon filing.

**§53-8-13. Fees and costs.**

1 (a) *Charges for fees and costs postponed.* -- No fees may  
2 be charged for the filing of petitions or other papers, service  
3 of petitions or orders, copies of orders or other costs for  
4 services provided by, or associated with, any proceedings  
5 under this article until the matter is brought before the court  
6 for final resolution.

7 (b) *Assessment of court costs and fees when temporary*  
8 *order is denied.* -- If the petition is denied, court costs and  
9 fees shall be assessed by the magistrate against the petitioner  
10 at the conclusion of the temporary hearing, unless a fee  
11 waiver affidavit reflecting inability to pay has been filed or  
12 prohibited by federal law.

13 (c) Costs and fees may not be assessed against a  
14 prevailing party.

15 (d) *Assessment of court costs and fees when personal*  
16 *safety order is granted.* -- Except as in subsection (c), court  
17 costs and fees shall be assessed by the court at the conclusion  
18 of a proceeding, unless a fee waiver affidavit reflecting  
19 inability to pay has been filed.

20 (e) *Assessment of court costs and fees when petitioner*  
21 *moves to terminate order.* -- No court costs or fees shall be  
22 assessed against a petitioner who moves to terminate an  
23 order, whether the court grants or denies the motion.

24 (f) A person seeking waiver of fees, costs or security  
25 pursuant to section one, article two, chapter fifty-nine of this  
26 code shall execute before the clerk where the matter is  
27 pending a fee waiver affidavit which shall be kept

28 confidential. An additional fee waiver affidavit shall be filed  
29 whenever the financial condition of the person no longer  
30 conforms to the financial condition established by the  
31 Supreme Court of Appeals for determining inability to pay  
32 fees or whenever an order has been entered directing the  
33 filing of a new affidavit.

**§53-8-14. Service by law enforcement.**

1 Notwithstanding any other provision of this code to the  
2 contrary, all law-enforcement officers are hereby authorized  
3 and required to serve all pleadings and orders filed or entered  
4 pursuant to this article on Sundays and legal holidays. No  
5 law-enforcement officer may refuse to serve any pleadings or  
6 orders entered pursuant to this article. Law enforcement shall  
7 attempt to serve all orders without delay: *Provided*, That  
8 service of process shall be attempted within seventy-two  
9 hours of law enforcement's receipt of the order. If service is  
10 not made, law enforcement shall continue to attempt service  
11 on the respondent until proper service is made.

**§53-8-15. Rules and forms.**

1 (a) *Authorized.* -- The Supreme Court of Appeals may  
2 adopt rules and forms to implement the provisions of this  
3 article.

4 (b) *Petition form.* --

5 (1) The Supreme Court of Appeals is requested to adopt  
6 a form for a petition under this article.

7 (2) A petition form shall contain notice to a petitioner that  
8 an individual who knowingly provides false information in a  
9 petition filed under this subtitle is guilty of a misdemeanor  
10 and, on conviction, is subject to the penalties specified in  
11 section four of this article.

**§53-8-16. Limitation on use of information.**

1        Nothing in this article authorizes the inclusion of  
2 information contained in petition, pleadings or orders  
3 provided for by this article to be submitted to any local, state,  
4 interstate, national or international systems of criminal  
5 identification pursuant to section twenty-four, article two,  
6 chapter fifteen of this code. Nothing in this section prohibits  
7 the West Virginia State Police from processing information  
8 through its criminal identification bureau with respect to any  
9 actual charge or conviction of a crime.

**§53-8-17. Sealing of records.**

1        (a) *Definitions.* --

2        (1) In this section the following words have the meanings  
3 indicated.

4        (2) “Court record” means an official record of a court  
5 about a proceeding that the clerk of a court or other court  
6 personnel keeps. “Court record” includes an index, a docket  
7 entry, a petition or other pleading, a memorandum, a  
8 transcription of proceedings, an electronic recording, an order  
9 and a judgment.

10        (3) “Seal” means to remove information from public  
11 inspection in accordance with this section.

12        (4) “Sealing” means:

13        (A) With respect to a record kept in a courthouse,  
14 removing to a separate secure area to which persons who do  
15 not have a legitimate reason for access are denied access;

16        (B) With respect to electronic information about a  
17 proceeding on the website maintained by the magistrate

18 court, circuit court or the Supreme Court of Appeals,  
19 removing the information from the public website; and

20 (C) With respect to a record maintained by any law-  
21 enforcement agency, by removing to a separate secure area to  
22 which persons who do not have a legitimate reason for access  
23 are denied access.

24 (b) *Written request.* -- Either party to a petition filed  
25 pursuant to this article may file a written request with the  
26 clerk to seal all court records relating to the proceeding.

27 (c) *Timing.* -- A request for sealing under this section  
28 may not be filed within two years after the entry of a final  
29 order, or the denial or dismissal of the petition.

30 (d) *Notice, hearing and findings.* --

31 (1) On the filing of a request for sealing under this  
32 section, the court shall schedule a hearing on the request.

33 (2) The court shall give notice of the hearing to the  
34 parties.

35 (3) After the hearing, the court shall order the sealing of  
36 all court records relating to the proceeding if the court finds:

37 (A) Good cause to grant the request. In determining  
38 whether there is good cause to grant the request to seal court  
39 records, the court shall balance the privacy and potential  
40 danger of adverse consequences to the parties against the  
41 potential risk of future harm and danger to the petitioner and  
42 the community; and

43 (B) That none of the following are pending at the time of  
44 the hearing:

45 (i) A temporary personal safety order or protective order  
46 issued against the respondent in a proceeding between the  
47 petitioner and the respondent; or

48 (ii) A criminal charge against the respondent arising from  
49 an alleged act described in subsection (a) section four of this  
50 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  
53 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  
56 petitioner or the respondent in a proceeding;

57 (C) A prosecuting attorney; or

58 (D) An employee of the Department of Health and  
59 Human Resources.

60 (2) (A) A person not listed in subdivision (1) of this  
61 subsection may subpoena or file a motion for access to a  
62 record sealed under this section.

63 (B) If the court finds that the person has a legitimate  
64 reason for access, the court may grant the person access to  
65 the sealed record under the terms and conditions that the  
66 court determines.

67 (C) In ruling on a motion under this subdivision, the court  
68 shall balance the person's need for access to the record with  
69 the respondent's right to privacy and the potential harm of  
70 unwarranted adverse consequences to the respondent that the  
71 disclosure may create.



72 (f) *Compliance with order.* -- Within sixty days after  
73 entry of an order under subdivision (3), subsection (d) of this  
74 section, each custodian of court records that are subject to the  
75 order of sealing shall advise in writing the court and the  
76 parties of compliance with the order.

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## 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.**

#### **§62-12-12. Parole Board generally.**

1 (a) The West Virginia Parole Board is continued. The  
2 board shall consist of nine members, each of whom shall have  
3 been a resident of this state for at least five consecutive years  
4 prior to his or her appointment. No more than five of the  
5 board members may at any one time belong to the same

6 political party. The board shall be appointed by the Governor,  
7 by and with the advice and consent of the Senate.

8 (b) Appointments shall be made in such a manner that  
9 each congressional district is represented and so that no more  
10 than four and no less than two members of the board reside  
11 in any one congressional district. No more than two  
12 members of the board may reside in any one county.

13 (c) Any person initially appointed to the board on or after  
14 July 1, 2012, shall have a degree from an accredited college  
15 or university or at least five years of actual experience in the  
16 fields of corrections, law enforcement, sociology, law,  
17 education, psychology, social work, medicine or a  
18 combination thereof and shall be otherwise competent to  
19 perform the duties of his or her office. The members shall be  
20 appointed for overlapping terms of six years. Members are  
21 eligible for reappointment. The members of the board shall  
22 devote their full time and attention to their board duties. The  
23 Governor shall appoint one of the nine appointed members to  
24 serve as chairperson at the Governor's will and pleasure.

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## 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.**

1           (a) The Auditor shall provide at least one seminar each  
2     year for state licensing boards to inform the boards of the  
3     duties and requirements imposed by state law and rules. All  
4     state agencies shall cooperate with and assist in providing the  
5     seminar if the Auditor requests.

6           (b) The seminar may include the following topics:

7           (1) Powers and duties of the boards and board members;

8           (2) The financial procedures for boards;

9           (3) Purchasing requirements;

10          (4) Open meeting requirements;

11          (5) Ethics;

12          (6) Rule-making procedures;

13          (7) Procedures for the handling of complaints,  
14     investigations and administrative hearings;

15 (8) Disciplinary actions available to boards;

16 (9) Records management procedures;

17 (10) Annual reports; and

18 (11) Any other topics the Auditor determines necessary  
19 or informative.

20 (c) (1) The board members and the executive director or  
21 the chief financial officer of a board newly created under the  
22 provisions of this chapter shall attend a seminar provided  
23 under this section within one year of the creation of the  
24 board.

25 (2) The chairperson, the executive director or the chief  
26 financial officer of the board shall annually attend a seminar  
27 provided under this section.

28 (3) Each board member shall attend at least one seminar  
29 provided under this section during each term of office.

30 (d) The Auditor may charge a registration fee for the  
31 seminar to cover the cost of providing the seminar. The fee  
32 may be paid from funds available to a board and a board may  
33 approve an expense reimbursement for the attendance of its  
34 members, executive director and the chief financial officer of  
35 the board.

36 (e) Prior to January 1 of each year, the Auditor shall  
37 provide to the chairs of the Joint Standing Committee on  
38 Government Organization a list of:

39 (1) The names and titles of the persons who attended the  
40 seminar;

- 41           (2) The boards represented; and
- 42           (3) The number and dates of the seminars offered by the  
43 Auditor during the previous year.
- 44           (f) Ex officio members who are elected or appointed state  
45 officers or employees and members of boards that have purely  
46 advisory functions with respect to a department or agency of the  
47 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.**

1 (a) An applicant for an authorization to practice under the  
2 provisions of this chapter shall apply in writing to the proper  
3 board and submit the applicable fees.

4 (b) Each board may establish, by legislative rule, a  
5 deadline for an application for an examination.

6 (c) Notwithstanding the specific fees set forth in this  
7 chapter, each board may set fees by legislative rule that are  
8 sufficient to enable the board to effectively carry out its  
9 duties and responsibilities. At least thirty days prior to  
10 proposing a rule on fees, the board shall notify its  
11 membership of the proposed rule by:

12 (1) Mailing a copy of the proposed rule to its  
13 membership; or

14 (2) Posting the proposed rule on its website and notifying  
15 its membership of the website posting by:

16 (A) Mailing a postcard;

17 (B) Emailing a notice; or

18 (C) Placing a notice in its newsletter.

19 (d) In addition to any other information required by the  
20 board, an applicant's social security number shall be recorded

21 on an application: *Provided*, That the board shall redact the  
22 social security number on any copies provided to the public.

23 (e) A board may not discriminate against an applicant  
24 because of political or religious opinion or affiliation, marital  
25 status, race, color, gender, creed, age, national origin,  
26 disability or other protected group status.

27 (f) A board may deny an applicant an authorization to  
28 practice in this state if an applicant's authorization to practice  
29 in another jurisdiction has been revoked. The denial may be  
30 made by the board without a hearing unless the applicant  
31 requests a hearing within thirty days of the denial. A hearing  
32 must be conducted pursuant to the provisions of this article or  
33 the provisions contained in the rules of the board.

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## 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.**

1 (a) The Legislature finds that:

2 (1) Many current and former members of the United  
3 States Armed Forces have acquired extensive academic,  
4 professional and occupational training and experience in  
5 various professions and occupations while serving in the  
6 Armed Forces.

7 (2) In many instances, that level of academic education,  
8 training and experience may be comparable to, or may  
9 exceed, what is required in this state to register for  
10 examination, or qualify for licensure, certification or  
11 registration for a similar or related occupation or profession.

12 (3) Armed forces service members often leave the  
13 military with documented training, education and experience



14 which may be sufficient for application toward the  
15 requirements in this state to register for examination, or  
16 qualify for licensure, certification or registration in a  
17 comparable profession or occupation.

18 (4) Armed forces members who are separating from  
19 service are frequently delayed getting post-service  
20 employment even though they have applicable military  
21 education, training and experience which can qualify them  
22 for professional license, certifications or registration.

23 (5) Military veterans have expended and sacrificed a  
24 significant portion of their most productive earning potential  
25 and working years to the service of their country; however,  
26 reported unemployment rates of veterans are higher than  
27 national averages, and accordingly, military veterans should  
28 be given the opportunity to take advantage of their military  
29 education, experience and training, as appropriate, toward  
30 pursuing a career in many of the professions and occupations  
31 identified in this chapter.

32 (6) The state may be experiencing a shortage of qualified  
33 candidates for licensure, certification or registration for these  
34 various professions and occupations. Therefore, it is in the  
35 public interest of this state to accommodate and attract  
36 persons with the appropriate military education, training and  
37 experience, to apply for licensure, certification or registration  
38 in a profession or occupation in West Virginia.

39 (7) The boards in this chapter have the particular  
40 expertise necessary to evaluate and determine what military  
41 education, training and experience is adequate, acceptable  
42 and appropriate to be applied toward the qualifications for  
43 licensure, certification or registration and whether it is  
44 necessary that the competency of those persons be  
45 determined and evaluated by examination before they are so  
46 licensed, certified or registered.

47 (b) Except as provided in subsection (d) of this section,  
48 and notwithstanding any law to the contrary, all boards  
49 referred to in this chapter shall, upon presentation of  
50 satisfactory evidence by an applicant for licensure,  
51 certification or registration, accept education, training or  
52 experience of an individual as a member of the Armed Forces  
53 or Reserves of the United States, the National Guard of any  
54 state, or the military reserves of any state, as part of the  
55 evaluation process toward the qualifications to receive, or  
56 take examination for, that respective professional license,  
57 certification, or registration.

58 (c) Boards referred to in this chapter may propose rules  
59 for legislative approval in accordance with the provisions of  
60 article three, chapter twenty-nine-a of this code as are  
61 necessary to implement the provisions of this section. The  
62 proposed rules shall establish criteria or requirements for  
63 military education, training and experience that qualify the  
64 applicant to take an examination for licensure, certification or  
65 registration or for a waiver of any examination requirement  
66 to be licensed, certified or registered.

67 (d) The provisions of this section do not apply to the  
68 boards referred to in this chapter whose license, certification  
69 or registration requirements are subject to the provisions of  
70 article twenty-four of this chapter.

71 (e) This section shall be liberally construed to effectuate  
72 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.**

1 (a) During periods when the licensee, certificate holder or  
2 registrant is on active duty as a member of the Armed Forces

3 of the United States, the National Guard of this state or any  
4 other state, or any other military reserve component and  
5 deployed outside of this state, and for six months after  
6 discharge from active duty, the license, certification or  
7 registration of a person regulated by a board in this chapter  
8 shall continue in good standing and shall be renewed without  
9 payment of any dues or fees for the maintenance or renewal  
10 of the license, certification or registration, and without  
11 meeting continuing education requirements for the license,  
12 certification or registration, when circumstances associated  
13 with military duty prevent the individual from obtaining the  
14 required continuing education.

15 (b) The licensee shall submit a waiver request to the  
16 appropriate board, informing the board of circumstances  
17 which include, but are not limited to, deployment outside of  
18 the United States or in any combat area and verify that the  
19 individual performs the licensed, certified or registered  
20 profession or occupation as part of his or her military duties  
21 as annotated in Defense Department Form 214 (DD214).

22 (c) During periods when the licensee, certificate holder or  
23 registrant is accompanying his or her spouse who is on active  
24 duty as a member of the Armed Forces of the United States,  
25 the National Guard of this state or any other state, or any  
26 other military reserve component and deployed outside of this  
27 state, and for six months after discharge from active duty, the  
28 license, certification or registration of that person regulated  
29 by a board referred to in this chapter, shall continue in good  
30 standing and shall be renewed without payment of any dues  
31 or fees for the maintenance or renewal of the license,  
32 certification or registration, and without meeting continuing  
33 education requirements for the license certification or  
34 registration when circumstances associated with  
35 accompanying a spouse on military duty prevent the  
36 individual from obtaining the required continuing education.

37 (d) The licensee shall submit a waiver request to the  
38 appropriate board informing the board of these circumstances  
39 which include, but are not limited to, deployment outside of  
40 the United States or in any combat area.

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## 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.**

1 (a) Any professional or occupational group or  
2 organization, any individual or any other interested party

3 which proposes the regulation of any unregulated  
4 professional or occupational group or organization, or who  
5 proposes to establish, revise or expand the scope of practice  
6 of a regulated profession or occupation shall submit an  
7 application to the Joint Standing Committee on Government  
8 Organization, as set out in this article.

9 (b) The Joint Standing Committee on Government  
10 Organization may only accept an application for regulation of  
11 a professional or occupational group or organization, or  
12 establishment, revision or expansion of the scope of practice  
13 of a regulated profession or occupation, when the party  
14 submitting an application files with the committee a statement  
15 of support for the proposed regulation which has been signed  
16 by at least ten residents or citizens of the State of West  
17 Virginia who are members of the professional or occupational  
18 group or organization for which regulation is being sought,  
19 or for which establishment, revision or expansion of the  
20 scope of practice of a regulated profession or occupation is  
21 being sought.

22 (c) The completed application shall contain:

23 (1) A description of the occupational or professional  
24 group or organization for which regulation is proposed, or for  
25 which establishment, revision or expansion of the scope of  
26 practice of a regulated profession or occupation is proposed,  
27 including a list of associations, organizations and other  
28 groups currently representing the practitioners in this state,  
29 and an estimate of the number of practitioners in each group;

30 (2) A definition of the problem and the reasons why  
31 regulation or establishment, revision or expansion of the  
32 scope of practice is necessary;

33 (3) The reasons why certification, registration, licensure  
34 or other type of regulation is being requested and why that  
35 regulatory alternative was chosen;

36 (4) A detailed statement of the proposed funding  
37 mechanism to pay the administrative costs of the regulation  
38 or the establishment, revision or expansion of the scope of  
39 practice, or of the fee structure conforming with the statutory  
40 requirements of financial autonomy as set out in this chapter;

41 (5) A detailed statement of the location and manner in  
42 which the group plans to maintain records which are  
43 accessible to the public as set out in this chapter;

44 (6) The benefit to the public that would result from the  
45 proposed regulation or establishment, revision or expansion  
46 of the scope of practice; and

47 (7) The cost of the proposed regulation or establishment,  
48 revision or expansion of the scope of practice.

### **§30-1A-3. Analysis and evaluation of application.**

1 (a) The Joint Committee on Government Organization  
2 shall refer the completed application of the professional or  
3 occupational group or organization to the Performance  
4 Evaluation and Research Division of the Office of the  
5 Legislative Auditor.

6 (b) The Performance Evaluation and Research Division  
7 of the Office of the Legislative Auditor shall conduct an  
8 analysis and evaluation of the application. The analysis and  
9 evaluation shall be based upon the criteria listed in subsection  
10 (c) of this section. The Performance Evaluation and Research  
11 Division of the Office of the Legislative Auditor shall submit  
12 a report, and such supporting materials as may be required, to  
13 the Joint Standing Committee on Government Organization,  
14 as set out in this section.

15 (c) For an application proposing the regulation of an  
16 unregulated professional or occupational group or

17 organization, the report shall include evaluation, analysis and  
18 findings as to:

19 (1) Whether the unregulated practice of the occupation or  
20 profession clearly harms or endangers the health, safety or  
21 welfare of the public, and whether the potential for the harm  
22 is easily recognizable and not remote or dependent upon  
23 tenuous argument;

24 (2) Whether the practice of the profession or occupation  
25 requires specialized skill or training which is readily  
26 measurable or quantifiable so that examination or training  
27 requirements would reasonably assure initial and continuing  
28 professional or occupational competence;

29 (3) Whether the public can be adequately protected by  
30 other means in a more cost-effective manner; and

31 (4) Whether the professional or occupational group or  
32 organization should be regulated as proposed in the  
33 application.

34 (d) For an application proposing the establishment,  
35 revision or expansion of the scope of practice of a regulated  
36 profession or occupation, the report shall include the  
37 evaluation, analysis and findings as set forth in subsection (c)  
38 of this section inasmuch as applicable, and a clear  
39 recommendation as to whether the scope of practice should  
40 be established, revised or expanded as proposed in the  
41 application.

42 (e) For an application received after December 1, and on  
43 or before June 1, the Performance Evaluation and Research  
44 Division of the Office of the Legislative Auditor shall present  
45 a report to the Joint Committee on Government Organization  
46 by December 31 of that year.

47 (f) For an application received after June 1 and on or  
48 before December 1, the Performance Evaluation and  
49 Research Division of the Office of the Legislative Auditor  
50 shall present a report to the Joint Committee on Government  
51 Organization by June 30 of the next year.

**§30-1A-5. Reapplication requirements.**

1 (a) If the Joint Standing Committee on Government  
2 Organization approves an application for regulation of a  
3 professional or occupational group or organization, but the  
4 legislation incorporating its recommendations does not  
5 become law in the year in which it is first introduced, the  
6 applicants for regulation may introduce legislation during  
7 each of the two successive regular sessions without having to  
8 make reapplication.

9 (b) If the Joint Standing Committee on Government  
10 Organization does not approve an application for regulation,  
11 establishment, revision or expansion of the scope of practice  
12 of a professional or occupational group or organization, any  
13 party who continues to propose the regulation, establishment,  
14 revision or expansion must reapply in accordance with the  
15 provisions of this article.

**§30-1A-6. Article construction.**

1 (a) Nothing in this article shall be construed as limiting or  
2 interfering with the right of any member of the Legislature to  
3 introduce or of the Legislature to consider any bill that would  
4 create a new state governmental department or agency or  
5 amend the law with respect to an existing one.

6 (b) Notwithstanding the provisions of subsection (a) of  
7 this section, the recommendations of the Joint Standing  
8 Committee on Government Organization are to be given



9 considerable weight in determining if a profession or  
10 occupation should be regulated, or if the scope of practice of  
11 a regulated profession or occupation should be established,  
12 revised or expanded.

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## 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.**

1 (a) As used in this section:

2 (1) “Approved program” means an educational program for  
3 physician assistants approved and accredited by the Committee on  
4 Accreditation of Allied Health Education Programs or its  
5 successor;

6 (2) “Health care facility” means any licensed hospital, nursing  
7 home, extended care facility, state health or mental institution,  
8 clinic or physician’s office;

9 (3) “Physician assistant” means an assistant to a physician  
10 who is a graduate of an approved program of instruction in  
11 primary health care or surgery, has attained a baccalaureate or  
12 master’s degree, has passed the national certification examination  
13 and is qualified to perform direct patient care services under the  
14 supervision of a physician;

15 (4) “Physician assistant-midwife” means a physician assistant  
16 who meets all qualifications set forth under subdivision (3) of this  
17 subsection and fulfills the requirements set forth in subsection (d)  
18 of this section, is subject to all provisions of this section and assists  
19 in the management and care of a woman and her infant during the  
20 prenatal, delivery and postnatal periods; and

21           (5) “Supervising physician” means a doctor or doctors of  
22 medicine or podiatry permanently and fully licensed in this state  
23 without restriction or limitation who assume legal and  
24 supervisory responsibility for the work or training of any  
25 physician assistant under his or her supervision.

26           (b) The board shall promulgate rules pursuant to the  
27 provisions of article three, chapter twenty-nine-a of this code  
28 governing the extent to which physician assistants may function  
29 in this state. The rules shall provide that the physician assistant is  
30 limited to the performance of those services for which he or she is  
31 trained and that he or she performs only under the supervision and  
32 control of a physician permanently licensed in this state but that  
33 supervision and control does not require the personal presence of  
34 the supervising physician at the place or places where services are  
35 rendered if the physician assistant’s normal place of employment  
36 is on the premises of the supervising physician. The supervising  
37 physician may send the physician assistant off the premises to  
38 perform duties under his or her direction but a separate place of  
39 work for the physician assistant may not be established. In  
40 promulgating the rules, the board shall allow the physician  
41 assistant to perform those procedures and examinations and, in the  
42 case of certain authorized physician assistants, to prescribe at the  
43 direction of his or her supervising physician, in accordance with  
44 subsection (r) of this section, those categories of drugs submitted  
45 to it in the job description required by this section. Certain  
46 authorized physician assistants may pronounce death in  
47 accordance with the rules proposed by the board which receive  
48 legislative approval. The board shall compile and publish an  
49 annual report that includes a list of currently licensed physician  
50 assistants and their supervising physician(s) and location in the  
51 state.

52           (c) The board shall license as a physician assistant any person  
53 who files an application together with a proposed job description  
54 and furnishes satisfactory evidence to it that he or she has met the  
55 following standards:

56 (1) Is a graduate of an approved program of instruction in  
57 primary health care or surgery;

58 (2) Has passed the certifying examination for a primary care  
59 physician assistant administered by the National Commission on  
60 Certification of Physician Assistants and has maintained  
61 certification by that commission so as to be currently certified;

62 (3) Is of good moral character; and

63 (4) Has attained a baccalaureate or master's degree.

64 (d) The board shall license as a physician assistant-midwife  
65 any person who meets the standards set forth under subsection (c)  
66 of this section and, in addition thereto, the following standards:

67 (1) Is a graduate of a school of midwifery accredited by the  
68 American College of Nurse-Midwives;

69 (2) Has passed an examination approved by the board; and

70 (3) Practices midwifery under the supervision of a  
71 board-certified obstetrician, gynecologist or a board-certified  
72 family practice physician who routinely practices obstetrics.

73 (e) The board may license as a physician assistant any person  
74 who files an application together with a proposed job description  
75 and furnishes satisfactory evidence that he or she is of good moral  
76 character and meets either of the following standards:

77 (1) He or she is a graduate of an approved program of  
78 instruction in primary health care or surgery prior to July 1, 1994,  
79 and has passed the certifying examination for a physician  
80 assistant administered by the National Commission on  
81 Certification of Physician Assistants and has maintained  
82 certification by that commission so as to be currently certified; or

83           (2) He or she had been certified by the board as a physician  
84     assistant then classified as Type B prior to July 1, 1983.

85           (f) Licensure of an assistant to a physician practicing the  
86     specialty of ophthalmology is permitted under this section:  
87     *Provided*, That a physician assistant may not dispense a  
88     prescription for a refraction.

89           (g) When a graduate of an approved program who has  
90     successfully passed the National Commission on Certification of  
91     Physician Assistants' certifying examination submits an  
92     application to the board for a physician assistant license,  
93     accompanied by a job description as referenced by this section,  
94     and a \$50 temporary license fee, and the application is complete,  
95     the board shall issue to that applicant a temporary license allowing  
96     that applicant to function as a physician assistant.

97           (h) When a graduate of an approved program submits an  
98     application to the board for a physician assistant license,  
99     accompanied by a job description as referenced by this section,  
100     and a \$50 temporary license fee, and the application is complete,  
101     the board shall issue to the applicant a temporary license allowing  
102     the applicant to function as a physician assistant until the  
103     applicant successfully passes the National Commission on  
104     Certification of Physician Assistants' certifying examination so  
105     long as the applicant sits for and obtains a passing score on the  
106     examination next offered following graduation from the approved  
107     program.

108           (i) No applicant may receive a temporary license who,  
109     following graduation from an approved program, has not  
110     obtained a passing score on the examination.

111           (j) A physician assistant who has not been certified by the  
112     National Commission on Certification of Physician Assistants will  
113     be restricted to work under the direct supervision of the  
114     supervising physician.

115           (k) A physician assistant who has been issued a temporary  
116 license shall, within thirty days of receipt of written notice from  
117 the National Commission on Certification of Physician Assistants  
118 of his or her performance on the certifying examination, notify the  
119 board in writing of his or her results. In the event of failure of that  
120 examination, the temporary license shall terminate automatically  
121 and the board shall so notify the physician assistant in writing.

122           (l) In the event a physician assistant fails a recertification  
123 examination of the National Commission on Certification of  
124 Physician Assistants and is no longer certified, the physician  
125 assistant shall immediately notify his or her supervising physician  
126 or physicians and the board in writing. The physician assistant  
127 shall immediately cease practicing, the license shall terminate  
128 automatically and the physician assistant is not eligible for  
129 reinstatement until he or she has obtained a passing score on the  
130 examination.

131           (m) A physician applying to the board to supervise a  
132 physician assistant shall affirm that the range of medical services  
133 set forth in the physician assistant's job description are consistent  
134 with the skills and training of the supervising physician and the  
135 physician assistant. Before a physician assistant can be employed  
136 or otherwise use his or her skills, the supervising physician and the  
137 physician assistant must obtain approval of the job description  
138 from the board. The board may revoke or suspend any license of  
139 an assistant to a physician for cause, after giving the assistant an  
140 opportunity to be heard in the manner provided by article five,  
141 chapter twenty-nine-a of this code and as set forth in rules duly  
142 adopted by the board.

143           (n) The supervising physician is responsible for observing,  
144 directing and evaluating the work, records and practices of each  
145 physician assistant performing under his or her supervision. He or  
146 she shall notify the board in writing of any termination of his or  
147 her supervisory relationship with a physician assistant within ten  
148 days of the termination. The legal responsibility for any physician

149 assistant remains with the supervising physician at all times  
150 including occasions when the assistant under his or her direction  
151 and supervision aids in the care and treatment of a patient in a  
152 health care facility. In his or her absence, a supervising physician  
153 must designate an alternate supervising physician but the legal  
154 responsibility remains with the supervising physician at all times.  
155 A health care facility is not legally responsible for the actions or  
156 omissions of the physician assistant unless the physician assistant  
157 is an employee of the facility.

158 (o) The acts or omissions of a physician assistant employed by  
159 health care facilities providing inpatient or outpatient services are  
160 the legal responsibility of the facilities. Physician assistants  
161 employed by facilities in staff positions shall be supervised by a  
162 permanently licensed physician.

163 (p) A health care facility shall report in writing to the board  
164 within sixty days after the completion of the facility's formal  
165 disciplinary procedure and after the commencement and  
166 conclusion of any resulting legal action, the name of any physician  
167 assistant practicing in the facility whose privileges at the facility  
168 have been revoked, restricted, reduced or terminated for any cause  
169 including resignation, together with all pertinent information  
170 relating to the action. The health care facility shall also report any  
171 other formal disciplinary action taken against any physician  
172 assistant by the facility relating to professional ethics, medical  
173 incompetence, medical malpractice, moral turpitude or drug or  
174 alcohol abuse. Temporary suspension for failure to maintain  
175 records on a timely basis or failure to attend staff or section  
176 meetings need not be reported.

177 (q) When functioning as a physician assistant, the physician  
178 assistant shall wear a name tag that identifies him or her as a  
179 physician assistant. A two and one-half by three and one-half  
180 inch card of identification shall be furnished by the board upon  
181 licensure of the physician assistant.

182 (r) A physician assistant may write or sign prescriptions or  
183 transmit prescriptions by word of mouth, telephone or other means  
184 of communication at the direction of his or her supervising  
185 physician. A fee of \$50 will be charged for prescription-writing  
186 privileges. The board shall promulgate rules pursuant to the  
187 provisions of article three, chapter twenty-nine-a of this code  
188 governing the eligibility and extent to which a physician assistant  
189 may prescribe at the direction of the supervising physician. The  
190 rules shall include, but not be limited to, the following:

191 (1) Provisions and restrictions for approving a state formulary  
192 classifying pharmacologic categories of drugs that may be  
193 prescribed by a physician assistant are as follows:

194 (A) Schedules I and II of the Uniform Controlled Substances  
195 Act, antineoplastic, radiopharmaceuticals, general anesthetics and  
196 radiographic contrast materials shall be excluded from the  
197 formulary;

198 (B) Drugs listed under Schedule III shall be limited to a  
199 seventy-two hour supply without refill;

200 (C) In addition to the above referenced provisions and  
201 restrictions and at the direction of a supervising physician, the  
202 rules shall permit the prescribing of an annual supply of any drug,  
203 with the exception of controlled substances, which is prescribed  
204 for the treatment of a chronic condition, other than chronic pain  
205 management. For the purposes of this section, a “chronic  
206 condition” is a condition which lasts three months or more,  
207 generally cannot be prevented by vaccines, can be controlled but  
208 not cured by medication and does not generally disappear. These  
209 conditions, with the exception of chronic pain, include, but are not  
210 limited to, arthritis, asthma, cardiovascular disease, cancer,  
211 diabetes, epilepsy and seizures and obesity. The prescriber  
212 authorized in this section shall note on the prescription the chronic  
213 disease being treated.

214 (D) Categories of other drugs may be excluded as determined  
215 by the board.



216           (2) All pharmacological categories of drugs to be prescribed  
217 by a physician assistant shall be listed in each job description  
218 submitted to the board as required in subsection (i) of this section;

219           (3) The maximum dosage a physician assistant may  
220 prescribe;

221           (4) A requirement that to be eligible for prescription  
222 privileges, a physician assistant shall have performed patient care  
223 services for a minimum of two years immediately preceding the  
224 submission to the board of the job description containing  
225 prescription privileges and shall have successfully completed an  
226 accredited course of instruction in clinical pharmacology approved  
227 by the board; and

228           (5) A requirement that to maintain prescription privileges, a  
229 physician assistant shall continue to maintain national  
230 certification as a physician assistant and, in meeting the national  
231 certification requirements, shall complete a minimum of ten hours  
232 of continuing education in rational drug therapy in each  
233 certification period. Nothing in this subsection permits a physician  
234 assistant to independently prescribe or dispense drugs.

235           (s) A supervising physician may not supervise at any one time  
236 more than three full-time physician assistants or their equivalent,  
237 except that a physician may supervise up to four  
238 hospital-employed physician assistants. No physician shall  
239 supervise more than four physician assistants at any one time.

240           (t) A physician assistant may not sign any prescription, except  
241 in the case of an authorized physician assistant at the direction of  
242 his or her supervising physician in accordance with the provisions  
243 of subsection (r) of this section. A physician assistant may not  
244 perform any service that his or her supervising physician is not  
245 qualified to perform. A physician assistant may not perform any  
246 service that is not included in his or her job description and  
247 approved by the board as provided for in this section.

248 (u) The provisions of this section do not authorize a physician  
249 assistant to perform any specific function or duty delegated by this  
250 code to those persons licensed as chiropractors, dentists, dental  
251 hygienists, optometrists or pharmacists or certified as nurse  
252 anesthetists.

253 (v) Each application for licensure submitted by a licensed  
254 supervising physician under this section is to be accompanied by  
255 a fee of \$200. A fee of \$100 is to be charged for the biennial  
256 renewal of the license. A fee of \$50 is to be charged for any  
257 change or addition of supervising physician or change or addition  
258 of job location. A fee of \$50 will be charged for prescriptive  
259 writing privileges.

260 (w) As a condition of renewal of physician assistant license,  
261 each physician assistant shall provide written documentation of  
262 participation in and successful completion during the preceding  
263 two-year period of continuing education, in the number of hours  
264 specified by the board by rule, designated as Category I by the  
265 American Medical Association, American Academy of Physician  
266 Assistants or the Academy of Family Physicians and continuing  
267 education, in the number of hours specified by the board by rule,  
268 designated as Category II by the Association or either Academy.

269 (x) Notwithstanding any provision of this chapter to the  
270 contrary, failure to timely submit the required written  
271 documentation results in the automatic expiration of any license  
272 as a physician assistant until the written documentation is  
273 submitted to and approved by the board.

274 (y) If a license is automatically expired and reinstatement is  
275 sought within one year of the automatic expiration, the former  
276 licensee shall:

277 (1) Provide certification with supporting written  
278 documentation of the successful completion of the required  
279 continuing education;

280 (2) Pay a renewal fee; and

281 (3) Pay a reinstatement fee equal to fifty percent of the  
282 renewal fee.

283 (z) If a license is automatically expired and more than one  
284 year has passed since the automatic expiration, the former licensee  
285 shall:

286 (1) Apply for a new license;

287 (2) Provide certification with supporting written  
288 documentation of the successful completion of the required  
289 continuing education; and

290 (3) Pay such fees as determined by the board.

291 (aa) It is unlawful for any physician assistant to represent to  
292 any person that he or she is a physician, surgeon or podiatrist. A  
293 person who violates the provisions of this subsection is guilty of  
294 a felony and, upon conviction thereof, shall be imprisoned in a  
295 state correctional facility for not less than one nor more than two  
296 years, or be fined not more than \$2,000, or both fined and  
297 imprisoned.

298 (bb) All physician assistants holding valid certificates issued  
299 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.**

1 (a) The board may, in its discretion, authorize an advanced  
2 practice registered nurse to prescribe prescription drugs in a  
3 collaborative relationship with a physician licensed to practice in  
4 West Virginia and in accordance with applicable state and federal  
5 laws. An authorized advanced practice registered nurse may write

6 or sign prescriptions or transmit prescriptions verbally or by other  
7 means of communication.

8 (b) For purposes of this section an agreement to a  
9 collaborative relationship for prescriptive practice between a  
10 physician and an advanced practice registered nurse shall be set  
11 forth in writing. Verification of the agreement shall be filed with  
12 the board by the advanced practice registered nurse. The board  
13 shall forward a copy of the verification to the Board of Medicine  
14 and the Board of Osteopathic Medicine. Collaborative agreements  
15 shall include, but are not limited to, the following:

16 (1) Mutually agreed upon written guidelines or protocols for  
17 prescriptive authority as it applies to the advanced practice  
18 registered nurse's clinical practice;

19 (2) Statements describing the individual and shared  
20 responsibilities of the advanced practice registered nurse and the  
21 physician pursuant to the collaborative agreement between them;

22 (3) Periodic and joint evaluation of prescriptive practice; and

23 (4) Periodic and joint review and updating of the written  
24 guidelines or protocols.

25 (c) The board shall promulgate legislative rules in accordance  
26 with the provisions of chapter twenty-nine-a of this code  
27 governing the eligibility and extent to which an advanced practice  
28 registered nurse may prescribe drugs. Such rules shall provide, at  
29 a minimum, a state formulary classifying those categories of drugs  
30 which shall not be prescribed by advanced practice registered  
31 nurse including, but not limited to, Schedules I and II of the  
32 Uniform Controlled Substances Act, antineoplastics,  
33 radiopharmaceuticals and general anesthetics. Drugs listed under  
34 Schedule III shall be limited to a seventy-two hour supply without  
35 refill. In addition to the above referenced provisions and  
36 restrictions and pursuant to a collaborative agreement as set forth

37 in subsections (a) and (b) of this section, the rules shall permit the  
38 prescribing of an annual supply of any drug, with the exception of  
39 controlled substances, which is prescribed for the treatment of a  
40 chronic condition, other than chronic pain management. For the  
41 purposes of this section, a “chronic condition” is a condition  
42 which lasts three months or more, generally cannot be prevented  
43 by vaccines, can be controlled but not cured by medication and  
44 does not generally disappear. These conditions, with the  
45 exception of chronic pain, include, but are not limited to, arthritis,  
46 asthma, cardiovascular disease, cancer, diabetes, epilepsy and  
47 seizures, and obesity. The prescriber authorized in this section  
48 shall note on the prescription the chronic disease being treated.

49 (d) The board shall consult with other appropriate boards for  
50 the development of the formulary.

51 (e) The board shall transmit to the Board of Pharmacy a list of  
52 all advanced practice registered nurse with prescriptive authority.  
53 The list shall include:

54 (1) The name of the authorized advanced practice registered  
55 nurse;

56 (2) The prescriber’s identification number assigned by the  
57 board; and

58 (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.**

1 (a) As used in this section:

2 (1) “Approved program” means an educational program for  
3 osteopathic physician assistants approved and accredited by the  
4 Committee on Allied Health Education and Accreditation or its  
5 successor.

6 (2) “Board” means the Board of Osteopathy established under  
7 the provisions of article fourteen, chapter thirty of this code.

8 (3) “Direct supervision” means the presence of the  
9 supervising physician at the site where the osteopathic physician  
10 assistant performs medical duties.

11 (4) “Health care facility” means any licensed hospital, nursing  
12 home, extended care facility, state health or mental institution,  
13 clinic or physician’s office.

14 (5) “License” means a certificate issued to an osteopathic  
15 physician assistant who has passed the examination for a primary  
16 care or surgery physician assistant administered by the National  
17 Board of Medical Examiners on behalf of the National  
18 Commission on Certification of Physician Assistants. All  
19 osteopathic physician assistants holding valid certificates issued by  
20 the board prior to March 31, 2010, are licensed under the  
21 provisions of this article, but must renew the license pursuant to  
22 the provisions of this article.

23 (6) “Osteopathic physician assistant” means an assistant to an  
24 osteopathic physician who is a graduate of an approved program

25 of instruction in primary care or surgery, has passed the National  
26 Certification Examination and is qualified to perform direct patient  
27 care services under the supervision of an osteopathic physician.

28 (7) "Supervising physician" means a doctor of osteopathy  
29 permanently licensed in this state who assumes legal and  
30 supervising responsibility for the work or training of an  
31 osteopathic physician assistant under his or her supervision.

32 (b) The board shall propose emergency and legislative rules  
33 for legislative approval pursuant to the provisions of article three,  
34 chapter twenty-nine-a of this code, governing the extent to which  
35 osteopathic physician assistants may function in this state. The  
36 rules shall provide that:

37 (1) The osteopathic physician assistant is limited to the  
38 performance of those services for which he or she is trained;

39 (2) The osteopathic physician assistant performs only under  
40 the supervision and control of an osteopathic physician  
41 permanently licensed in this state but such supervision and control  
42 does not require the personal presence of the supervising physician  
43 at the place or places where services are rendered if the  
44 osteopathic physician assistant's normal place of employment is  
45 on the premises of the supervising physician. The supervising  
46 physician may send the osteopathic physician assistant off the  
47 premises to perform duties under his or her direction, but a  
48 separate place of work for the osteopathic physician assistant may  
49 not be established; and

50 (3) The board may allow the osteopathic physician assistant  
51 to perform those procedures and examinations and, in the case of  
52 authorized osteopathic physician assistants, to prescribe at the  
53 direction of his or her supervising physician in accordance with  
54 subsections (p) and (q) of this section those categories of drugs  
55 submitted to it in the job description required by subsection (f) of  
56 this section.

57 (c) The board shall compile and publish an annual report that  
58 includes a list of currently licensed osteopathic physician  
59 assistants and their employers and location in the state.

60 (d) The board shall license as an osteopathic physician  
61 assistant a person who files an application together with a  
62 proposed job description and furnishes satisfactory evidence that  
63 he or she has met the following standards:

64 (1) Is a graduate of an approved program of instruction in  
65 primary health care or surgery;

66 (2) Has passed the examination for a primary care or surgery  
67 physician assistant administered by the National Board of  
68 Medical Examiners on behalf of the National Commission on  
69 Certification of Physician Assistants; and

70 (3) Is of good moral character.

71 (e) When a graduate of an approved program submits an  
72 application to the board, accompanied by a job description in  
73 conformity with this section, for an osteopathic physician assistant  
74 license, the board may issue to the applicant a temporary license  
75 allowing the applicant to function as an osteopathic physician  
76 assistant for the period of one year. The temporary license may be  
77 renewed for one additional year upon the request of the  
78 supervising physician. An osteopathic physician assistant who has  
79 not been certified as such by the National Board of Medical  
80 Examiners on behalf of the National Commission on Certification  
81 of Physician Assistants will be restricted to work under the direct  
82 supervision of the supervising physician.

83 (f) An osteopathic physician applying to the board to  
84 supervise an osteopathic physician assistant shall provide a job  
85 description that sets forth the range of medical services to be  
86 provided by the assistant. Before an osteopathic physician  
87 assistant can be employed or otherwise use his or her skills, the



88 supervising physician must obtain approval of the job description  
89 from the board. The board may revoke or suspend a license of an  
90 assistant to a physician for cause, after giving the person an  
91 opportunity to be heard in the manner provided by sections eight  
92 and nine, article one of this chapter.

93 (g) The supervising physician is responsible for observing,  
94 directing and evaluating the work records and practices of each  
95 osteopathic physician assistant performing under his or her  
96 supervision. He or she shall notify the board in writing of any  
97 termination of his or her supervisory relationship with an  
98 osteopathic physician assistant within ten days of his or her  
99 termination. The legal responsibility for any osteopathic  
100 physician assistant remains with the supervising physician at all  
101 times, including occasions when the assistant, under his or her  
102 direction and supervision, aids in the care and treatment of a  
103 patient in a health care facility. In his or her absence, a  
104 supervising physician must designate an alternate supervising  
105 physician but the legal responsibility remains with the supervising  
106 physician at all times. A health care facility is not legally  
107 responsible for the actions or omissions of an osteopathic  
108 physician assistant unless the osteopathic physician assistant is an  
109 employee of the facility.

110 (h) The acts or omissions of an osteopathic physician  
111 assistant employed by health care facilities providing in-patient  
112 services are the legal responsibility of the facilities. Osteopathic  
113 physician assistants employed by such facilities in staff positions  
114 shall be supervised by a permanently licensed physician.

115 (i) A health care facility shall report in writing to the board  
116 within sixty days after the completion of the facility's formal  
117 disciplinary procedure, and after the commencement and the  
118 conclusion of any resulting legal action, the name of an  
119 osteopathic physician assistant practicing in the facility whose  
120 privileges at the facility have been revoked, restricted, reduced or  
121 terminated for any cause including resignation, together with all

122 pertinent information relating to such action. The health care  
123 facility shall also report any other formal disciplinary action taken  
124 against an osteopathic physician assistant by the facility relating to  
125 professional ethics, medical incompetence, medical malpractice,  
126 moral turpitude or drug or alcohol abuse. Temporary suspension  
127 for failure to maintain records on a timely basis or failure to attend  
128 staff or section meetings need not be reported.

129 (j) When functioning as an osteopathic physician assistant, the  
130 osteopathic physician assistant shall wear a name tag that identifies  
131 him or her as a physician assistant.

132 (k) (1) A supervising physician shall not supervise at any time  
133 more than three osteopathic physician assistants except that a  
134 physician may supervise up to four hospital-employed  
135 osteopathic physician assistants: *Provided*, That an alternative  
136 supervisor has been designated for each.

137 (2) An osteopathic physician assistant shall not perform any  
138 service that his or her supervising physician is not qualified to  
139 perform.

140 (3) An osteopathic physician assistant shall not perform any  
141 service that is not included in his or her job description and  
142 approved by the board as provided in this section.

143 (4) The provisions of this section do not authorize an  
144 osteopathic physician assistant to perform any specific function or  
145 duty delegated by this code to those persons licensed as  
146 chiropractors, dentists, registered nurses, licensed practical nurses,  
147 dental hygienists, optometrists or pharmacists or certified as nurse  
148 anesthetists.

149 (l) An application for license or renewal of license shall be  
150 accompanied by payment of a fee established by legislative rule  
151 of the Board of Osteopathy pursuant to the provisions of article  
152 three, chapter twenty-nine-a of this code.

153 (m) As a condition of renewal of an osteopathic physician  
154 assistant license, each osteopathic physician assistant shall provide  
155 written documentation satisfactory to the board of participation in  
156 and successful completion of continuing education in courses  
157 approved by the Board of Osteopathy for the purposes of  
158 continuing education of osteopathic physician assistants. The  
159 osteopathy board shall propose legislative rules for minimum  
160 continuing hours necessary for the renewal of a license. These  
161 rules shall provide for minimum hours equal to or more than the  
162 hours necessary for national certification. Notwithstanding any  
163 provision of this chapter to the contrary, failure to timely submit  
164 the required written documentation results in the automatic  
165 suspension of a license as an osteopathic physician assistant until  
166 the written documentation is submitted to and approved by the  
167 board.

168 (n) It is unlawful for any person who is not licensed by the  
169 board as an osteopathic physician assistant to use the title of  
170 osteopathic physician assistant or to represent to any other person  
171 that he or she is an osteopathic physician assistant. A person who  
172 violates the provisions of this subsection is guilty of a  
173 misdemeanor and, upon conviction thereof, shall be fined not  
174 more than \$2,000.

175 (o) It is unlawful for an osteopathic physician assistant to  
176 represent to any person that he or she is a physician. A person  
177 who violates the provisions of this subsection is guilty of a felony,  
178 and, upon conviction thereof, shall be imprisoned in a state  
179 correctional facility for not less than one, nor more than two years,  
180 or be fined not more than \$2,000, or both fined and imprisoned.

181 (p) An osteopathic physician assistant may write or sign  
182 prescriptions or transmit prescriptions by word of mouth,  
183 telephone or other means of communication at the direction of his  
184 or her supervising physician. The board shall propose rules for  
185 legislative approval in accordance with the provisions of article  
186 three, chapter twenty-nine-a of this code governing the eligibility

187 and extent to which an osteopathic physician assistant may  
188 prescribe at the direction of the supervising physician. The rules  
189 shall provide for a state formulary classifying pharmacologic  
190 categories of drugs which may be prescribed by such an  
191 osteopathic physician assistant. In classifying such pharmacologic  
192 categories, those categories of drugs which shall be excluded  
193 include, but are not limited to, Schedules I and II of the Uniform  
194 Controlled Substances Act, antineoplastics, radiopharmaceuticals,  
195 general anesthetics and radiographic contrast materials. Drugs  
196 listed under Schedule III are limited to a seventy-two hour supply  
197 without refill. In addition to the above referenced provisions and  
198 restrictions and at the direction of a supervising physician, the  
199 rules shall permit the prescribing an annual supply of any drug  
200 other than controlled substances which is prescribed for the  
201 treatment of a chronic condition other than chronic pain  
202 management. For the purposes of this section, a “chronic  
203 condition” is a condition which last three months or more,  
204 generally cannot be prevented by vaccines, can be controlled but  
205 not cured by medication and does not generally disappear. These  
206 conditions include, but are not limited to, arthritis, asthma,  
207 cardiovascular disease, cancer, diabetes, epilepsy and seizures and  
208 obesity. The prescriber authorized in this section shall note on the  
209 prescription the condition for which the patient is being treated.  
210 The rules shall provide that all pharmacological categories of  
211 drugs to be prescribed by an osteopathic physician assistant be  
212 listed in each job description submitted to the board as required in  
213 this section. The rules shall provide the maximum dosage an  
214 osteopathic physician assistant may prescribe.

215 (q) (1) The rules shall provide that to be eligible for such  
216 prescription privileges, an osteopathic physician assistant must:

217 (A) Submit an application to the board for prescription  
218 privileges;

219 (B) Have performed patient care services for a minimum of  
220 two years immediately preceding the application; and

221 (C) Have successfully completed an accredited course of  
222 instruction in clinical pharmacology approved by the board.

223 (2) The rules shall provide that to maintain prescription  
224 privileges, an osteopathic physician assistant shall:

225 (A) Continue to maintain national certification as an  
226 osteopathic physician assistant; and

227 (B) Complete a minimum of ten hours of continuing  
228 education in rational drug therapy in each licensing period.

229 (3) Nothing in this subsection permits an osteopathic  
230 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.

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## 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:

2           (a) The practice of “advanced practice registered nurse”  
3 is a registered nurse who has acquired advanced clinical  
4 knowledge and skills preparing him or her to provide direct  
5 and indirect care to patients, who has completed a board-  
6 approved graduate-level education program and who has  
7 passed a board-approved national certification examination.  
8 An advanced practice registered nurse shall meet all the  
9 requirements set forth by the board by rule for an advance  
10 practice registered nurse which shall include, at a minimum,  
11 a valid license to practice as a certified registered nurse  
12 anesthetist, a certified nurse midwife, a clinical nurse  
13 specialist or a certified nurse practitioner.

14           (b) “Board” means the West Virginia Board of Examiners  
15 for Registered Professional Nurses;

16           (c) The practice of “registered professional nursing”  
17 means the performance for compensation of any service  
18 requiring substantial specialized judgment and skill based on  
19 knowledge and application of principles of nursing derived  
20 from the biological, physical and social sciences, such as  
21 responsible supervision of a patient requiring skill in  
22 observation of symptoms and reactions and the accurate  
23 recording of the facts, or the supervision and teaching of  
24 other persons with respect to such principles of nursing, or in  
25 the administration of medications and treatments as  
26 prescribed by a licensed physician or a licensed dentist, or the  
27 application of such nursing procedures as involve  
28 understanding of cause and effect in order to safeguard life  
29 and health of a patient and others;

30           (d) “Temporary permit” means a permit authorizing the  
31 holder to practice registered professional nursing in this state  
32 until such permit is no longer effective or the holder is  
33 granted a license by the West Virginia State Board of  
34 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.**

1 An applicant for licensure as an advanced practice  
2 registered nurse as set forth in section one of this article who  
3 completed an advanced nursing education program and was  
4 recognized, licensed or certified in an advanced practice or a  
5 certified nurse midwife by West Virginia or another state  
6 before December 31, 2012, may apply for and receive an  
7 advanced practice registered nurse license if that applicant  
8 meets the requirements that were in place in West Virginia at  
9 the time the applicant qualified for initial advanced practice  
10 licensure.

**§30-7-15b. Eligibility for prescriptive authority; application; fee.**

1 An advanced practice registered nurse who applies for  
2 authorization to prescribe drugs shall:

3 (a) Be licensed and certified in West Virginia as an  
4 advanced practice registered nurse;

5 (b) Not be less than eighteen years of age;

6 (c) Provide the board with evidence of successful  
7 completion of forty-five contact hours of education in  
8 pharmacology and clinical management of drug therapy  
9 under a program approved by the board, fifteen hours of  
10 which shall be completed within the two-year period  
11 immediately before the date of application;

12 (d) Provide the board with evidence that he or she is a  
13 person of good moral character and not addicted to alcohol or  
14 the use of controlled substances; and

15 (e) Submit a completed, notarized application to the  
16 board, accompanied by a fee as established by the board by  
17 rule.

**§30-7-15c. Form of prescriptions; termination of authority;  
renewal; notification of termination of authority.**

1 (a) Prescriptions authorized by an advanced practice  
2 registered nurse must comply with all applicable state and  
3 federal laws; must be signed by the prescriber with the initials  
4 "A.P.R.N." or the designated certification title of the  
5 prescriber; and must include the prescriber's identification  
6 number assigned by the board or the prescriber's national  
7 provider identifier assigned by the National Provider System  
8 pursuant to 45 C. F. R. §162.408.

9 (b) Prescriptive authorization shall be terminated if the  
10 advanced practice registered nurse has:

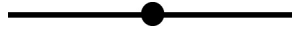
11 (1) Not maintained current authorization as an advanced  
12 practice registered nurse; or

13 (2) Prescribed outside the advanced practice registered  
14 nurse's scope of practice or has prescribed drugs for other  
15 than therapeutic purposes; or

16 (3) Has not filed verification of a collaborative agreement  
17 with the board.

18 (c) Prescriptive authority for an advanced practice  
19 registered nurse must be renewed biennially. Documentation  
20 of eight contact hours of pharmacology during the previous  
21 two years must be submitted at the time of renewal.

22 (d) The board shall notify the Board of Pharmacy, the  
23 Board of Medicine and the Board of Osteopathic Medicine  
24 within twenty-four hours after termination of, or change in,  
25 an advanced practice registered nurse's prescriptive authority.



## CHAPTER 146

**(Com. Sub. for S. B. 379 - By Senators Stollings,  
Laird, Foster, Kessler, Mr. President,  
Plymale and Jenkins)**

[Amended and again passed, in an effort to meet the objections of  
the Governor, 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 §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.**

1 (a) In order to encourage voluntary participation in  
2 monitored alcohol, chemical dependency or major mental  
3 illness programs and in recognition of the fact that major  
4 mental illness, alcoholism and chemical dependency are  
5 illnesses, any person who holds a license to practice  
6 registered nursing in this state or who is applying for a  
7 license to practice registered nursing in this state may enter  
8 into a voluntary agreement with a nurse health program as  
9 defined in section one, article seven-e of this chapter. The  
10 agreement between the licensee or applicant and the nurse  
11 health program shall include a jointly agreed upon treatment  
12 program and mandatory conditions and procedures to monitor  
13 compliance with the program of recovery.

14 (b) Any voluntary agreement entered into pursuant to this  
15 section shall not be considered a disciplinary action or order  
16 by the board, shall not be disclosed to the board and shall not  
17 be public information if:

18 (1) Such voluntary agreement is the result of the licensee  
19 or applicant self enrolling or voluntarily participating in the  
20 board- designated nurse health program;

21 (2) The board has not received nor filed any written  
22 complaints regarding said licensee or applicant relating to an  
23 alcohol, chemical dependency or major mental illness  
24 affecting the care and treatment of patients; and

25 (3) The licensee or applicant is in compliance with the  
26 voluntary treatment program and the conditions and  
27 procedures to monitor compliance.

28 (c) Pursuant to this section, if any licensee or applicant  
29 enters into a voluntary agreement with a nurse health  
30 program as defined in section one, article seven-e of this  
31 chapter, and then fails to comply with or fulfill the terms of  
32 said agreement, the nurse health program shall report the  
33 noncompliance to the board within twenty-four hours. The  
34 board may initiate disciplinary proceedings pursuant to  
35 section eleven of this article or may permit continued  
36 participation in the nurse health program or both.

37 (d) If the board has not instituted any disciplinary  
38 proceeding as provided for in this article, any information  
39 received, maintained or developed by the board relating to  
40 the alcohol or chemical dependency impairment of any  
41 licensee or applicant and any voluntary agreement made  
42 pursuant to this section shall be confidential and not available  
43 for public information, discovery or court subpoena, nor for  
44 introduction into evidence in any medical professional  
45 liability action or other action for damages arising out of the  
46 provision of or failure to provide health care services.

47 (e) Notwithstanding any of the foregoing provisions, the  
48 board may cooperate with and provide documentation of any  
49 voluntary agreement entered into pursuant to this section to  
50 licensing boards in other jurisdictions of which the board has  
51 become aware and may be appropriate.

## **ARTICLE 7E. NURSE HEALTH PROGRAMS.**

### **§30-7E-1. Definitions.**

1 For the purposes of this article, the following words and  
2 terms have the meanings ascribed to them, unless the context  
3 clearly indicates otherwise.

4 (1) "Board" means the West Virginia Board of Examiners  
5 for Registered Professional Nurses.

6           (2) “Major mental illness” means a diagnosis of a mental  
7 disorder within the axis of psychotic or affective or mood,  
8 alcohol or chemical abuse or alcohol or chemical dependency  
9 as stipulated in the International Code of Diagnosis.

10           (3) “Nurse” means those health care professionals  
11 licensed by the West Virginia Board of Examiners for  
12 Registered Professional Nurses.

13           (4) “Nurse health program” means a program meeting the  
14 requirements of this article.

15           (5) “Qualifying illness” means the diagnosis of alcohol or  
16 substance abuse, alcohol or substance dependency or major  
17 mental illness.

**§30-7E-2. Nurse health program.**

1           (a) The board is authorized to designate one or more  
2 nurse health programs. To be eligible for designation by the  
3 board, a nurse health program shall:

4           (1) Enter into an agreement with the board outlining  
5 specific requirements of the program;

6           (2) Agree to make its services available to all licensed  
7 West Virginia registered professional nurses with a  
8 qualifying illness;

9           (3) Provide for the education of nurses with respect to the  
10 recognition and treatment of alcohol, chemical dependency  
11 and mental illness and the availability of the nurse health  
12 program for qualifying illnesses;

13           (4) Offer assistance to any person in referring a nurse for  
14 purposes of assessment or treatment or both for a qualifying  
15 illness;

16           (5) Monitor the status of a nurse who enters treatment for  
17 a qualifying illness pursuant to a written, voluntary  
18 agreement during treatment;

19           (6) Monitor the compliance of a nurse who enters into a  
20 written, voluntary agreement for a qualifying illness with the  
21 nurse health program setting forth a course for recovery;

22           (7) Agree to accept referrals from the board to provide  
23 monitoring services pursuant to a board order; and

24           (8) Include such other requirements as the board deems  
25 necessary.

26           (b) A designated nurse health program shall:

27           (1) Set and collect reasonable fees, grants and donations  
28 for administration and services provided;

29           (2) Work collaboratively with the board to develop model  
30 compliance agreements;

31           (3) Work collaboratively with the board to identify  
32 qualified providers of services as may be needed by the  
33 individuals participating in the nurse health program;

34           (4) Report to the board, no less than annually, statistics  
35 including the number of individuals served; the number of  
36 compliant individuals; the number of individuals who have  
37 successfully completed their agreement period; and the  
38 number of individuals reported to the board for suspected  
39 noncompliance: *Provided*, That in making such report the  
40 nurse health program shall not disclose any personally

41 identifiable information relating to any nurse participating in  
42 a voluntary agreement as provided herein: *Provided,*  
43 *however,* That in the case of a nurse not in compliance with  
44 the requirements, full disclosure of information will be  
45 provided to the board.

46 (c) The fact that a nurse is participating in a designated  
47 nurse health program is confidential, as is all nurse patient  
48 information acquired, created or used by the nurse health  
49 program, and it shall remain confidential and may not be  
50 subject to discovery or subpoena in a civil case. The  
51 disclosure of participation and noncompliance to the board,  
52 as required by a compliance agreement, waives the  
53 confidentiality as to the board for disciplinary purposes.

54 (d) The nurse health program and all persons engaged in  
55 nurse health program activities are immune from civil  
56 liability and no civil action may be brought or maintained  
57 while the nurse health program and all persons engaged in  
58 nurse health program activities are acting in good faith and  
59 within the scope of their duties.

60 (e) The board is immune from civil liability and no civil  
61 action may be brought or maintained against the board or the  
62 state for an injury alleged to have been the result of the  
63 activities of the nurse health program or the board referral of  
64 an individual to the nurse health program when they are  
65 acting in good faith and within the scope of their duties.

**§30-7E-3. Discretionary authority of boards to designate programs.**

1 The West Virginia Board of Examiners of Registered  
2 Professional Nurses has the sole discretion to designate nurse  
3 health programs for licensees of the board and no provision  
4 of this article may be construed to entitle any nurse to the  
5 creation or designation of a nurse health program for any  
6 individual qualifying illness or group of qualifying illnesses.



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## CHAPTER 147

### (Com. Sub. for H. B. 4239 - By Delegates Morgan and Perdue)

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

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.**

- 1 It is unlawful for any person to practice or offer to practice
- 2 medicine and surgery as an osteopathic physician and surgeon in
- 3 this state without a license or permit issued by the West Virginia
- 4 Board of Osteopathic Medicine: *Provided*, That any license

5 heretofore issued under the laws of this state, authorizing its holder  
6 to practice osteopathy and surgery, shall in no way be affected by  
7 the enactment of this article; except that the holder of every such  
8 license shall be subject to all of the provisions of this article  
9 respecting the requirements and obligations herein prescribed for  
10 the continuance in force of such license.

### §30-14-2. Definitions.

1 (a) “Accredited osteopathic college” means a college of  
2 osteopathy and surgery which requires as a minimum prerequisite  
3 for admission preprofessional training of at least two years of  
4 academic work in specified scientific subjects, as prescribed by the  
5 board or by the college accrediting agency of the American  
6 Osteopathic Association, in an accredited college of arts and  
7 sciences and which requires for graduation a course of study  
8 approved by the board in accordance with the minimum standards  
9 established by the American Osteopathic Association;

10 (b) “Approved program of post-graduate clinical training”  
11 means a program of clinical training approved by, or subject of  
12 approval by, the American Osteopathic Association or approved  
13 by the Accreditation Council for Graduate Medical Education for  
14 the purposes of intern or resident training;

15 (c) “Board” means the West Virginia Board of Osteopathic  
16 Medicine: *Provided*, That where used elsewhere in the Code, the  
17 West Virginia Board of Osteopathy and Board of Osteopathy shall  
18 also mean the West Virginia Board of Osteopathic Medicine;

19 (d) “License” means legal authorization issued by the board  
20 to a fully qualified osteopathic physician to engage in the regular  
21 practice of osteopathic medicine and surgery;

22 (e) “Osteopathy” means that system of the healing art which  
23 places the chief emphasis on the structural integrity of the body  
24 mechanism as being the most important single factor in  
25 maintaining the well-being of the organism in health and disease;

26 (f) "Permit" means a limited, legal authorization issued by the  
27 board to an osteopathic physician to practice osteopathic medicine  
28 and surgery in this state while serving under special circumstances  
29 of public need or while undergoing post-graduate clinical training  
30 as a prerequisite to licensure;

31 (g) "Reciprocal endorsement" means a duly authenticated  
32 verification of the board, addressed to a board or agency of  
33 another country, state, territory, province or the District of  
34 Columbia, vouching that a license issued to an osteopathic  
35 physician and surgeon pursuant to the laws of this state is  
36 currently valid and not suspended or revoked for any cause or  
37 causes specified in this article.

### **§30-14-3. Board of Osteopathic Medicine.**

1 (a) The West Virginia Board of Osteopathy is continued and  
2 effective July 1, 2012 shall be known as the West Virginia Board  
3 of Osteopathic Medicine. The members of the board shall  
4 continue to serve until a successor is appointed and may be  
5 reappointed.

6 (b) The Governor shall appoint, by and with advice and  
7 consent of the Senate, two additional members and stagger their  
8 initial terms:

9 (1) One person who is a licensed osteopathic physician or  
10 surgeon; and

11 (2) One person who is a licensed osteopathic physician  
12 assistant.

13 (c) The board consists of the following seven members, who  
14 are appointed to staggered terms by the Governor with the advice  
15 and consent of the Senate:

16 (1) Four licensed osteopathic physicians and surgeons;

17 (2) One licensed osteopathic physician assistant; and

18 (3) Two citizen members, who are not associated with the  
19 practice of osteopathic medicine.

20 (d) After the initial appointment, a board member's term shall  
21 be for 5 years.

22 (e) The West Virginia Osteopathic Medical Association may  
23 submit recommendations to the Governor for the appointment of  
24 an osteopathic physician board member, and the West Virginia  
25 Association of Physician Assistants may submit recommendations  
26 to the Governor for the appointment of an osteopathic physician  
27 assistant board member.

28 (f) Each licensed member of the board, at the time of his or  
29 her appointment, must have held a license in this state for a period  
30 of not less than five years immediately preceding the  
31 appointment.

32 (g) Each member of the board must be a U.S. citizen and a  
33 resident of this state for a period of not less than five years  
34 immediately preceding the appointment and while serving as a  
35 member of the board.

36 (h) A member may not serve more than two consecutive full  
37 terms. A member having served two consecutive full terms may  
38 not be appointed for one year after completion of his or her second  
39 full term. A member may continue to serve until a successor has  
40 been appointed and has qualified.

41 (i) A vacancy on the board shall be filled by appointment by  
42 the Governor for the unexpired term of the member whose office  
43 is vacant and the appointment shall be made within sixty days of  
44 the vacancy.

45 (j) The Governor may remove any member from the board for  
46 neglect of duty, incompetency or official misconduct.

47 (k) A member of the board immediately and automatically  
48 forfeits membership to the board if his or her license to practice is  
49 suspended or revoked, he or she is convicted of a felony under the  
50 laws of any jurisdiction, or he or she becomes a nonresident of this  
51 state.

52 (l) The board shall elect annually one of its members as a  
53 chairperson and one of its members as a secretary who shall serve  
54 at the will of the board.

55 (m) Each member of the board is entitled to compensation  
56 and expense reimbursement in accordance with article one of this  
57 chapter.

58 (n) A simple majority of the membership serving on the board  
59 at a given time constitutes a quorum.

60 (o) The board shall hold at least two meetings each year.  
61 Other meetings may be held at the call of the chairperson or upon  
62 the written request of two members, at the time and place as  
63 designated in the call or request.

64 (p) Prior to commencing his or her duties as a member of the  
65 board, each member shall take and subscribe to the oath required  
66 by section five, article four of the Constitution of this state.

67 (q) The members of the board when acting in good faith,  
68 without malice and within the scope of their duties as board  
69 members shall enjoy immunity from individual civil liability.

**§30-14-12b. Special volunteer medical license; civil immunity for  
voluntary services rendered to indigents.**

1 (a) There is hereby established a special volunteer medical  
2 license for physicians retired or retiring from the active practice of

3 osteopathy who wish to donate their expertise for the medical care  
4 and treatment of indigent and needy patients in the clinic setting  
5 of clinics organized, in whole or in part, for the delivery of health  
6 care services without charge. The special volunteer medical  
7 license shall be issued by the West Virginia Board of Osteopathic  
8 Medicine to physicians licensed or otherwise eligible for licensure  
9 under this article and the rules promulgated hereunder without the  
10 payment of any application fee, license fee or renewal fee, shall be  
11 issued for a fiscal year or part thereof, and shall be renewable  
12 annually. The board shall develop application forms for the special  
13 license provided for in this subsection which shall contain the  
14 physician's acknowledgment that: (1) The physician's practice  
15 under the special volunteer medical license will be exclusively and  
16 totally devoted to providing medical care to needy and indigent  
17 persons in West Virginia; (2) the physician will not receive any  
18 payment or compensation, either direct or indirect, or have the  
19 expectation of any payment or compensation, for any medical  
20 services rendered under the special volunteer medical license; (3)  
21 the physician will supply any supporting documentation that the  
22 board may reasonably require; and (4) the physician agrees to  
23 continue to participate in continuing medical education as required  
24 of physicians in active practice.

25 (b) Any physician who renders any medical service to  
26 indigent and needy patients of clinics organized, in whole or in  
27 part, for the delivery of health care services without charge under  
28 a special volunteer medical license authorized under subsection (a)  
29 of this section without payment or compensation or the  
30 expectation or promise of payment or compensation is immune  
31 from liability for any civil action arising out of any act or omission  
32 resulting from the rendering of the medical service at the clinic  
33 unless the act or omission was the result of the physician's gross  
34 negligence or willful misconduct. In order for the immunity under  
35 this subsection to apply, there must be a written agreement  
36 between the physician and the clinic pursuant to which the  
37 physician will provide voluntary noncompensated medical  
38 services under the control of the clinic to patients of the clinic

39 before the rendering of any services by the physician at the clinic:  
40 *Provided*, That any clinic entering into such written agreement  
41 shall be required to maintain liability coverage of not less than one  
42 million dollars per occurrence.

43 (c) Notwithstanding the provisions of subsection (a) of this  
44 section, a clinic organized, in whole or in part, for the delivery of  
45 health care services without charge shall not be relieved from  
46 imputed liability for the negligent acts of a physician rendering  
47 voluntary medical services at or for the clinic under a special  
48 volunteer medical license authorized under subsection (a) of this  
49 section.

50 (d) For purposes of this section, “otherwise eligible for  
51 licensure” means the satisfaction of all the requirements for  
52 licensure as listed in section ten of this article and in the  
53 legislative rules promulgated hereunder, except the fee  
54 requirements of subsections (b) and (d) of said section and of the  
55 legislative rule promulgated by the board relating to fees.

56 (e) Nothing in this section may be construed as requiring the  
57 board to issue a special volunteer medical license to any  
58 physician whose medical license is or has been subject to any  
59 disciplinary action or to any physician who has surrendered a  
60 medical license or caused such license to lapse, expire and  
61 become invalid in lieu of having a complaint initiated or other  
62 action taken against his or her medical license, or who has elected  
63 to place a medical license in inactive status in lieu of having a  
64 complaint initiated or other action taken against his or her medical  
65 license, or who have been denied a medical license.

66 (f) Any policy or contract of liability insurance providing  
67 coverage for liability sold, issued or delivered in this state to any  
68 physician covered under the provisions of this article shall be read  
69 so as to contain a provision or endorsement whereby the company  
70 issuing such policy waives or agrees not to assert as a defense on  
71 behalf of the policyholder or any beneficiary thereof, to any claim

72 covered by the terms of such policy within the policy limits, the  
73 immunity from liability of the insured by reason of the care and  
74 treatment of needy and indigent patients by a physician who holds  
75 a special volunteer medical license.

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## 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.**

#### **§30-27-3. Definitions.**

1 As used in this article, the following words and terms  
2 have the following meanings, unless the context clearly  
3 indicates otherwise:

4 (a) “Aesthetics” or “esthetics” means any one or any  
5 combination of the following acts when done on the human  
6 body for compensation and not for the treatment of disease:



7           (1) Administering cosmetic treatments to enhance or  
8 improve the appearance of the skin, including cleansing,  
9 toning, performing effleurage or other related movements,  
10 stimulating, exfoliating or performing any other similar  
11 procedure on the skin of the human body or scalp;

12           (2) Applying, by hand or with a mechanical or electrical  
13 apparatus, any cosmetics, makeups, oils, powders, clays,  
14 antiseptics, tonics, lotions, creams or chemical preparations  
15 necessary for the practice of aesthetics to another person's  
16 face, neck, back, shoulders, hands, elbows and feet up to and  
17 including the knee;

18           (3) The rubbing, cleansing, exercising, beautifying or  
19 grooming of another person's face, neck, back, shoulders,  
20 hands, elbows and feet up to and including the knee;

21           (4) The waxing, tweezing and threading of hair on  
22 another person's body;

23           (5) The wrapping of another person's body in a body  
24 wrap;

25           (6) Applying artificial eyelashes and eyebrows; and

26           (7) The lightening of hair on the body except the scalp.

27           (b) "Aesthetician" or "esthetician" means a person  
28 licensed under the provisions of this article who engages in  
29 the practice of aesthetics.

30           (c) "Applicant" means a person making application for a  
31 professional license, license, certificate, registration, permit  
32 or renewal under the provisions of this article.

33           (d) "Barber" means a person licensed under the  
34 provisions of this article who engages in the practice of  
35 barbering.

36 (e) “Barbering” means any one or any combination of the  
37 following acts when done on the human body for  
38 compensation and not for the treatment of disease:

39 (1) Shaving, shaping and trimming the beard, or both;

40 (2) Cutting, singeing, shampooing, arranging, dressing,  
41 tinting, bleaching, or applying lotions or tonics on human  
42 hair, or a wig or hairpiece; and

43 (3) Applications, treatments or rubs of the scalp, face, or  
44 neck with oils, creams, lotions, cosmetics, antiseptics,  
45 powders, or other preparations in connection with the  
46 shaving, cutting or trimming of the hair or beard.

47 (f) “Barber crossover” or “cosmetologist crossover” is a  
48 person who is licensed to perform barbering and  
49 cosmetology.

50 (g) “Barber permanent waving” means the following acts  
51 done on the human body for compensation and not for the  
52 treatment of disease:

53 (1) The bleaching or tinting of hair; and

54 (2) The permanent waving of hair.

55 (h) “Barber permanent waviest” means a person licensed  
56 to perform barbering and barber permanent waving.

57 (i) “Board” means the West Virginia Board of Barbers  
58 and Cosmetologists.

59 (j) “Certificate” means an instructor certificate to teach in  
60 a school under the provisions of this article.

61 (k) "Certificate holder" means a person certified as an  
62 instructor to teach in a school under the provisions of this  
63 article.

64 (l) "Cosmetologist" means a person licensed under the  
65 provisions of this article who engages in the practice of  
66 cosmetology.

67 (m) "Cosmetology" means any one or any combination  
68 of the following acts when done on the human body for  
69 compensation and not for the treatment of disease:

70 (1) Cutting, styling, shaping, arranging, braiding,  
71 weaving, dressing, adding extensions, curling, waving,  
72 permanent waving, relaxing, straightening, shampooing,  
73 cleansing, singeing, bleaching, tinting, coloring, waxing,  
74 tweezing, or similarly work on human hair, or a wig or  
75 hairpiece, by any means, including hands, mechanical or  
76 electrical devices or appliances;

77 (2) Nail care;

78 (3) Applying by hand or with a mechanical or electrical  
79 device or appliance, any cosmetics, makeups, oils, powders,  
80 clays, antiseptics, tonics, lotions, creams or chemical  
81 preparations necessary for the practice of aesthetics to  
82 another person's face, neck, shoulders, hands, elbows and  
83 feet up to and including the knee;

84 (4) The rubbing, cleansing, exercising, beautifying or  
85 grooming of another person's face, neck, shoulders, hands,  
86 elbows and feet up to and including the knee;

87 (5) The wrapping of another person's body in a body  
88 wrap; and

89 (6) Performing aesthetics.

90 (n) “General supervision” means:

91 (1) For schools, a master or certified instructor is on the  
92 premises and is quickly and easily available; or

93 (2) For salons, a professional licensee is on the premises  
94 and is quickly and easily available.

95 (o) “Hair braiding” means any one or any combination of  
96 the following acts when done on the human body for  
97 compensation and not for the treatment of disease: Braiding,  
98 plaiting, twisting, wrapping, threading, weaving, extending  
99 or locking of natural human hair by hand or mechanical  
100 device.

101 (p) “Hair Styling” means any one or any combination of  
102 the following acts when done on the human body for  
103 compensation and not for the treatment of disease:

104 (1) Cutting, styling, shaping, arranging, braiding,  
105 weaving, dressing, adding extensions, curling, waving,  
106 permanent waving, relaxing, straightening, shampooing,  
107 cleansing, singeing, bleaching, tinting, coloring, waxing,  
108 tweezing, threading or similarly work on human hair, or a  
109 wig or hairpiece, by any means, including hands, mechanical  
110 or electrical devices or appliances;

111 (2) The rubbing, cleansing, exercising, beautifying or  
112 grooming of another person's face, neck, shoulders, hands,  
113 elbows and feet up to and including the knee.

114 (q) “Hair Stylist” means a person licensed under the  
115 provisions of this article who engages in the practice of hair  
116 styling.

117 (r) “License” means a professional license, a salon license  
118 or a school license.

119 (s) "Licensee" means a person, corporation or firm  
120 holding a license issued under the provisions of this article.

121 (t) "Nail care" means any one or any combination of the  
122 following acts when done on the human body for  
123 compensation and not for the treatment of disease:

124 (1) The cleansing, dressing, or polishing of nails of a  
125 person;

126 (2) Performing artificial nail service; and

127 (3) The cosmetic treatment of the feet up to the knee and  
128 the hands up to the elbow.

129 (u) "Nail technician" or "manicurist" means a person  
130 licensed under the provisions of this article who engages in  
131 the practice of nail care.

132 (v) "Permit" means a work permit.

133 (w) "Permitee" means a person holding a work permit.

134 (x) "Professional license" means a license to practice as  
135 an aesthetician, barber, barber crossover, barber permanent  
136 waviest, cosmetologist, cosmetologist crossover or nail  
137 technician.

138 (y) "Registration" means a registration issued by the  
139 board to a person who rents or leases a booth or chair from a  
140 licensed salon owner and operator, or both, or a registration  
141 issued by the board to a person who is a student in a school.

142 (z) "Registrant" means a person who holds a registration  
143 under the provisions of this article.

144 (aa) "Salon" means a shop or other facility where a  
145 person practices under a professional license.

146 (bb) “Salon license” means a license to own and operate  
147 a salon.

148 (cc) “School” means a facility to educate persons to be  
149 licensed with professional licenses under the provisions of  
150 this article.

151 (dd) “School license” means a license to own and operate  
152 a school.

153 (ee) “Student registration” means a registration issued by  
154 the board to a student to study at a school licensed under the  
155 provisions of this article.

**§30-27-8. Professional license requirements.**

1 (a) An applicant for a professional license to practice as  
2 an aesthetician, barber, barber crossover, barber permanent  
3 waviest, cosmetologist, hair stylist, cosmetologist crossover or  
4 nail technician shall present satisfactory evidence that he or  
5 she:

6 (1) Is at least eighteen years of age;

7 (2) Is of good moral character;

8 (3) Has a high school diploma, a GED, or has passed the  
9 “ability to benefit test” approved by the United States  
10 Department of Education;

11 (4) Has graduated from a school which has been  
12 approved by the board;

13 (5) Has passed an examination that tests the applicant’s  
14 knowledge of subjects specified by the board: *Provided*,  
15 That the board may recognize a certificate or similar license  
16 in lieu of the examination or part of the examination that the  
17 board requires;

18 (6) Has paid the applicable fee;

19 (7) Presents a certificate of health from a licensed  
20 physician;

21 (8) Is a citizen of the United States or is eligible for  
22 employment in the United States; and

23 (9) Has fulfilled any other requirement specified by the  
24 board.

25 (b) A license to practice issued by the board prior to July  
26 1, 2009, shall for all purposes be considered a professional  
27 license issued under this article: *Provided*, That a person  
28 holding a license issued prior to July 1, 2009, must renew the  
29 license pursuant to the provisions of this article.

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## 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.**

1 (a) A professional licensee and certificate holder shall  
2 annually or biennially on or before January 1, renew his or  
3 her professional license or certificate by completing a form  
4 prescribed by the board, paying the renewal fee and  
5 submitting any other information required by the board.

6 (b) The board shall charge a fee for each renewal of a  
7 license or certificate, and a late fee for any renewal not paid  
8 by the due date.

9 (c) The board shall require as a condition of renewal of a  
10 professional license or certificate that each licensee or  
11 certificate holder complete continuing education: *Provided*,  
12 That a barber who has been licensed for twenty years or more  
13 is exempt from the continuing education requirement of this  
14 subsection.

15 (d) The board may deny an application for renewal for  
16 any reason which would justify the denial of an original  
17 application for a license or certificate.



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## CHAPTER 150

(Com. Sub. for S. B. 36 - By Senator 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 §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.**

- 1 (a) This section and the requirements set forth in this
- 2 section may be referred to as the West Virginia Fairness In
- 3 Competitive Bidding Act.

4 (b) As used in this section:

5 (1) “Lowest qualified responsible bidder” means the  
6 bidder that bids the lowest price and that meets, as a  
7 minimum, all the following requirements in connection with  
8 the bidder’s response to the bid solicitation. The bidder must  
9 certify that it:

10 (A) Is ready, able and willing to timely furnish the labor  
11 and materials required to complete the contract;

12 (B) Is in compliance with all applicable laws of the State  
13 of West Virginia; and

14 (C) Has supplied a valid bid bond or other surety  
15 authorized or approved by the contracting public entity.

16 (2) “The state and its subdivisions” means the State of  
17 West Virginia, every political subdivision thereof, every  
18 administrative entity that includes such a subdivision, all  
19 municipalities and all county boards of education.

20 (c) The state and its subdivisions shall, except as  
21 provided in this section, solicit competitive bids for every  
22 construction project exceeding \$25,000 in total cost:  
23 *Provided*, That a vendor who has been debarred pursuant to  
24 the provisions of sections thirty-three-a through thirty-three-f,  
25 inclusive, article three, chapter five-a of this code may not  
26 bid on or be awarded a contract under this section. All bids  
27 submitted pursuant to this chapter shall include a valid bid  
28 bond or other surety as approved by the State of West  
29 Virginia or its subdivisions.

30 (d) Following the solicitation of bids, the construction  
31 contract shall be awarded to the lowest qualified responsible  
32 bidder who shall furnish a sufficient performance and  
33 payment bond. The state and its subdivisions may reject all  
34 bids and solicit new bids on the project.

35 (e) The apparent low bidder on a contract for the  
36 construction, alteration, decoration, painting or improvement  
37 of a new or existing building or structure with the  
38 Department of Administration, Division of Purchasing,  
39 valued at more than \$500,000.00 shall submit a list of all  
40 subcontractors who will perform more than \$25,000.00 of  
41 work on the project including labor and materials: *Provided*,  
42 That this section shall not apply to any other construction  
43 projects, such as highway, mine reclamation, water or sewer  
44 projects. The list shall include the names of the bidders and  
45 the license numbers as required by article eleven, chapter  
46 twenty-one of this code. This information shall be provided  
47 to the Division of Purchasing within one business day of the  
48 opening of bids for review prior to the awarding of a  
49 construction contract. If no subcontractors are to be used to  
50 complete the project it will be so noted on the subcontractor  
51 list. Failure to submit the subcontractor list within one  
52 business day after the deadline for submitting bids shall result  
53 in disqualification of the bid.

54 (f) Written approval must be obtained from the Division  
55 of Purchasing before any subcontractor substitution is  
56 permitted. Substitutions are not permitted unless:

57 (1) The subcontractor listed in the original bid has filed  
58 for bankruptcy;

59 (2) The Division of Purchasing refuses to approve a  
60 subcontractor in the original bid because the subcontractor is  
61 under a debarment pursuant to section thirty-three-d, article  
62 three, chapter five-a of this code or a suspension under  
63 section thirty-two, article three, chapter five-a of this code; or

64 (3) The contractor certifies in writing that the  
65 subcontractor listed in the original bill fails, is unable or  
66 refuses to perform his subcontract.

67           (g) The amendments to this section made during the 2012  
68 regular session of the Legislature shall expire one year from  
69 the effective date of the amendments absent further action of  
70 the Legislature.

71           (h) The contracting public entity may not award the  
72 contract to a bidder which fails to meet the minimum  
73 requirements set out in this section. As to any prospective  
74 low bidder which the contracting public entity determines not  
75 to have met any one or more of the requirements of this  
76 section or other requirements as determined by the public  
77 entity in the written bid solicitation, prior to the time a  
78 contract award is made, the contracting public entity shall  
79 document in writing and in reasonable detail the basis for the  
80 determination and shall place the writing in the bid file. After  
81 the award of a bid under this section, the bid file of the  
82 contracting public agency and all bids submitted in response  
83 to the bid solicitation shall be open and available for public  
84 inspection.

85           (i) Any public official or other person who individually  
86 or together with others knowingly makes an award of a  
87 contract under this section in violation of the procedures and  
88 requirements of this section is subject to the penalties set  
89 forth in section twenty-nine, article three, chapter five-a of  
90 the Code of West Virginia.

91           (j) No officer or employee of this state or of any public  
92 agency, public authority, public corporation or other public  
93 entity and no person acting or purporting to act on behalf of  
94 such officer or employee or public entity shall require that  
95 any performance bond, payment bond or surety bond required  
96 or permitted by this section be obtained from any particular  
97 surety company, agent, broker or producer.

98           (k) All bids shall be open in accordance with the  
99           provisions of section two of this article, except design-build  
100           projects which are governed by article twenty-two-a of this  
101           chapter and are exempt from these provisions.

102           (1) Nothing in this section shall apply to:

103           (1) Work performed on construction or repair projects by  
104           regular full-time employees of the state or its subdivisions;

105           (2) Prevent students enrolled in vocational educational  
106           schools from being utilized in construction or repair projects  
107           when the use is a part of the student's training program;

108           (3) Emergency repairs to building components and  
109           systems. For the purpose of this subdivision, the term  
110           emergency repairs means repairs that if not made  
111           immediately will seriously impair the use of building  
112           components and systems or cause danger to those persons  
113           using the building components and systems; and

114           (4) Any situation where the state or a subdivision thereof  
115           reaches an agreement with volunteers, or a volunteer group,  
116           whereby the governmental body will provide construction or  
117           repair materials, architectural, engineering, technical or any  
118           other professional services and the volunteers will provide  
119           the necessary labor without charge to, or liability upon, the  
120           governmental body.

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## CHAPTER 151

(Com. Sub. for S. B. 76 -  
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 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  
2 effective July 1, 2012.

#### **§22-29-2. Findings and purpose.**

1 (a) The Legislature finds that:

2 (1) Encouraging the construction of energy-efficient  
3 public buildings is in the public interest and promotes the  
4 general welfare of the people of the state.

5 (2) Efficient energy use by public buildings contributes  
6 substantially to improving the environment.

7 (3) Public buildings can be built in accordance with  
8 energy-efficient standards.

9 (b) This article is enacted to more efficiently spend public  
10 funds and protect the health and welfare of West Virginia  
11 residents.

### **§22-29-3. Definitions.**

1 As used in this article:

2 (a) “ANSI” means the American National Standards  
3 Institute;

4 (b) “ASHRAE” means the American Society of Heating,  
5 Refrigerating and Air-Conditioning Engineers;

6 (c) “IESNA” means the Illuminating Engineering Society  
7 of North America;

8 (d) “ICC” means the International Code Council; and

9 (e) “Public agency” means an agency of the state and  
10 political subdivisions, public institutions of higher education  
11 and boards of education.

### **§22-29-4. Minimum energy standards for new building construction projects of public agencies.**

1 All new building construction projects of public agencies  
2 that have not entered the schematic design phase prior to July 1,

3 2012, or any building construction project receiving state grant  
4 funds and appropriations, including public schools, that have not  
5 entered the schematic design phase prior to July 1, 2012, shall be  
6 designed and constructed complying with the ICC International  
7 Energy Conservation Code, adopted by the State Fire  
8 Commission, and the ANSI/ASHRAE/IESNA Standard  
9 90.1-2007: *Provided*, That if any construction project has a  
10 commitment of federal funds to pay for a portion of such project,  
11 this section shall only apply to the extent such standards are  
12 consistent with the federal standards.

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## 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.**

- 1 (a) The Public Employees Insurance Agency consists of
- 2 the Director, the Finance Board, the Advisory Board and any
- 3 employees who may be authorized by law. The Director
- 4 shall be appointed by the Governor, with the advice and
- 5 consent of the Senate, and serves at the will and pleasure of

6 the Governor. The Director shall have at least three years'  
7 experience in health or governmental health benefit  
8 administration as his or her primary employment duty prior  
9 to appointment as director. The Director shall receive actual  
10 expenses incurred in the performance of official business.  
11 The Director shall employ any administrative, technical and  
12 clerical employees required for the proper administration of  
13 the programs provided in this article. The Director shall  
14 perform the duties that are required of him or her under the  
15 provisions of this article and is the Chief Administrative  
16 Officer of the Public Employees Insurance Agency. The  
17 Director may employ a deputy director.

18 (b) Except for the Director, his or her personal secretary,  
19 the Deputy Director and the Chief Financial Officer, all  
20 positions in the agency shall be included in the classified  
21 service of the civil service system pursuant to article six,  
22 chapter twenty-nine of this code.

23 (c) The Director is responsible for the administration and  
24 management of the Public Employees Insurance Agency as  
25 provided in this article and in connection with his or her  
26 responsibility may make all rules necessary to effectuate the  
27 provisions of this article. Nothing in section four or five of  
28 this article limits the Director's ability to manage on a day-to-  
29 day basis the group insurance plans required or authorized by  
30 this article, including, but not limited to, administrative  
31 contracting, studies, analyses and audits, eligibility  
32 determinations, utilization management provisions and  
33 incentives, provider negotiations, provider contracting and  
34 payment, designation of covered and noncovered services,  
35 offering of additional coverage options or cost containment  
36 incentives, pursuit of coordination of benefits and  
37 subrogation or any other actions which would serve to  
38 implement the plan or plans designed by the Finance Board.  
39 The Director is to function as a benefits management  
40 professional and should avoid political involvement in

41 managing the affairs of the Public Employees Insurance  
42 Agency.

43 (d) The Director should make every effort to evaluate and  
44 administer programs to improve quality, improve health  
45 status of members, develop innovative payment  
46 methodologies, manage health care delivery costs, evaluate  
47 effective benefit designs, evaluate cost sharing and benefit  
48 based programs, and adopt effective industry programs that  
49 can manage the long-term effectiveness and costs for the  
50 programs at the Public Employees Insurance Agency to  
51 include, but not be limited to:

52 (1) Increasing generic fill rates;

53 (2) Managing specialty pharmacy costs;

54 (3) Implementing and evaluating medical home models  
55 and health care delivery;

56 (4) Coordinating with providers, private insurance  
57 carriers and to the extent possible Medicare to encourage the  
58 establishment of cost effective accountable care  
59 organizations;

60 (5) Exploring and developing advanced payment  
61 methodologies for care delivery such as case rates, capitation  
62 and other potential risk-sharing models and partial risk-  
63 sharing models for accountable care organizations and/or  
64 medical homes;

65 (6) Adopting measures identified by the Centers for  
66 Medicare and Medicaid Services to reduce cost and enhance  
67 quality;

68 (7) Evaluating the expenditures to reduce excessive use  
69 of emergency room visits, imaging services and other drivers  
70 of the agency's medical rate of inflation;

71 (8) Recommending cutting-edge benefit designs to the  
72 Finance Board to drive behavior and control costs for the plans;

73 (9) Implementing programs to encourage the use of the  
74 most efficient and high-quality providers by employees and  
75 retired employees;

76 (10) Identifying employees and retired employees who  
77 have multiple chronic illnesses and initiating programs to  
78 coordinate the care of these patients;

79 (11) Initiating steps by the agency to adjust payment by  
80 the agency for the treatment of hospital acquired infections  
81 and related events consistent with the payment policies,  
82 operational guidelines and implementation timetable  
83 established by the Centers of Medicare and Medicaid  
84 Services. The agency shall protect employees and retired  
85 employees from any adjustment in payment for hospital  
86 acquired infections; and

87 (12) Initiating steps by the agency to reduce the number of  
88 employees and retired employees who experience avoidable  
89 readmissions to a hospital for the same diagnosis related group  
90 illness within thirty days of being discharged by a hospital in this  
91 state or another state consistent with the payment policies,  
92 operational guidelines and implementation timetable established  
93 by the Centers of Medicare and Medicaid Services.

94 (e) The Director shall issue an annual progress report to  
95 the Joint Committee on Government and Finance on the  
96 implementation of any reforms initiated pursuant to this  
97 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.**

1 The Finance Board may include in its financial plans a  
2 subsidy from the Retiree Health Benefit Trust Fund created

3 by article sixteen-d of this chapter for the cost of coverage  
4 under the major health care benefits plans, only for retired  
5 employees who were hired before July 1, 2010.

**§5-16-5b. Creation of trust for retirees hired on or after July 1, 2010.**

1 There is hereby created a special revenue account in the  
2 State Treasury, designated the Post-July 1, 2010, Employee  
3 Trust Fund, which shall be an interest-bearing account and  
4 may be invested in accordance with the provisions of article  
5 six, chapter twelve of this code, with the interest income a  
6 proper credit to the fund. The fund shall consist of moneys  
7 appropriated by the Legislature and moneys transferred  
8 pursuant to section ninety-six, article twenty-one, chapter  
9 eleven of this code. Expenditures from the fund shall be for  
10 the purposes set forth by the Legislature in furtherance of an  
11 incentive contingent on future legislative directives for  
12 retirees who were hired on or after July 1, 2010, to be  
13 received upon their retirement. Such incentive may be  
14 determined by the Legislature in accordance with section  
15 seven, article sixteen-d of this chapter.

**ARTICLE 16D. RETIREMENT HEALTH BENEFIT TRUST FUND.**

**§5-16D-7. Select Committee on Other Post-Employment Benefits.**

1 (a) Pursuant to the authority contained in section one,  
2 article one, chapter four of this code, the presiding officers of  
3 each house of the Legislature may appoint a joint committee  
4 to be known as the Select Committee on Other Post-  
5 Employment Benefits to study other post-employment  
6 benefits, including the effects of the amendments to this code  
7 relating to other post-employment benefits made during the  
8 2012 regular session of the Legislature.

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.

19 (c) The transfers required by subsection (b) of this section  
20 shall continue to be made until the Governor certifies to the  
21 Legislature that an independent actuarial study determined  
22 that the unfunded liability of the old fund, as defined in  
23 chapter twenty-three of this code, has been paid or provided  
24 for in its entirety. Thereafter, an annual amount of \$35  
25 million from annual collections of the tax imposed by this  
26 article and which were previously dedicated by this section  
27 for payment of the unfunded liability of the Workers  
28 Compensation Fund shall be dedicated for payment of the  
29 unfunded liability of the West Virginia Retiree Health Benefit  
30 Trust Fund and to provide funding for the Post-July 1, 2010,  
31 Employee Trust Fund created by section five-b, article  
32 sixteen, chapter five of this code. The \$35 million transferred  
33 pursuant to this subsection shall be transferred in accordance  
34 with the following:

35 (1) The annual amount of \$30 million shall be transferred  
36 into the West Virginia Retiree Health Benefit Trust Fund, by  
37 transferring \$5 million each month for the following months  
38 of each year: October, November, December, January,  
39 February and March, until the Governor certifies to the  
40 Legislature that an independent actuarial study has  
41 determined that the unfunded liability of West Virginia  
42 Retiree Health Benefit Trust Fund, as created in section two,  
43 article sixteen-d, chapter five of this code, has been provided  
44 for in its entirety or July 1, 2037, whichever date is later. No  
45 transfer into the West Virginia Retiree Health Benefit Trust  
46 Fund pursuant to this subdivision shall be made thereafter;  
47 and

48 (2) An annual amount of \$5 million shall be transferred  
49 into the Post-July 1, 2010, Employee Trust Fund created by  
50 section five-b, article sixteen, chapter five of this code in  
51 April of each year.

**CHAPTER 18. EDUCATION.****ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-24. Foundation allowance for Public Employees Insurance Fund.**

1           (a) The allowance to the Public Employees Insurance  
2 Agency for school employees shall be made in accordance  
3 with the following: The number of individuals employed by  
4 county boards as professional educators pursuant to section  
5 four of this article, plus the number of individuals employed  
6 by county boards as service personnel pursuant to section five  
7 of this article, plus the number of individuals employed by  
8 county boards as professional student support personnel  
9 pursuant to section eight of this article, multiplied by the  
10 average premium rate for all county board of education  
11 employees established by the Public Employees Insurance  
12 Agency Finance Board. The average premium rate for all  
13 county board of education employees shall be incorporated  
14 into each financial plan developed by the Finance Board in  
15 accordance with section five, article sixteen, chapter five of  
16 this code. The premiums shall include any proportionate  
17 share of retirees subsidy established by the Finance Board  
18 and the difference, if any, between the previous year's actual  
19 premium costs and the previous year's appropriation, if the  
20 actual cost was greater than the appropriation. The amount  
21 of the allowance provided in this subsection shall be paid  
22 directly to the West Virginia Public Employees Insurance  
23 Agency. Each county board shall reflect its share of the  
24 payment as revenue on its financial statements to offset its  
25 expense for the employer annual required contribution, as  
26 defined in article sixteen-d, chapter five of this code.

27           (b) Notwithstanding any other provision of section six,  
28 article sixteen-d, chapter five of this code to the contrary, any  
29 amount of employer annual required contribution allocated



30 and billed to county boards on or after July 1, 2012, and any  
31 amount of the employer annual required contribution  
32 allocated and billed to the county boards prior to that date for  
33 employees who are employed as professional employees  
34 within the limits authorized by section four of this article,  
35 employees who are employed as service personnel within the  
36 limits authorized by section five of this article, and  
37 employees who are employed as professional student support  
38 personnel within the limits authorized by section eight of this  
39 article, shall be charged to the state: *Provided*, That nothing  
40 in this subsection requires any specific level of funding by  
41 the Legislature in any particular year: *Provided, however*,  
42 That charging specified amounts to the state pursuant to this  
43 section is not to be construed as creating an employer  
44 employee relationship between the State of West Virginia and  
45 any employee under the employ of a county board or as  
46 creating a liability of the state.

47 (c) County boards are liable for the employer annual  
48 required contribution allocated and billed to the county  
49 boards on or after July 1, 2012, and any amount of the  
50 employer annual required contribution allocated and billed to  
51 the county boards prior to that date for individuals who are  
52 employed as professional employees above and beyond those  
53 authorized by section four of this article, individuals who are  
54 employed as service personnel above and beyond those  
55 authorized by section five of this article and individuals who  
56 are employed as professional student support personnel above  
57 and beyond those authorized by section eight of this article.  
58 For each such employee, the county board shall forward to  
59 the Public Employees Insurance Agency an amount equal to  
60 the average premium rate established by the finance board in  
61 accordance with subsection (a) of this section: *Provided*, That  
62 the county board shall pay the actual employer premium costs  
63 for any county board employee paid from special revenues,  
64 federal or state grants, or sources other than state general  
65 revenue or county funds.

66 (d) Prior to July 1, 1995, nothing in this article shall be  
67 construed to limit the ability of county boards to use funds  
68 appropriated to county boards pursuant to this article to pay  
69 employer premiums to the Public Employees Insurance  
70 Agency for employees whose positions are funded pursuant  
71 to this article. Funds appropriated to county boards pursuant  
72 to this article shall not be used to pay employer premiums for  
73 employees of such boards whose positions are not, or will not  
74 be within twenty months, funded by funds appropriated  
75 pursuant to this article.

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## 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.**

1           (a) The Public Employees Insurance Agency Finance  
2 Board is continued and consists of the Secretary of the  
3 Department of Administration or his or her designee and ten  
4 members appointed by the Governor, with the advice and  
5 consent of the Senate, for terms of four years and each may  
6 serve until his or her successor is appointed and qualified.  
7 Members may be reappointed for successive terms. No more  
8 than six members, including the Secretary of the Department  
9 of Administration, may be of the same political party.

10           (b)(1) Of the ten members appointed by the Governor  
11 with advice and consent of the Senate, one member shall  
12 represent the interests of education employees, one shall  
13 represent the interests of public employees, one shall  
14 represent the interests of retired employees, one shall  
15 represent the interests of organized labor, one shall represent  
16 the interests of a participating political subdivision and five  
17 shall be selected from the public at large. The Governor shall  
18 appoint the member representing the interests of education  
19 employees from a list of three names submitted by the largest  
20 organization of education employees in this state. The  
21 Governor shall appoint the member representing the interests  
22 of organized labor from a list of three names submitted by the  
23 state's largest organization representing labor affiliates. The  
24 five members appointed from the public shall each have  
25 experience in the financing, development or management of  
26 employee benefit programs.

27           (2) All appointments shall be selected to represent the  
28 different geographical areas within the state and all members  
29 shall be residents of West Virginia. No member may be  
30 removed from office by the Governor except for official  
31 misconduct, incompetence, neglect of duty, neglect of  
32 fiduciary duty or other specific responsibility imposed by this  
33 article or gross immorality.

34           (c) The Secretary of the Department of Administration  
35 shall serve as chair of the finance board, which shall meet at  
36 times and places specified by the call of the chair or upon the  
37 written request to the chair of at least two members. The  
38 Director of the Public Employees Insurance Agency shall  
39 serve as staff to the board. Notice of each meeting shall be  
40 given in writing to each member by the director at least three  
41 days in advance of the meeting. Six members constitute a  
42 quorum. The board shall pay each member the same  
43 compensation and expense reimbursement that is paid to  
44 members of the Legislature for their interim duties for each  
45 day or portion of a day engaged in the discharge of official  
46 duties.

47           (d) Upon termination of the board and notwithstanding  
48 any provisions in this article to the contrary, the director is  
49 authorized to assess monthly employee premium  
50 contributions and to change the types and levels of costs to  
51 employees only in accordance with this subsection. Any  
52 assessments or changes in costs imposed pursuant to this  
53 subsection shall be implemented by legislative rule proposed  
54 by the director for promulgation pursuant to the provisions of  
55 article three, chapter twenty-nine-a of this code. Any  
56 employee assessments or costs previously authorized by the  
57 finance board shall then remain in effect until amended by  
58 rule of the director promulgated pursuant to this subsection.

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**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
- 2 supervision of the division. The director and any officer of
- 3 the division specified by the director may carry designated

4 weapons and have the same powers of arrest and law  
5 enforcement in Kanawha County as members of the West  
6 Virginia State Police as set forth in subsections (b) and (d),  
7 section twelve, article two of this chapter: *Provided*, That the  
8 director and designated members shall have such powers  
9 throughout the State of West Virginia in investigating and  
10 performing law-enforcement duties for offenses committed  
11 on the Capitol Complex or related to the division's security  
12 and protection duties at the Capitol Complex: *Provided*,  
13 *however*, That the director and designated members shall  
14 have said powers throughout the state relating to offenses and  
15 activities occurring on any property owned, leased or  
16 operated by the State of West Virginia when undertaken at  
17 the request of the agency occupying the property: *Provided*  
18 *further*, That nothing in this article shall be construed as to  
19 obligate the director or the division to provide or be  
20 responsible for providing security at state facilities outside  
21 the Capitol Complex.

22 (b) Any officer of the division shall be certified as a law-  
23 enforcement officer by the Governor's Committee on Crime,  
24 Delinquency and Correction or may be conditionally  
25 employed as a law-enforcement officer until certified in  
26 accordance with the provisions of section five, article twenty-  
27 nine, chapter thirty of this code.

28 (c) The director may:

29 (1) Employ necessary personnel, all of whom shall be  
30 classified exempt, assign them the duties necessary for the  
31 efficient management and operation of the division and  
32 specify members who may carry, without license, weapons  
33 designated by the director;

34 (2) Contract for security and other services;

35 (3) Purchase equipment as necessary to maintain security  
36 at the Capitol Complex and other state facilities as may be

37 determined by the Secretary of the Department of Military  
38 Affairs and Public Safety;

39 (4) Establish and provide standard uniforms, arms,  
40 weapons and other enforcement equipment authorized for use  
41 by members of the division and shall provide for the periodic  
42 inspection of the uniforms and equipment. All uniforms,  
43 arms, weapons and other property furnished to members of  
44 the division by the State of West Virginia is and remains the  
45 property of the state;

46 (5) Appoint security officers to provide security on  
47 premises owned or leased by the State of West Virginia;

48 (6) Upon request by the Superintendent of the West  
49 Virginia State Police, provide security for the Speaker of the  
50 West Virginia House of Delegates, the President of the West  
51 Virginia Senate, the Governor or a justice of the West  
52 Virginia Supreme Court of Appeals;

53 (7) Gather information from a broad base of employees  
54 at and visitors to the Capitol Complex to determine their  
55 security needs and develop a comprehensive plan to maintain  
56 and improve security at the Capitol Complex based upon  
57 those needs; and

58 (8) Assess safety and security needs and make  
59 recommendations for safety and security at any proposed or  
60 existing state facility as determined by the Secretary of the  
61 Department of Military Affairs and Public Safety, upon  
62 request of the secretary of the department to which the  
63 facility is or will be assigned.

64 (d) The director shall:

65 (1) On or before July 1, 1999, propose legislative rules  
66 for promulgation in accordance with the provisions of article  
67 three, chapter twenty-nine-a of this code. The rules shall, at

68 a minimum, establish ranks and the duties of officers within  
69 the membership of the division.

70 (2) On or before July 1, 1999, enter into an interagency  
71 agreement with the Secretary of the Department of Military  
72 Affairs and Public Safety and the Secretary of the  
73 Department of Administration, which delineates their  
74 respective rights and authorities under any contracts or  
75 subcontracts for security personnel. A copy of the  
76 interagency agreement shall be delivered to the Governor, the  
77 President of the West Virginia Senate and the Speaker of the  
78 West Virginia House of Delegates and a copy shall be filed  
79 in the office of the Secretary of State and shall be a public  
80 record.

81 (3) Deliver a monthly status report to the Speaker of the  
82 West Virginia House of Delegates and the President of the  
83 West Virginia Senate.

84 (e) Require any service provider whose employees are  
85 regularly employed on the grounds or in the buildings of the  
86 Capitol Complex or who have access to sensitive or critical  
87 information submit to a fingerprint-based state and federal  
88 background inquiry through the state repository, and require  
89 a new employee who is employed to provide services on the  
90 grounds or in the building of the Capitol Complex to submit  
91 to an employment eligibility check through E-verify.

92 (1) After the contract for such services has been  
93 approved, but before any such employees are permitted to be  
94 on the grounds or in the buildings of the Capitol Complex or  
95 have access to sensitive or critical information, the service  
96 provider shall submit a list of all persons who will be  
97 physically present and working at the Capitol Complex for  
98 purposes of verifying compliance with this section.

99 (2) All current service providers shall, within ninety days  
100 of the amendment and reenactment of this section by the



101 eightieth Legislature, ensure that all of its employees who are  
102 providing services on the grounds or in the buildings of the  
103 Capitol Complex or who have access to sensitive or critical  
104 information submit to a fingerprint-based state and federal  
105 background inquiry through the state repository.

106 (3) Any contract entered into, amended or renewed by an  
107 agency or entity of state government with a service provider  
108 shall contain a provision reserving the right to prohibit  
109 specific employees thereof from accessing sensitive or critical  
110 information or to be present at the Capitol Complex based  
111 upon results addressed from a criminal background check.

112 (4) For purposes of this section, the term “service  
113 provider” means any person or company that provides  
114 employees to a state agency or entity of state government to  
115 work on the grounds or in the buildings that make up the  
116 Capitol Complex or who have access to sensitive or critical  
117 information.

118 (5) In accordance with the provisions of Public Law 92-  
119 544 the criminal background check information will be  
120 released to the Director of the Division of Protective  
121 Services.

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## 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

thereto a new section, designated §15-5-20a, all relating to disaster prevention; eliminating the requirement that the Office of Emergency Services report to the West Virginia Disaster Recovery Board on debris that may cause an obstruction during disasters; requiring all floodplain managers to complete yearly training; and providing that another manager may take over the responsibilities of a manager who has not completed the required training.

*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.**

1           (a) In addition to disaster prevention measures as  
2 included in the state, local, regional and interjurisdictional  
3 disaster plans, the Governor shall consider on a continuing  
4 basis steps that could be taken to prevent or reduce the  
5 harmful consequences of disasters. At his or her direction,  
6 and pursuant to any other authority and competence they  
7 have, state agencies, including, but not limited to, those  
8 charged with responsibilities in connection with floodplain  
9 management, stream encroachment and flow regulation,  
10 weather modification, fire prevention and control, air quality,  
11 public works, land use and land-use planning and  
12 construction standards, shall make studies of disaster  
13 prevention-related matters. The Governor, from time to time,  
14 shall make such recommendation to the Legislature, political  
15 subdivisions and other appropriate public and private entities  
16 as may facilitate measures for prevention or reduction of the  
17 harmful consequences of disasters.

18 (b) At the request of and in conjunction with the Office  
19 of Emergency Services, the divisions of energy, natural  
20 resources and highways and any state department insured by  
21 the Board of Risk and Insurance Management shall keep land  
22 use and construction of structures and other facilities under  
23 continuing study and identify areas which are particularly  
24 susceptible to severe land shifting, subsidence, flooding or  
25 other catastrophic occurrences. Such studies shall  
26 concentrate on means of reducing or avoiding the dangers  
27 caused by such occurrences and the consequences thereof.

**§15-5-20a. Floodplain manager training.**

1 (a) Community participation in the National Flood  
2 Insurance Program is important to manage and mitigate the  
3 special flood hazard areas in West Virginia. Therefore, all  
4 state, county, municipality and local floodplain managers  
5 should be adequately trained in floodplain management.

6 (b) Commencing July 1, 2012, each floodplain manager  
7 in the state is required to complete six hours of training in  
8 floodplain management annually to maintain good standing  
9 with the West Virginia Division of Homeland Security.

10 (c) A governmental unit that has a floodplain manager  
11 who fails to obtain the required training shall suspend the  
12 floodplain manager from his or her floodplain management  
13 responsibilities until the training requirement is met.

14 (d) A governmental unit that has a floodplain manager  
15 who fails to obtain the required training shall transfer its  
16 floodplain management responsibilities and all associated  
17 fees to a governmental unit that has a floodplain manager in  
18 good standing.

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## CHAPTER 156

**(H. B. 4530 - By Delegates White, Varner, Boggs, R. Phillips,  
Andes, Morgan, Stowers and Poore)**

[Passed March 7, 2012; in effect from passage.]  
[Approved by the Governor on March 15, 2012.]

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 thereto; 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.**

1           (a) *Legislative findings.* - The Legislature hereby finds  
2           and declares as follows:

3           (1) That some electric utilities in the state have  
4           experienced expanded net energy costs of a magnitude  
5           problematic to recover from their customers through the  
6           commission's traditional cost recovery mechanisms, which  
7           have resulted in unusually large under-recoveries;

8           (2) That the financing costs of carrying such under-  
9           recovery balances and projected costs can be considerable;

10          (3) That the use of traditional utility financing  
11          mechanisms to finance or refinance the recovery of such  
12          under-recovery balances and projected costs may result in  
13          considerable additional costs to be reflected in the approved  
14          rates of electric utility customers;

15          (4) That customers of electric utilities in the state have an  
16          interest in the electric utilities financing the costs of such  
17          under-recovery balances and projected costs at a lower cost  
18          than would be afforded by traditional utility financing  
19          mechanisms;

20          (5) That alternative financing mechanisms exist which  
21          can result in lower costs and mitigate rate impacts to

22 customers and the use of these mechanisms can prove highly  
23 beneficial to such customers; and

24 (6) That in order to use such alternative financing  
25 mechanisms, the commission must be empowered to adopt a  
26 financing order that advances these goals. The Legislature,  
27 therefore, determines that it is in the interest of the state and  
28 its citizens to encourage and facilitate the use of alternative  
29 financing mechanisms that will enable electric utilities to  
30 finance or refinance expanded net energy costs at the lowest  
31 reasonably practical cost under certain conditions and to  
32 empower the commission to review and approve alternative  
33 financing mechanisms when it determines that such approval  
34 is in the public interest, as set forth in this section.

35 (b) *Definitions.* - As used in this section:

36 (1) "Adjustment mechanism" means a formula-based  
37 mechanism for making adjustments to consumer rate relief  
38 charges to correct for over-collection or under-collection of  
39 such charges or otherwise to ensure the timely and complete  
40 payment and recovery of such charges and financing costs.  
41 The adjustment mechanism shall accommodate: (i) Standard  
42 adjustments to consumer rate relief charges that are limited to  
43 relatively stable conditions of operations; and (ii)  
44 nonstandard adjustments to consumer rate relief charges that  
45 are necessary to reflect significant changes from historical  
46 conditions of operations, such as the loss of significant  
47 electrical load. The adjustment mechanism is not to be used  
48 as a means to authorize the issuance of consumer rate relief  
49 bonds in a principal amount greater, or the payment or  
50 recovery of expanded net energy costs in an amount greater,  
51 than that which was authorized in the financing order which  
52 established the adjustment mechanism.

53 (2) "Ancillary agreement" means a bond insurance policy  
54 letter of credit, reserve account, surety bond, swap  
55 arrangement, hedging arrangement, liquidity or credit support

56 arrangement or other similar agreement or arrangement  
57 entered into in connection with the issuance of consumer rate  
58 relief bonds that is designed to promote the credit quality and  
59 marketability of the bonds or to mitigate the risk of an  
60 increase in interest rates.

61 (3) “Assignee” means a person, corporation, limited  
62 liability company, trust, partnership or other entity to which  
63 an interest in consumer rate relief property is assigned, sold  
64 or transferred, other than as security. The term also includes  
65 any entity to which an assignee assigns, sells or transfers,  
66 other than as security, the assignee’s interest in or right to  
67 consumer rate relief property.

68 (4) “Bond” includes debentures, notes, certificates of  
69 participation, certificates of beneficial interest, certificates of  
70 ownership or other evidences of indebtedness or ownership  
71 that are issued by an electric utility or an assignee under a  
72 final financing order, the proceeds of which are used directly  
73 or indirectly to recover, finance, or refinance expanded net  
74 energy costs and that are secured by or payable from  
75 revenues from consumer rate relief charges.

76 (5) “Bondholder” means any holder or owner of a  
77 consumer rate relief bond.

78 (6) “Commission” means the Public Service Commission  
79 of West Virginia, as it may be constituted from time to time,  
80 and any successor agency exercising functions similar in  
81 purpose thereto.

82 (7) “Consumer rate relief charges” means the amounts  
83 which are authorized by the commission in a financing order  
84 to be collected from a qualifying utility’s customers in order  
85 to pay and secure the debt service payments of consumer rate  
86 relief bonds and associated financing costs.

87           (8) “Consumer rate relief costs” means those costs,  
88 including financing costs, which are to be defrayed through  
89 consumer rate relief charges.

90           (9) “Consumer rate relief property” means the property,  
91 rights, and interests of a qualifying utility or an assignee  
92 under a final financing order, including the right to impose,  
93 charge, and collect the consumer rate relief charges that shall  
94 be used to pay and secure the payment of consumer rate relief  
95 bonds and financing costs, and including the right to obtain  
96 adjustments to those charges, and any revenues, receipts,  
97 collections, rights to payment, payments, moneys, claims, or  
98 other proceeds arising from the rights and interests created  
99 under the final financing order.

100           (10) “Expanded net energy costs” means historical and,  
101 if deemed appropriate by the commission, projected costs,  
102 inclusive of carrying charges on under-recovery balances  
103 authorized by the commission, including costs incurred prior  
104 to the effective date of this statute, adjudicated pursuant to  
105 the commission’s expanded net energy cost proceedings,  
106 which have been authorized for recovery by an order of the  
107 commission, whether or not subject to judicial appeal.

108           (11) “Financing costs” means any of the following:

109           (A) Principal, interest and redemption premiums that are  
110 payable on consumer rate relief bonds;

111           (B) A payment required under an ancillary agreement;

112           (C) An amount required to fund or replenish a reserve  
113 account or another account established under an indenture,  
114 ancillary agreement or other financing document relating to  
115 consumer rate relief bonds or the payment of any return on  
116 the capital contribution approved by the commission to be  
117 made by a qualifying utility to an assignee;



118 (D) Costs of retiring or refunding an existing debt and  
119 equity securities of a qualifying utility in connection with the  
120 issuance of consumer rate relief bonds but only to the extent  
121 the securities were issued for the purpose of financing  
122 expanded net energy costs;

123 (E) Costs incurred by a qualifying utility to obtain  
124 modifications of or amendments to an indenture, financing  
125 agreement, security agreement, or similar agreement or  
126 instrument relating to an existing secured or unsecured  
127 obligation of the utility in connection with the issuance of  
128 consumer rate relief bonds;

129 (F) Costs incurred by a qualifying utility to obtain a  
130 consent, release, waiver, or approval from a holder of an  
131 obligation described in subparagraph (E) of this subdivision  
132 that are necessary to be incurred for the utility to issue or  
133 cause the issuance of consumer rate relief bonds;

134 (G) Taxes, franchise fees or license fees imposed on  
135 consumer rate relief charges;

136 (H) Costs related to issuing or servicing consumer rate  
137 relief bonds or related to obtaining a financing order,  
138 including servicing fees and expenses, trustee fees and  
139 expenses, legal fees and expenses, administrative fees,  
140 placement fees, underwriting fees, capitalized interest and  
141 equity, rating-agency fees and other related costs authorized  
142 by the commission in a financing order; and

143 (I) Costs that are incurred by the commission for a  
144 financial adviser with respect to consumer rate relief bonds.

145 (12) "Financing order" means an order issued by the  
146 commission under subsection (e) of this section that  
147 authorizes a qualifying utility to issue consumer rate relief  
148 bonds and recover consumer rate relief charges. A financing  
149 order may set forth conditions or contingencies on the

150 effectiveness of the relief authorized therein and may grant  
151 relief that is different from that which was requested in the  
152 application.

153 (13) “Final financing order” means a financing order that  
154 has become final and has taken effect as provided in  
155 subdivision (10) of subsection (e) of this section.

156 (14) “Financing party” means either of the following:

157 (A) A trustee, collateral agent or other person acting for  
158 the benefit of any bondholder; or

159 (B) A party to an ancillary agreement, the rights and  
160 obligations of which relate to or depend upon the existence  
161 of consumer rate relief property, the enforcement and priority  
162 of a security interest in consumer rate relief property, the  
163 timely collection and payment of consumer rate relief charges  
164 or a combination of these factors.

165 (15) “Financing statement” has the same meaning as in  
166 section one-hundred-two, article nine, chapter forty-six of  
167 this code.

168 (16) “Investment grade” means, with respect to the  
169 unsecured debt obligations of a utility at any given time of  
170 determination, a rating that is within the top four investment  
171 rating categories as published by at least one nationally  
172 recognized statistical rating organization as recognized by the  
173 United States Securities and Exchange Commission.

174 (17) “Nonbypassable” means that the payment of  
175 consumer rate relief charges may not be avoided by any West  
176 Virginia retail customer of a qualifying utility or its  
177 successors and must be paid by any such customer that  
178 receives electric delivery service from such utility or its  
179 successors for as long as the consumer rate relief bonds are  
180 outstanding.

181           (18) “Nonutility affiliate” means, with respect to any  
182 utility, a person that: (i) Is an affiliate of the utility as defined  
183 in 42 U.S.C.§16451(1); and (ii) is not a public utility that  
184 provides retail utility service to customers in the state within  
185 the meaning of section two, article one of this chapter.

186           (19) “Parent” means, with respect to a utility, a registered  
187 holding company or other person that holds a majority  
188 ownership or membership interest in the utility.

189           (20) “Qualifying utility” means a public utility engaged  
190 in the sale of electric service to retail customers in West  
191 Virginia which has applied for and received from the  
192 commission a final financing order under this section,  
193 including an affiliated electric public utility which has  
194 applied jointly for and received such an order.

195           (21) “Registered holding company” means, with respect  
196 to a utility, a person that is: (i) A registered holding company  
197 as defined in 42 U.S.C.§16451(8); and (ii) an affiliate of the  
198 utility as defined in 42 U.S.C.§16451(1).

199           (22) “Regulatory sanctions” means, under the  
200 circumstances presented, a regulatory or ratemaking sanction  
201 or penalty that the commission is authorized to impose  
202 pursuant to this chapter or any proceeding for the  
203 enforcement of any provision of this chapter or any order of  
204 the commission that the commission is authorized to pursue  
205 or conduct pursuant to this chapter, including without  
206 limitation: (i) The initiation of any proceeding in which the  
207 utility is required to show cause why it should not be required  
208 to comply with the terms and conditions of a financing order  
209 or the requirements of this section; (ii) the imposition of  
210 penalties pursuant to article four of this chapter; and (iii) a  
211 proceeding by mandamus, injunction or other appropriate  
212 proceeding as provided in section two of this article.

213           (23) “Successor” means, with respect to an entity, another  
214 entity that succeeds by operation of law to the rights and  
215 obligations of the first legal entity pursuant to any  
216 bankruptcy, reorganization, restructuring, or other insolvency  
217 proceeding, any merger, acquisition, or consolidation, or any  
218 sale or transfer of assets, regardless of whether any of these  
219 occur as a result of a restructuring of the electric power  
220 industry or otherwise.

221           (c) *Application for financing order.*

222           (1) If an electric utility or affiliate obtains from the  
223 commission an authorization or waiver required by any other  
224 provision of this chapter or by commission order with respect  
225 to the underlying expanded net energy costs proposed to be  
226 financed through the mechanism of consumer rate relief  
227 bonds, an electric utility, or two or more affiliated electric  
228 utilities engaged in the delivery of electric service to  
229 customers in this state, may apply to the commission for a  
230 financing order that authorizes the following:

231           (A) The issuance of consumer rate relief bonds, in one or  
232 more series, to recover only those expanded net energy costs  
233 that could result in an under-recovery;

234           (B) The imposition, charging, and collection of consumer  
235 rate relief charges, in accordance with the adjustment  
236 mechanism approved by the commission under subparagraph  
237 (E), subdivision (6), subsection (e) of this section to recover  
238 sufficient amounts to pay and secure the debt service  
239 payments of consumer rate relief bonds and associated  
240 financing costs; and

241           (C) The creation of consumer rate relief property under  
242 the financing order.

243           (2) The commission may only consider applications made  
244 pursuant to this subsection for the recovery of underlying

245 expanded net energy costs that would be reflected in  
246 schedules of rates filed in calendar year 2012.

247 (d) *Information required in application for financing*  
248 *order.*

249 The application shall include all of the following:

250 (1) A description and quantification of the uncollected  
251 expanded net energy costs that the electric utility seeks to  
252 recover through the issuance of consumer rate relief bonds;

253 (2) An estimate of the date each series of consumer rate  
254 relief bonds is expected to be issued;

255 (3) The expected term during which the consumer rate  
256 relief costs for each series of consumer rate relief bonds are  
257 expected to be recovered;

258 (4) An estimate of the financing costs associated with the  
259 issuance of each series of consumer rate relief bonds;

260 (5) An estimate of the amount of consumer rate relief  
261 charges necessary to recover the consumer rate relief costs set  
262 forth in the application and the calculation for that estimate,  
263 which calculation shall take into account the estimated date  
264 or dates of issuance and the estimated principal amount of  
265 each series of consumer rate relief bonds;

266 (6) A proposed methodology for allocating consumer rate  
267 relief charges between and within tariff schedules and to  
268 special contract customers;

269 (7) A description of a proposed adjustment mechanism,  
270 reflecting the allocation methodology in subdivision (6) of  
271 this subsection;

272 (8) A description of the benefits to the qualifying utility's  
273 customers that are expected to result from the issuance of the  
274 consumer rate relief bonds, including a demonstration that the  
275 bonds and their financing costs are just and reasonable and  
276 are reasonably expected to achieve the lowest reasonably  
277 attainable cost in order to produce cost savings to customers  
278 and to mitigate rate impacts on customers, as compared to  
279 traditional financing mechanisms or traditional cost-recovery  
280 methods available to the electric utility; and

281 (9) Other information required by commission rules.

282 (e) *Issuance of financing order.*

283 (1) Except as otherwise provided in this section,  
284 proceedings on an application submitted by an electric utility  
285 under subsection (c) of this section are governed by the  
286 commission's standard procedural rules. Any party that  
287 participated in a proceeding in which the subject expanded  
288 net energy costs were authorized or approved automatically  
289 has standing to participate in the financing order proceedings  
290 and the commission shall determine the standing or lack of  
291 standing of any other petitioner for party status.

292 (2) Within thirty days after the filing of an application  
293 under subsection (c) of this section, the commission shall  
294 issue a scheduling order for the proceeding.

295 (3) At the conclusion of proceedings on an application  
296 submitted by an electric utility under subsection (c) of this  
297 section, the commission shall issue either a financing order,  
298 granting the application, in whole or with modifications, or  
299 an order denying the application.

300 (4) The commission may issue a financing order under  
301 this subsection if the commission finds that the issuance of  
302 the consumer rate relief bonds and the consumer rate relief  
303 charges authorized by the order are just and reasonable and

304 are reasonably expected to achieve the lowest reasonably  
305 attainable cost in order to produce cost savings to customers  
306 and to mitigate rate impacts on customers, as compared to  
307 traditional financing mechanisms or traditional cost-recovery  
308 methods available to the electric utility.

309 (5) The commission shall include all of the following in  
310 a financing order issued under this subsection:

311 (A) A determination of the maximum amount and a  
312 description of the expanded net energy costs that may be  
313 recovered through consumer rate relief bonds issued under  
314 the financing order;

315 (B) A description of consumer rate relief property, the  
316 creation of which is authorized by the financing order;

317 (C) A description of the financing costs that may be  
318 recovered through consumer rate relief charges and the  
319 period over which those costs may be recovered;

320 (D) A description of the methodology and calculation for  
321 allocating consumer rate relief charges between and within  
322 tariff schedules and to special contract customers;

323 (E) A description and approval of the adjustment  
324 mechanism for use in the imposition, charging, and collection  
325 of the consumer rate relief charges, including: (i) The  
326 allocation referred to in paragraph (D) of this subdivision and  
327 (ii) any specific requirements for adjusting and reconciling  
328 consumer rate relief charges for standard adjustments that are  
329 limited to relatively stable conditions of operations and  
330 nonstandard adjustments that are necessary to reflect  
331 significant changes from historical conditions of operations,  
332 such as the loss of substantial electrical load, so long as each  
333 and every application of the adjustment mechanism is  
334 designed to assure the full and timely payment of consumer  
335 rate relief bonds and associated financing costs.

336 (F) The maximum term of the consumer rate relief bonds;

337 (G) A finding that the issuance of the consumer rate relief  
338 bonds, including financing costs, is just and reasonable and  
339 are reasonably expected to achieve the lowest reasonably  
340 attainable cost in order to produce cost savings to customers  
341 and to mitigate rate impacts on customers, as compared to  
342 traditional financing mechanisms or traditional cost-recovery  
343 methods available to the electric utility; and

344 (H) Any other provision the commission considers  
345 appropriate to ensure the full and timely imposition, charging,  
346 collection and adjustment, pursuant to an approved  
347 adjustment mechanism, of the consumer rate relief charges.

348 (6) To the extent the commission deems appropriate and  
349 compatible with the issuance advice letter procedure under  
350 subdivision (9) of this subsection, the commission, in a  
351 financing order, shall afford the electric utility flexibility in  
352 establishing the terms and conditions for the consumer rate  
353 relief bonds to accommodate changes in market conditions,  
354 including repayment schedules, interest rates, financing costs,  
355 collateral requirements, required debt service and other  
356 reserves, and the ability of the qualifying utility, at its option,  
357 to effect a series of issuances of consumer rate relief bonds  
358 and correlated assignments, sales, pledges, or other transfers  
359 of consumer rate relief property. Any changes made under  
360 this subdivision to terms and conditions for the consumer rate  
361 relief bonds shall be in conformance with the financing order.

362 (7) A financing order shall provide that the creation of  
363 consumer rate relief property shall be simultaneous with the  
364 sale of that property to an assignee as provided in the  
365 application and the pledge of the property to secure consumer  
366 rate relief bonds.

367 (8) The commission, in a financing order, shall require  
368 that, after the final terms of each issuance of consumer rate



369 relief bonds have been established, and prior to the issuance  
370 of those bonds, the qualifying utility shall determine the  
371 resulting initial consumer rate relief charges in accordance  
372 with the adjustment mechanism described in the financing  
373 order. These consumer rate relief charges shall be final and  
374 effective upon the issuance of the consumer rate relief bonds,  
375 without further commission action.

376 (9) Because the actual structure and pricing of the  
377 consumer rate relief bonds will not be known at the time the  
378 financing order is issued, in the case of every securitization  
379 approved by the commission, the qualifying utility which  
380 intends to cause the issuance of such bonds will provide to  
381 the commission and the commission's financial adviser, if  
382 any, prior to the issuance of the bonds, an issuance advice  
383 letter following the determination of the final terms of the  
384 bonds. The issuance advice letter shall indicate the final  
385 structure of the consumer rate relief bonds and provide the  
386 best available estimate of total ongoing costs. The issuance  
387 advice letter should report the initial consumer rate relief  
388 charges and other information specific to the consumer rate  
389 relief bonds to be issued, as the financing order may require.  
390 The qualifying utility may proceed with the issuance of the  
391 consumer rate relief bonds unless, prior to noon on the fourth  
392 business day after the commission receives the issuance  
393 advice letter, the commission issues a disapproval letter  
394 directing that the bonds as proposed shall not be issued and  
395 the basis for that disapproval. The financing order may  
396 provide such additional provisions relating to the issuance  
397 advice letter process as the commission deems appropriate.

398 (10) An order of the commission issued pursuant to this  
399 subsection is a final order of the commission. Any party  
400 aggrieved by the issuance of any such order may petition for  
401 suspension and review thereof by the Supreme Court of  
402 Appeals pursuant to section one, article five of this chapter.  
403 In the case of a petition for suspension and review, the  
404 Supreme Court of Appeals shall proceed to hear and

405 determine the action as expeditiously as practicable and give  
406 the action precedence over other matters not accorded similar  
407 precedence by law.

408 (11) The financing order shall also provide for a procedure  
409 requiring the qualifying utility to adjust its rates or provide  
410 credits in a manner that would return to customers any  
411 overpayments resulting from the securitization for the expanded  
412 net energy costs in excess of actual prudently incurred costs as  
413 subsequently determined by the commission. The adjustment  
414 mechanism may not affect or impair the consumer rate relief  
415 property or the right to impose, collect, or adjust the consumer  
416 rate relief charges under this section.

417 (12) The commission may require, as a condition to the  
418 effectiveness of the financing order but in every circumstance  
419 subject to the limitations set forth in subdivision (3),  
420 subsection (g) of this section, that the qualifying utility give  
421 appropriate assurances to the commission that the qualifying  
422 utility and its parent will abide by the following conditions  
423 during any period in which any consumer rate relief bonds  
424 issued pursuant to the financing order are outstanding, in  
425 addition to any other obligation either may have under this  
426 code or federal law. Without first obtaining the prior consent  
427 and approval of the Commission, the qualifying utility will  
428 not:

429 (A) Lend money, directly or indirectly, to a registered  
430 holding company or a nonutility affiliate; or

431 (B) Guarantee the obligations of a registered holding  
432 company or a nonutility affiliate.

433 (13) A financing order may require the qualifying utility  
434 to file with the commission a periodic report showing the  
435 receipt and disbursement of proceeds of consumer rate relief  
436 bonds and consumer rate relief charges. A financing order  
437 may authorize the staff of the commission to review and audit

438 the books and records of the qualifying utility relating to the  
439 receipt and disbursement of such proceeds. The provisions of  
440 this subdivision do not limit the authority of the commission  
441 under this chapter to investigate the practices of the  
442 qualifying utility or to audit the books and records of the  
443 qualifying utility.

444 (14) In the case of two or more affiliated utilities that  
445 have jointly applied for a financing order as provided in  
446 subdivision (1), subsection (c) of this section, a financing  
447 order may authorize each affiliated utility to impose  
448 consumer rate relief charges on its customers and to cause to  
449 be issued consumer rate relief bonds and to receive and use  
450 the proceeds which it receives with respect thereto as  
451 provided in subdivision (1), subsection (j) of this section.

452 (15) The commission, in its discretion, may engage the  
453 services of a financial adviser for the purpose of assisting the  
454 commission in its consideration of an application for a  
455 financing order and a subsequent issuance of consumer rate  
456 relief bonds pursuant to a financing order.

457 (f) *Allowed disposition of consumer rate relief property.*

458 (1) The consumer rate relief property created in a final  
459 financing order may be transferred, sold, conveyed or  
460 assigned to any affiliate of the qualifying utility created for  
461 the limited purpose of acquiring, owning or administering  
462 that property, issuing consumer rate relief bonds under the  
463 final financing order or a combination of these purposes.

464 (2) All or any portion of the consumer rate relief property  
465 may be pledged to secure the payment of consumer rate relief  
466 bonds, amounts payable to financing parties and bondholders,  
467 amounts payable under any ancillary agreement and other  
468 financing costs.

469           (3) A transfer, sale, conveyance, assignment, grant of a  
470 security interest in or pledge of consumer rate relief property  
471 by a qualifying utility to an affiliate of the utility, to the  
472 extent previously authorized in a financing order, does not  
473 require the prior consent and approval of the commission  
474 under section twelve of this article.

475           (4) The consumer rate relief property constitutes an  
476 existing, present property right, notwithstanding any  
477 requirement that the imposition, charging, and collection of  
478 consumer rate relief charges depend on the qualifying utility  
479 continuing to deliver retail electric service or continuing to  
480 perform its servicing functions relating to the billing and  
481 collection of consumer rate relief charges or on the level of  
482 future energy consumption. That property exists regardless of  
483 whether the consumer rate relief charges have been billed,  
484 have accrued or have been collected and notwithstanding any  
485 requirement that the value or amount of the property is  
486 dependent on the future provision of service to customers by  
487 the qualifying utility.

488           (5) All such consumer rate relief property continues to  
489 exist until the consumer rate relief bonds issued under the  
490 final financing order are paid in full and all financing costs  
491 relating to the bonds have been paid in full.

492           (g) *Final financing order to remain in effect.*

493           (1) A final financing order remains in effect until the  
494 consumer rate relief bonds issued under the final financing  
495 order and all financing costs related to the bonds have been  
496 paid in full.

497           (2) A final financing order remains in effect and  
498 unabated, notwithstanding the bankruptcy, reorganization or  
499 insolvency of the qualifying utility, or any affiliate of the  
500 qualifying utility, or the commencement of any judicial or  
501 nonjudicial proceeding on the final financing order.

502 (3) A final financing order is irrevocable and the  
503 commission may not reduce, impair, postpone or terminate  
504 the consumer rate relief charges authorized in the final  
505 financing order or impair the property or the collection or  
506 recovery of consumer rate relief costs.

507 (h) *Subsequent commission proceeding.*

508 Upon petition, or upon its own motion, the commission  
509 may commence a proceeding and issue a subsequent  
510 financing order that provides for retiring and refunding  
511 consumer rate relief bonds issued under the final financing  
512 order if the commission finds that the subsequent financing  
513 order satisfies all of the requirements of subsection (e) of this  
514 section. Effective on retirement of the refunded consumer  
515 rate relief bonds and the issuance of new consumer rate relief  
516 bonds, the commission shall adjust the related consumer rate  
517 relief charges accordingly.

518 (i) *Limits on commission authority.*

519 (1) The commission, in exercising its powers and  
520 carrying out its duties regarding regulation and ratemaking,  
521 may not do any of the following:

522 (A) Consider consumer rate relief bonds issued under a  
523 final financing order to be the debt of the qualifying utility;

524 (B) Consider the consumer rate relief charges imposed,  
525 charged or collected under a final financing order to be  
526 revenue of the qualifying utility; or

527 (C) Consider the consumer rate relief costs or financing  
528 costs authorized under a final financing order to be costs of  
529 the qualifying utility.

530 (2) The commission may not order or otherwise require,  
531 directly or indirectly, an electric utility to use consumer rate

532 relief bonds to finance the recovery of expanded net energy  
533 costs.

534 (3) The commission may not refuse to allow the recovery  
535 of expanded net energy costs solely because an electric utility  
536 has elected or may elect to finance those costs through a  
537 financing mechanism other than the issuance of consumer  
538 rate relief bonds.

539 (4) If a qualifying utility elects not to finance such costs  
540 through the issuance of consumer rate relief bonds as  
541 authorized in a final financing order, those costs shall be  
542 recovered as authorized by the commission previously or in  
543 subsequent proceedings.

544 (j) *Duties of qualifying utility.*

545 (1) A qualifying utility shall cause the proceeds which it  
546 receives with respect to consumer rate relief bonds issued  
547 pursuant to a financing order to be used for the recovery of  
548 the expanded net energy costs which occasioned the issuance  
549 of the bonds, including the retirement of debt and/or equity  
550 of the qualifying utility which was incurred to finance or  
551 refinance such costs and for no other purpose.

552 (2) A qualifying utility shall annually provide a plain-  
553 English explanation of the consumer rate relief charges  
554 approved in the financing order, as modified by subsequent  
555 issuances of consumer rate relief bonds authorized under the  
556 financing order, if any, and by application of the adjustment  
557 mechanism as provided in subsection (k) of this section.  
558 These explanations may be made by bill inserts, website  
559 information or other appropriate means as required, or  
560 approved if proposed by the qualifying utility, by the  
561 commission.

562 (3) Collected consumer rate relief charges shall be  
563 applied solely to the repayment of consumer rate relief bonds  
564 and other financing costs.

565 (4) The failure of a qualifying utility to apply the  
566 proceeds which it receives with respect to an issuance of  
567 consumer rate relief bonds in a reasonable, prudent and  
568 appropriate manner or otherwise comply with any provision  
569 of this section does not invalidate, impair or affect any  
570 financing order, consumer rate relief property, consumer rate  
571 relief charges or consumer rate relief bonds. Subject to the  
572 limitations set forth in subsection (g) of this section, nothing  
573 in this subdivision prevents or precludes the commission  
574 from imposing regulatory sanctions against a qualifying  
575 utility for failure to comply with the terms and conditions of  
576 a financing order or the requirements of this section.

577 (k) *Application of adjustment mechanism; filing of*  
578 *schedules with commission.*

579 (1) A qualifying utility shall file with the commission,  
580 and the commission shall approve, with or without such  
581 modification as is allowed under this subsection, at least  
582 annually, or more frequently as provided in the final  
583 financing order, a schedule applying the approved adjustment  
584 mechanism to the consumer rate relief charges authorized  
585 under the final financing order, based on estimates of demand  
586 and consumption for each tariff schedule and special contract  
587 customer and other mathematical factors. The qualifying  
588 utility shall submit with the schedule a request for approval  
589 to make the adjustments to the consumer rate relief charges  
590 in accordance with the schedule.

591 (2) On the same day a qualifying utility files with the  
592 commission its calculation of the adjustment, it shall cause  
593 notice of the filing to be given, in the form specified in the  
594 financing order, as a Class I legal advertisement in  
595 compliance with the provisions of article three, chapter fifty-

596 nine of this code in a newspaper of general circulation  
597 published each weekday in Kanawha County. This  
598 publication is only required if the calculation of the  
599 adjustment filed by the utility with the commission would  
600 result in an increase in the amount of the consumer rate relief  
601 charges.

602 (3) The commission's review of a request for a standard  
603 adjustment is limited to a determination of whether there is a  
604 mathematical error in the application of the adjustment  
605 mechanism to the consumer rate relief charges. No hearing is  
606 required for such an adjustment. Each standard adjustment  
607 to the consumer rate relief charges, in an amount as  
608 calculated by the qualifying utility but incorporating any  
609 correction for a mathematical error as determined by the  
610 commission, automatically becomes effective fifteen days  
611 following the date on which the qualifying utility files with  
612 the commission its calculation of the standard adjustment.

613 (4) If the commission authorizes a nonstandard  
614 adjustment procedure in the financing order, and the  
615 qualifying utility files for such an adjustment, the commission  
616 shall allow interested parties thirty days from the date the  
617 qualifying utility filed the calculation of a nonstandard  
618 adjustment to make comments. The commission's review of  
619 the total amount required for a nonstandard adjustment shall  
620 be limited to the mathematical accuracy of the total  
621 adjustment needed to assure the full and timely payment of  
622 all debt service costs and related financing costs of the  
623 consumer rate relief bonds. The commission may also  
624 determine the proper allocation of those costs within and  
625 between classes of customers and to special contract  
626 customers, the proper design of the consumer rate relief  
627 charges and the appropriate application of those charges  
628 under the methodology set forth in the formula-based  
629 adjustment mechanism approved in the financing order. If the  
630 commission determines that a hearing is necessary, the  
631 commission shall hold a hearing on the comments within



632 forty days of the date the qualifying utility filed the  
633 calculation of the nonstandard adjustment. The nonstandard  
634 adjustment, as modified by the commission, if necessary,  
635 shall be approved by the commission within sixty days and  
636 the commission may shorten the filing and hearing periods  
637 above in the financing order to ensure this result. Any  
638 procedure for a nonstandard adjustment must be consistent  
639 with assuring the full and timely payment of debt service of  
640 the consumer rate relief bonds and associated financing costs.

641 (5) No adjustment approved or deemed approved under  
642 this section affects the irrevocability of the final financing  
643 order as specified in subdivision (3) of subsection (g) of this  
644 section.

645 (l) *Nonbypassability of consumer rate relief charges.*

646 (1) As long as consumer rate relief bonds issued under a  
647 final financing order are outstanding, the consumer rate relief  
648 charges authorized under the final financing order are  
649 nonbypassable and apply to all existing or future West  
650 Virginia retail customers of a qualifying utility or its  
651 successors and must be paid by any customer that receives  
652 electric delivery service from the utility or its successors.

653 (2) The consumer rate relief charges shall be collected by  
654 the qualifying utility or the qualifying utility's successors or  
655 assignees, or a collection agent, in full through a charge that  
656 is separate and apart from the qualifying utility's base rates.

657 (m) *Utility default.*

658 (1) If a qualifying utility defaults on a required payment  
659 of consumer rate relief charges collected, a court, upon  
660 application by an interested party, or the commission, upon  
661 application to the commission or upon its own motion, and  
662 without limiting any other remedies available to the applying  
663 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.*

695           (1) Except as provided in subdivisions (3) through (5) of  
696 this subsection, the creation, perfection and enforcement of  
697 a security interest in consumer rate relief property under a  
698 final financing order to secure the repayment of the principal  
699 of and interest on consumer rate relief bonds, amounts  
700 payable under any ancillary agreement and other financing  
701 costs are governed by this section and not article nine of  
702 chapter forty-six of this code.

703           (2) The description of the consumer rate relief property  
704 in a transfer or security agreement and a financing statement  
705 is sufficient only if the description refers to this section and  
706 the final financing order creating the property. This section  
707 applies to all purported transfers of, and all purported grants  
708 of, liens on or security interests in that property, regardless of  
709 whether the related transfer or security agreement was  
710 entered into or the related financing statement was filed,  
711 before or after the effective date of this section.

712           (3) A security interest in consumer rate relief property  
713 under a final financing order is created, valid and binding on  
714 the latest of the date that the security agreement is executed  
715 and delivered or the date that value is received for the  
716 consumer rate relief bonds.

717           (4) The security interest attaches without any physical  
718 delivery of collateral or other act and upon the filing of the  
719 financing statement with the Office of the Secretary of State.  
720 The lien of the security interest is valid, binding and  
721 perfected against all parties having claims of any kind in tort,  
722 contract or otherwise against the person granting the security  
723 interest, regardless of whether the parties have notice of the  
724 lien. Also upon this filing, a transfer of an interest in the  
725 consumer rate relief property is perfected against all parties  
726 having claims of any kind, including any judicial lien, or  
727 other lien creditors or any claims of the seller or creditors of  
728 the seller, other than creditors holding a prior security

729 interest, ownership interest or assignment in the property  
730 previously perfected in accordance with this subsection.

731 (5) The Secretary of State shall maintain any financing  
732 statement filed under this subsection in the same manner that  
733 the secretary maintains financing statements filed by utilities  
734 under article nine of chapter forty-six of this code. The filing  
735 of a financing statement under this subsection is governed by  
736 the provisions regarding the filing of financing statements in  
737 article nine of chapter forty-six of this code. However, a  
738 person filing a financing statement under this subsection is  
739 not required to file any continuation statements to preserve  
740 the perfected status of its security interest.

741 (6) A security interest in consumer rate relief property  
742 under a final financing order is a continuously perfected  
743 security interest and has priority over any other lien, created  
744 by operation of law or otherwise, that may subsequently  
745 attach to that property or those rights or interests unless the  
746 holder of any such lien has agreed in writing otherwise.

747 (7) The priority of a security interest in consumer rate  
748 relief property is not affected by the commingling of  
749 collected consumer rate relief charges with other amounts.  
750 Any pledged or secured party has a perfected security interest  
751 in the amount of all consumer rate relief charges collected  
752 that are deposited in a cash or deposit account of the  
753 qualifying utility in which such collected charges have been  
754 commingled with other funds. Any other security interest  
755 that may apply to those funds shall be terminated when the  
756 funds are transferred to a segregated account for an assignee  
757 or a financing party.

758 (8) No application of the adjustment mechanism as  
759 described in subsection (j) of this section affects the validity,  
760 perfection or priority of a security interest in or the transfer  
761 of consumer rate relief property under the final financing  
762 order.

763           (p) *Transfer, sale, etc. of consumer rate relief property.*

764           (1) A sale, assignment or transfer of consumer rate relief  
765 property under a final financing order is an absolute transfer  
766 and true sale of, and not a pledge of or secured transaction  
767 relating to, the seller's right, title and interest in, to and under  
768 the property, if the documents governing the transaction  
769 expressly state that the transaction is a sale or other absolute  
770 transfer. A transfer of an interest in that property may be  
771 created only when all of the following have occurred:

772           (A) The financing order has become final and taken  
773 effect;

774           (B) The documents evidencing the transfer of the  
775 property have been executed and delivered to the assignee;  
776 and

777           (C) Value has been received for the property.

778           (2) The characterization of the sale, assignment or  
779 transfer as an absolute transfer and true sale and the  
780 corresponding characterization of the property interest of the  
781 purchaser shall be effective and perfected against all third  
782 parties and is not affected or impaired by, among other  
783 things, the occurrence of any of the following:

784           (A) Commingling of collected consumer rate relief  
785 charges with other amounts;

786           (B) The retention by the seller of any of the following:

787           (i) A partial or residual interest, including an equity  
788 interest, in the consumer rate relief property, whether direct  
789 or indirect, or whether subordinate or otherwise;

790 (ii) The right to recover costs associated with taxes,  
791 franchise fees or license fees imposed on the collection of  
792 consumer rate relief charges;

793 (iii) Any recourse that the purchaser or any assignee may  
794 have against the seller;

795 (iv) Any indemnification rights, obligations or repurchase  
796 rights made or provided by the seller;

797 (v) The obligation of the seller to collect consumer rate  
798 relief charges on behalf of an assignee;

799 (vi) The treatment of the sale, assignment or transfer for  
800 tax, financial reporting or other purposes; or

801 (vii) Any application of the adjustment mechanism under  
802 the final financing order.

803 (q) *Taxation of consumer rate relief charges; consumer*  
804 *rate relief bonds not debt of governmental entities or a*  
805 *pledge of taxing powers.*

806 (1) The imposition, billing, collection and receipt of  
807 consumer rate relief charges under this section are exempt  
808 from state income, sales, franchise, gross receipts, business  
809 and occupation and other taxes or similar charges: *Provided,*  
810 *however,* That neither this exemption nor any other provision  
811 of this subsection shall preclude any municipality from taxing  
812 consumer rate relief charges under the authority granted to  
813 municipalities pursuant to sections five and five-a of article  
814 thirteen in chapter eight of this code.

815 (2) Consumer rate relief bonds issued under a final  
816 financing order do not constitute a debt or a pledge of the  
817 faith and credit or taxing power of this state or of any county,  
818 municipality or any other political subdivision of this state.  
819 Bondholders have no right to have taxes levied by this state

820 or the taxing authority of any county, municipality or any  
821 other political subdivision of this state for the payment of the  
822 principal of or interest on the bonds. The issuance of  
823 consumer rate relief bonds does not, directly, indirectly or  
824 contingently, obligate this state or a county, municipality or  
825 political subdivision of this state to levy a tax or make an  
826 appropriation for payment of the principal of or interest on  
827 the bonds.

828 (r) *Consumer rate relief bonds as legal investments.* Any  
829 of the following may legally invest any sinking funds,  
830 moneys or other funds belonging to them or under their  
831 control in consumer rate relief bonds:

832 (1) The state, the West Virginia Investment Management  
833 Board, the West Virginia Housing Development Fund,  
834 municipal corporations, political subdivisions, public bodies  
835 and public officers except for members of the Public Service  
836 Commission;

837 (2) Banks and bankers, savings and loan associations,  
838 credit unions, trust companies, building and loan  
839 associations, savings banks and institutions, deposit  
840 guarantee associations, investment companies, insurance  
841 companies and associations and other persons carrying on a  
842 banking or insurance business, including domestic for life  
843 and domestic not for life insurance companies; and

844 (3) Personal representatives, guardians, trustees and other  
845 fiduciaries.

846 (s) *Pledge of state.*

847 (1) The state pledges to and agrees with the bondholders,  
848 assignees and financing parties under a final financing order  
849 that the state will not take or permit any action that impairs  
850 the value of consumer rate relief property under the final  
851 financing order or revises the consumer rate relief costs for

852 which recovery is authorized under the final financing order  
853 or, except as allowed under subsection (j) of this section,  
854 reduce, alter or impair consumer rate relief charges that are  
855 imposed, charged, collected or remitted for the benefit of the  
856 bondholders, assignees and financing parties, until any  
857 principal, interest and redemption premium in respect of  
858 consumer rate relief bonds, all financing costs and all  
859 amounts to be paid to an assignee or financing party under an  
860 ancillary agreement are paid or performed in full.

861 (2) A person who issues consumer rate relief bonds is  
862 permitted to include the pledge specified in subdivision (1) of  
863 this subsection in the consumer rate relief bonds, ancillary  
864 agreements and documentation related to the issuance and  
865 marketing of the consumer rate relief bonds.

866 (t) *West Virginia law governs; this section controls.*

867 (1) The law governing the validity, enforceability,  
868 attachment, perfection, priority and exercise of remedies with  
869 respect to the transfer of consumer rate relief property under  
870 a final financing order, the creation of a security interest in  
871 any such property, consumer rate relief charges or final  
872 financing order are the laws of this state as set forth in this  
873 section.

874 (2) This section controls in the event of a conflict  
875 between its provisions and any other law regarding the  
876 attachment, assignment, or perfection, the effect of perfection  
877 or priority of any security interest in or transfer of consumer  
878 rate relief property under a final financing order.

879 (u) *Severability.*

880 If any provision of this section or the application thereof  
881 to any person, circumstance or transaction is held by a court  
882 of competent jurisdiction to be unconstitutional or invalid, the  
883 unconstitutionality or invalidity does not affect the



884 constitutionality or validity of any other provision of this  
885 section or its application or validity to any person,  
886 circumstance or transaction, including, without limitation, the  
887 irrevocability of a financing order issued pursuant to this  
888 section, the validity of the issuance of consumer rate relief  
889 bonds, the imposition of consumer rate relief charges, the  
890 transfer or assignment of consumer rate relief property or the  
891 collection and recovery of consumer rate relief charges. To  
892 these ends, the Legislature hereby declares that the provisions  
893 of this section are intended to be severable and that the  
894 Legislature would have enacted this section even if any  
895 provision of this section held to be unconstitutional or invalid  
896 had not been included in this section.

897 (v) *Non-utility status.*

898 An assignee or financing party is not an electric public  
899 utility or person providing electric service by virtue of  
900 engaging in the transactions with respect to consumer rate  
901 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  
3           twenty-eight, article three, chapter sixty-one;

4           (2) “Railroad scrap metal” means any materials derived  
5           from railroad track, railroad track material, worn or used  
6           links, pins, journal bearings, or other worn, used, or detached  
7           appendages of railroad equipment or railroad track;

8           (3) “Purchaser” means any person in the business of  
9           purchasing railroad scrap metal, any salvage yard owner or  
10          operator, any public or commercial recycling facility owner or  
11          operator and any agent or employee thereof, or other individual  
12          or entity who purchase any form of railroad scrap metal;

13          (4) “Confusion of goods” means the intended mixture of  
14          similar railroad scrap metal done purposely by the purchaser  
15          without authorization of right or title to the railroad scrap  
16          metal.

17           (b) Only a duly authorized individual, agent, officer or  
18 employee of a company may sell or dispose of railroad scrap  
19 metal owned by the company. Any sale or disposition of  
20 railroad scrap metal made by any unauthorized individual is  
21 void: *Provided*, That the purchaser knowingly purchased  
22 company railroad scrap metal.

23           (c) All sales or disposition of company railroad scrap  
24 metal must:

25           (1) Be in quantities equal to or greater than one ton;

26           (2) Be accompanied by a bill of sale or other written  
27 evidence of authorization to sell the railroad scrap metal, a  
28 copy of which shall be retained by the purchaser and the duly  
29 authorized seller of railroad scrap metal; and

30           (3) Comply with other lawful requirements regarding the  
31 sale and purchase of railroad scrap metal.

32           (d) If a duly authorized individual sells or disposes of  
33 railroad scrap metal in quantities less than one ton, or without  
34 delivering a bill of sale or other written evidence of  
35 authorization from the company for sale or disposition of  
36 railroad scrap metal to the purchaser, the company shall not  
37 thereafter be entitled to the benefit of subsections (g) through  
38 (i) of this section.

39           (e) Before knowingly acquiring railroad scrap metal the  
40 purchaser shall attempt to ascertain the lawful ownership  
41 thereof, whether by evidence of a bill of sale from the  
42 company, or other form of written authorization from the  
43 company for sale or disposition of railroad scrap metal to the  
44 purchaser.

45           (f) In any civil action where the company claims to be the  
46 rightful owner of railroad scrap metal in the possession of a  
47 purchaser, the company may, in addition to any other relief

48 to which the company may be entitled, seek an immediate  
49 order from the court to physically preserve any railroad scrap  
50 metal which is the subject of the suit, and any other metals  
51 with which they may have been confused, while the suit is  
52 pending.

53 (g) In a civil action regarding rightful possession and  
54 ownership of railroad scrap metal, if the purchaser cannot  
55 produce the bill of sale or other written evidence of  
56 authorization to sell the railroad scrap metal, the court shall  
57 presume that the subject railroad scrap metal was unlawfully  
58 taken from the company.

59 (h) The purchaser claiming ownership of the railroad  
60 scrap metal in controversy may rebut this presumption and  
61 prove a lawful right or title to the subject railroad scrap  
62 metal, but in the absence of adequate proof, the company  
63 shall be held to be the general owner of the subject railroad  
64 scrap metal, and shall be entitled to immediate possession of  
65 the railroad scrap metal in controversy.

66 (i) If the court finds that any portion, or all of the railroad  
67 scrap metal in controversy was unlawfully obtained by the  
68 purchaser, and mixed or confused with other railroad scrap  
69 metal, it shall be deemed a confusion of goods. In the case of  
70 a confusion of goods, the purchaser loses any right in all  
71 mixed railroad scrap metal unless the railroad scrap metal can  
72 be identified and separated among the company and the  
73 purchaser.

74 (j) In a civil action regarding rightful possession and  
75 ownership of railroad scrap metal, if the court finds that the  
76 purchaser knowingly purchased company railroad scrap  
77 metal and failed to attempt to ascertain that the person selling  
78 the railroad scrap metal had a legal right to do so, the court  
79 shall award the company costs and attorneys fees related to  
80 that action.

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**CHAPTER 158****(Com. Sub. for S. B. 118 - By Senator Foster)**

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

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.**

1           (a) Rent may be recovered from the lessee, or other  
2 person owing it, or the heir, personal representative, devisee  
3 or assignee, who has succeeded to the lessee's estate in the  
4 premises. But no assignee shall be liable for rent which  
5 became due before his or her interest began. Subject to the  
6 provisions of subsection (b), nothing herein shall change or  
7 impair the liability of heirs, personal representatives, or  
8 devisees, for rent, to the extent and in the manner in which  
9 they are liable for other debts of the ancestor or testator; nor  
10 shall the mere merger of the reversion to which a rent is  
11 incident affect the liability for such rent.

12           (b) (1) Notwithstanding any other provision of this code  
13 to the contrary, upon the death of a lessee of a residential  
14 premises, an heir, personal representative, devisee or assignee  
15 of the deceased lessee may terminate a lease prior to its  
16 expiration.

17           (2) Termination of a residential lease, as provided in this  
18 subsection, shall become effective on the last day of the  
19 calendar month that is two months after:

20           (A) The date on which the notice is hand-delivered to the  
21 other party of the lease, or

22           (B) The date on which the notice, addressed to the other  
23 party to the lease, is deposited in the United States mail,  
24 postage prepaid, evidenced by the postmark.

25           (3) Termination of a lease under this subsection does not  
26 relieve the lessee's estate from liability for either:

27           (A) The payment of rent or other sums owed prior to or  
28 during the two month written notice period, or

29           (B) For the payment of amounts necessary to restore the  
30 premises to their condition at the commencement of the  
31 tenancy, ordinary wear and tear excepted.

32           (4) The right of termination contained in this subsection  
33 may not be waived by a lessor, lessee or lessee's heir,  
34 personal representative, devisee or assignee, by contract or  
35 otherwise. Any lease provision or agreement requiring a  
36 longer notice period than that provided by this article, is void  
37 and unenforceable.

38           (5) The provisions of this subsection apply to residential  
39 property leases entered into or renewed on or after July 1,  
40 2012.

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## CHAPTER 159

### (H. B. 4654 - By Delegates Morgan and Stephens)

[Passed March 7, 2012; in effect from passage.]  
[Approved by the Governor on March 14, 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
- 2 public retirement plan in this state may authorize that a
- 3 deduction from his or her monthly benefits be made for the

4 payment of membership dues or fees to a retiree association.  
5 The deductions shall be authorized on a form provided by the  
6 Consolidated Public Retirement Board and shall include: (1)  
7 The identity and social security number of the retiree; (2) the  
8 amount and frequency of the deduction; (3) the identity and  
9 address of the association to which the dues or fees shall be  
10 paid; and (4) the signature of the retiree.

11 (b) Any retiree association authorized by recipients of  
12 monthly benefits from any public retirement plan in this state to  
13 receive dues or fees from deductions from retirants' monthly  
14 benefits may notify the board of its monthly dues on a form  
15 provided by the board: *Provided*, That no increase in dues or  
16 fees will be deducted from any retirant's monthly benefit until  
17 the retirant has completed an authorization form containing the  
18 information in subsection (a) and submitted this authorization to  
19 the board. The increased monthly retiree association dues or  
20 fees will be deducted commencing the month following the  
21 receipt of the authorization form to the board.

22 (c) Upon execution of the authorization and its receipt by the  
23 Consolidated Public Retirement Board, the deduction shall be  
24 made in the manner specified on the form and remitted to the  
25 designated association on the tenth day of each month:  
26 *Provided*, That the deduction may not be made more  
27 frequently than monthly.

28 (d) Deduction authorizations may be revoked at any time  
29 at least thirty days prior to the date on which the deduction is  
30 regularly made and on a form to be provided by the  
31 Consolidated Public Retirement Board.

32 (e) Notwithstanding the provisions of section twenty-one,  
33 article eight, chapter five-a of this code to the contrary, a  
34 retiree association representing only West Virginia public  
35 retirees may request the board to mail voluntary membership  
36 applications and dues deduction cards to any eligible retirees  
37 of any West Virginia public retirement plan administered by

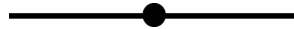


38 the board: *Provided*, That the retiree association shall pay all  
39 costs associated with these mailings, including, but not  
40 limited to, copying, mailing, postage, record-keeping and  
41 auditing: *Provided, however*, That the board may contract  
42 with a third-party to provide mailing services that agrees to  
43 maintain the confidentiality of the names, addresses and other  
44 personally identifiable information of the retirants.

45 (f) The board is not liable to any retirant, beneficiary or  
46 other annuitant for any action undertaken pursuant to this  
47 section. Any retiree association agrees, by requesting the  
48 board to deduct dues or fees or to provide mailings for it, to  
49 be responsible for any errors or omissions by the board in  
50 conducting these activities pursuant to this section.

51 (g) If any retiree association fails to timely pay to the board  
52 all costs required by this section, the board is authorized to  
53 thereafter refuse to provide the services in subsection (e).

54 (h) The provisions of this section shall expire July 1, 2022.



## 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.**

1 (a) The Consolidated Public Retirement Board shall, within  
2 one hundred eighty days of the effective date of the transfer of  
3 an emergency medical services officer from the Public  
4 Employees Retirement System to the plan, transfer assets from  
5 the Public Employees Retirement System Trust Fund into the  
6 West Virginia Emergency Medical Services Trust Fund.

7 (b) Except as provided in subsection (e) of this section, the  
8 amount of assets to be transferred for each transferring  
9 emergency medical services officer shall be computed as of  
10 January 1, 2008, using July 1, 2007, actuarial valuation of the  
11 Public Employees Retirement System, and updated with seven  
12 and one-half percent annual interest to the date of the actual asset  
13 transfer. The market value of the assets of the transferring  
14 emergency medical services officer in the Public Employees  
15 Retirement System shall be determined as of the end of the  
16 month preceding the actual transfer. To determine the  
17 computation of the asset share to be transferred the board shall:

18 (1) Compute the market value of the Public Employees  
19 Retirement System assets as of July 1, 2007, actuarial valuation  
20 date under the actuarial valuation approved by the board;

21 (2) Compute the actuarial accrued liabilities for all Public  
22 Employees Retirement System retirees, beneficiaries, disabled  
23 retirees and terminated inactive members as of July 1, 2007,  
24 actuarial valuation date;

25           (3) Compute the market value of active member assets in the  
26 Public Employees Retirement System as of July 1, 2007, by  
27 reducing the assets value under subdivision (1) of this  
28 subsection by the inactive liabilities under subdivision (2) of this  
29 subsection;

30           (4) Compute the actuarial accrued liability for all active  
31 Public Employees Retirement System members as of July 1,  
32 2007, actuarial valuation date approved by the board;

33           (5) Compute the funded percentage of the active members'  
34 actuarial accrued liabilities under the Public Employees  
35 Retirement System as of July 1, 2007, by dividing the active  
36 members' market value of assets under subdivision (3) of this  
37 subsection by the active members' actuarial accrued liabilities  
38 under subdivision (4) of this subsection;

39           (6) Compute the actuarial accrued liabilities under the Public  
40 Employees Retirement System as of July 1, 2007, for active  
41 emergency medical services officers transferring to the  
42 Emergency Medical Services Retirement System;

43           (7) Determine the assets to be transferred from the Public  
44 Employees Retirement System to the Emergency Medical  
45 Services Retirement System by multiplying the active members'  
46 funded percentage determined under subdivision (5) of this  
47 subsection by the transferring active members' actuarial accrued  
48 liabilities under the Public Employees Retirement System under  
49 subdivision (6) of this subsection and adjusting the asset transfer  
50 amount by interest at seven and five-tenths percent for the period  
51 from the calculation date of July 1, 2007, through the first day of  
52 the month in which the asset transfer is to be completed.

53           (c) Once an emergency medical services officer has elected  
54 to transfer from the Public Employees Retirement System,  
55 transfer of that amount as calculated in accordance with the  
56 provisions of subsection (b) of this section, or subsection (e) if

57 applicable, by the Public Employees Retirement System shall  
58 operate as a complete bar to any further liability to the Public  
59 Employees Retirement System and constitutes an agreement  
60 whereby the transferring emergency medical services officer  
61 forever indemnifies and holds harmless the Public Employees  
62 Retirement System from providing him or her any form of  
63 retirement benefit whatsoever until that emergency medical  
64 services officer obtains other employment which would make  
65 him or her eligible to reenter the Public Employees Retirement  
66 System with no credit whatsoever for the amounts transferred to  
67 the Emergency Medical Services Retirement System.

68 (d) Eligible emergency medical services officers that  
69 transfer from plans other than the Public Employees Retirement  
70 System shall have service recognized under this plan through the  
71 purchase of the service through payment by the member of sixty  
72 percent of the actuarial accrued liabilities which would result if  
73 the service is credited under the Emergency Medical Services  
74 Retirement System subject to the following:

75 (1) The service may be purchased in one-year increments of  
76 eligible service or for the total period of eligible service;

77 (2) Payment must begin within twelve months of the  
78 effective date of this article;

79 (3) Payment must be made in either a one-time lump sum  
80 payment received by the board no later than December 31, 2008,  
81 or in regular installment payments payable over sixty months  
82 with the initial installment received by the board on or before  
83 December 31, 2008;

84 (4) The rate of interest applicable to regular installment  
85 payments for the purchase of service shall be the actuarial  
86 interest rate assumption as approved by the board for completing  
87 the actuarial valuation for the plan year immediately preceding

88 the first day of the plan year in which the service purchase is  
89 made, compounded per annum;

90 (5) Once payments commence, selection of the period of  
91 service being purchased may not be amended; and

92 (6) Service will be credited only upon receipt by the board  
93 of all payments due.

94 (e) Notwithstanding any provision of this code to the  
95 contrary, any Emergency Medical Services director who: (1) Is  
96 an active member of the Public Employees Retirement System;  
97 and (2) has, or obtains within one year of the effective date of  
98 the amendments to this section enacted during the 2012 regular  
99 session of the Legislature, basic or higher emergency  
100 management technician certification, is eligible to transfer  
101 service credit from the Public Employees Retirement System to  
102 the Emergency Medical Services Retirement System, upon  
103 payment of associated costs by the transferring director. The  
104 board shall compute the actuarially appropriate amount of any  
105 increased benefit cost of transfer to be borne by the transferring  
106 director to be paid according to terms established by the board.  
107 Any Emergency Medical Services director who transfers to the  
108 Emergency Medical Services Retirement System pursuant to the  
109 provisions of this subsection shall apply for the transfer to the  
110 board within one year of the effective date of the amendments to  
111 this section enacted during the 2012 regular session of the  
112 Legislature. Upon receipt of the total payment of all associated  
113 costs by the transferring director, the board shall compute the  
114 amount of assets to be transferred from the Public Employees  
115 Retirement System to the Emergency Medical Retirement  
116 System and shall transfer the assets within six months of the  
117 receipt of the application. Any director transferring into the  
118 retirement system as provided in this subsection is prohibited  
119 from retiring within three years of transfer.

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## CHAPTER 161

**(S. B. 215 - By Senators Beach, Edgell,  
D. Facemire, Miller, 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 §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:*

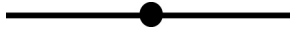
That §17-3A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.**

#### **§17-3A-1. Industrial Access Road Fund created; construction guarantees by municipalities and counties.**

- 1 (a) Any other provision of this code notwithstanding, there
- 2 is hereby continued in the State Treasury the Industrial Access
- 3 Road Fund, referred to in this article as “the fund”. There shall
- 4 be deposited into the fund three fourths of one percent of all state
- 5 tax collections which are otherwise specifically dedicated by the
- 6 provisions of this code to the State Road Fund or the percentage
- 7 of those tax collections that will produce \$3 million for each
- 8 fiscal year. At the end of each fiscal year, all unobligated
- 9 moneys in the fund revert to the State Road Fund.

10 (b) The moneys in the fund shall be expended by the  
11 Division of Highways for constructing and maintaining  
12 industrial access roads within counties and municipalities to  
13 industrial sites on which manufacturing, distribution, processing  
14 or other economic development activities, including publicly  
15 owned airports, are already constructed or are under firm  
16 contract to be constructed. In the event there is no industrial site  
17 already constructed or for which the construction is under firm  
18 contract, a county or municipality may guarantee to the Division  
19 of Highways an acceptable surety or a device in an amount equal  
20 to the estimated cost of the access road or that portion provided  
21 by the Division of Highways, that an industrial site will be  
22 constructed and if no industrial site acceptable to the Division of  
23 Highways is constructed within the time limits of the surety or  
24 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:

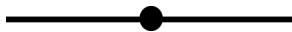
**ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.****§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.**

1 (a) Where street or highway construction work is being  
2 conducted, signs and other traffic control devices, as adopted in  
3 section one, article three, chapter seventeen-c of this code, shall  
4 be posted giving the location of the work and notifying all  
5 motorists as to the speed limit and any other traffic restrictions.

6 (b) Any person who exceeds any posted speed restriction or  
7 traffic restriction at a construction site referred to in subsection  
8 (a) of this section by less than fifteen miles per hour is guilty of  
9 a misdemeanor and, upon conviction thereof, shall be fined not  
10 more than \$200.

11 (c) Any person who exceeds any posted speed restriction or  
12 traffic restriction at a construction site referred to in subsection  
13 (a) of this section by fifteen miles per hour or more is guilty of  
14 a misdemeanor and, upon conviction thereof, shall be fined not  
15 more than \$200 or confined in a regional jail not more than  
16 twenty days, or both.

17 (d) Nothing in this section shall be construed to preclude  
18 prosecution of any operator of a motor vehicle who commits a  
19 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.**

1           Whenever a vehicle has been stopped, parked or left  
2 standing upon any part of a highway or constitutes an  
3 obstruction to the restoration of traffic flow as the result of an  
4 accident or other emergency, any police officer or employee of  
5 the Division of Highways, duly authorized by the commissioner,  
6 may remove or order the removal of the vehicle, by towing or  
7 otherwise, to the nearest available established garage or parking  
8 lot for storage until called for by the owner or his or her agent.  
9 The owner is liable for the reasonable cost of removal and  
10 storage, and until payment of the cost the garage or parking lot  
11 operator may retain possession of the vehicle subject to a lien for  
12 the amount due. The garage or parking lot operator may enforce  
13 his or her lien for towing and storage in the manner provided in  
14 section fourteen, article eleven, chapter thirty-eight of this code  
15 for the enforcement of other liens.

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## CHAPTER 164

**(H. B. 4583 - By Delegates M. Poling, Shaver,  
Caputo, Moye, Perry, Michael, Sumner and Duke)**

[Passed March 5, 2012; in effect from passage.]  
[Approved by the Governor on March 15, 2012.]

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.**

- 1 (a) Before entering upon their duties, all teachers shall
- 2 execute a contract with their county boards, which shall state

3 the salary to be paid and shall be in the form prescribed by  
4 the state superintendent. Each contract shall be signed by the  
5 teacher and by the president and secretary of the county  
6 board and shall be filed, together with the certificate of the  
7 teacher, by the secretary of the office of the county board:  
8 *Provided*, That when necessary to facilitate the employment  
9 of employable professional personnel and prospective and  
10 recent graduates of teacher education programs who have not  
11 yet attained certification, the contract may be signed upon the  
12 condition that the certificate is issued to the employee prior  
13 to the beginning of the employment term in which the  
14 employee enters upon his or her duties.

15 (b) Each teacher's contract, under this section, shall be  
16 designated as a probationary or continuing contract. A  
17 probationary teacher's contract shall be for a term of not less  
18 than one nor more than three years, one of which shall be for  
19 completion of a beginning teacher internship pursuant to the  
20 provisions of section two-b, article three of this chapter, if  
21 applicable. If, after three years of such employment, the  
22 teacher who holds a professional certificate, based on at least  
23 a bachelor's degree, has met the qualifications for a  
24 bachelor's degree and the county board enter into a new  
25 contract of employment, it shall be a continuing contract,  
26 subject to the following:

27 (1) Any teacher holding a valid certificate with less than  
28 a bachelor's degree who is employed in a county beyond the  
29 three-year probationary period shall upon qualifying for the  
30 professional certificate based upon a bachelor's degree, if  
31 reemployed, be granted continuing contract status; and

32 (2) A teacher holding continuing contract status with one  
33 county shall be granted continuing contract status with any  
34 other county upon completion of one year of acceptable  
35 employment if the employment is during the next succeeding

36 school year or immediately following an approved leave of  
37 absence extending no more than one year.

38 (c) The continuing contract of any teacher shall remain in  
39 full force and effect except as modified by mutual consent of  
40 the school board and the teacher, unless and until terminated,  
41 subject to the following:

42 (1) A continuing contract may not be terminated except:

43 (A) By a majority vote of the full membership of the  
44 county board on or before March 1 of the then current year,  
45 after written notice, served upon the teacher, return receipt  
46 requested, stating cause or causes and an opportunity to be  
47 heard at a meeting of the board prior to the board's action on  
48 the termination issue; or

49 (B) By written resignation of the teacher on or before  
50 March 1 to initiate termination of a continuing contract;

51 (2) The termination shall take effect at the close of the  
52 school year in which the contract is terminated;

53 (3) The contract may be terminated at any time by mutual  
54 consent of the school board and the teacher;

55 (4) This section does not affect the powers of the school  
56 board to suspend or dismiss a principal or teacher pursuant to  
57 section eight of this article;

58 (5) A continuing contract for any teacher holding a  
59 certificate valid for more than one year and in full force and  
60 effect during the school year 1984-1985 shall remain in full  
61 force and effect;

62 (6) A continuing contract does not operate to prevent a  
63 teacher's dismissal based upon the lack of need for the

64 teacher's services pursuant to the provisions of law relating  
65 to the allocation to teachers and pupil-teacher ratios. The  
66 written notification of teachers being considered for dismissal  
67 for lack of need shall be limited to only those teachers whose  
68 consideration for dismissal is based upon known or expected  
69 circumstances which will require dismissal for lack of need.  
70 An employee who was not provided notice and an  
71 opportunity for a hearing pursuant to this subsection may not  
72 be included on the list. In case of dismissal for lack of need,  
73 a dismissed teacher shall be placed upon a preferred list in the  
74 order of their length of service with that board. No teacher  
75 may be employed by the board until each qualified teacher  
76 upon the preferred list, in order, has been offered the  
77 opportunity for reemployment in a position for which he or  
78 she is qualified, not including a teacher who has accepted a  
79 teaching position elsewhere. The reemployment shall be  
80 upon a teacher's preexisting continuing contract and has the  
81 same effect as though the contract had been suspended during  
82 the time the teacher was not employed.

83 (d) In the assignment of position or duties of a teacher  
84 under a continuing contract, the board may provide for  
85 released time of a teacher for any special professional or  
86 governmental assignment without jeopardizing the  
87 contractual rights of the teacher or any other rights, privileges  
88 or benefits under the provisions of this chapter. Released  
89 time shall be provided for any professional educator while  
90 serving as a member of the Legislature during any duly  
91 constituted session of that body and its interim and statutory  
92 committees and commissions without jeopardizing his or her  
93 contractual rights or any other rights, privileges, benefits or  
94 accrual of experience for placement on the state minimum  
95 salary schedule in the following school year under the  
96 provisions of this chapter, board policy and law.

97 (e) Any teacher who fails to fulfill his or her contract with  
98 the board, unless prevented from doing so by personal illness

99 or other just cause or unless released from his or her contract  
100 by the board, or who violates any lawful provision of the  
101 contract, is disqualified to teach in any other public school in  
102 the state for a period of the next ensuing school year and the  
103 State Department of Education or board may hold all papers  
104 and credentials of the teacher on file for a period of one year  
105 for the violation: *Provided*, That marriage of a teacher is not  
106 considered a failure to fulfill, or violation of, the contract.

107 (f) Any classroom teacher, as defined in section one,  
108 article one of this chapter, who desires to resign employment  
109 with a county board or request a leave of absence, the  
110 resignation or leave of absence to become effective on or  
111 before July 15 of the same year and after completion of the  
112 employment term, may do so at any time during the school  
113 year by written notification of the resignation or leave of  
114 absence and any notification received by a county board shall  
115 automatically extend the teacher's public employee insurance  
116 coverage until August 31 of the same year.

117 (g) (1) A classroom teacher who gives written notice to the  
118 county board on or before January 15 of the school year of his or  
119 her retirement from employment with the board at the conclusion  
120 of the school year shall be paid \$500 from the Early Notification  
121 of Retirement line item established for the Department of  
122 Education for this purpose, subject to appropriation by the  
123 Legislature. If the appropriations to the Department of Education  
124 for this purpose are insufficient to compensate all applicable  
125 teachers, the Department of Education shall request a  
126 supplemental appropriation in an amount sufficient to  
127 compensate all such teachers. Additionally, if funds are still  
128 insufficient to compensate all applicable teachers, the priority of  
129 payment is for teachers who give written notice the earliest. This  
130 payment shall not be counted as part of the final average salary  
131 for the purpose of calculating retirement.

132           (2) The position of a classroom teacher providing written  
133 notice of retirement pursuant to this subsection may be  
134 considered vacant and the county board may immediately  
135 post the position as an opening to be filled at the conclusion  
136 of the school year. If a teacher has been hired to fill the  
137 position of a retiring classroom teacher prior to the start of  
138 the next school year, the retiring classroom teacher is  
139 disqualified from continuing his or her employment in that  
140 position. However, the retiring classroom teacher may be  
141 permitted to continue his or her employment in that position  
142 and forfeit the early retirement notification payment if, after  
143 giving notice of retirement in accordance with this  
144 subsection, he or she becomes subject to a significant  
145 unforeseen financial hardship, including a hardship caused by  
146 the death or illness of an immediate family member or loss of  
147 employment of a spouse. Other significant unforeseen  
148 financial hardships shall be determined by the county  
149 superintendent on a case-by-case basis. This subsection does  
150 not prohibit a county school board from eliminating the  
151 position of a retiring classroom teacher.

**§18A-2-6. Continuing contract status for service personnel;  
termination.**

1           After three years of acceptable employment, each service  
2 personnel employee who enters into a new contract of  
3 employment with the board shall be granted continuing contract  
4 status: *Provided*, That a service personnel employee holding  
5 continuing contract status with one county shall be granted  
6 continuing contract status with any other county upon  
7 completion of one year of acceptable employment if such  
8 employment is during the next succeeding school year or  
9 immediately following an approved leave of absence extending  
10 no more than one year. The continuing contract of any such  
11 employee shall remain in full force and effect except as modified  
12 by mutual consent of the school board and the employee, unless  
13 and until terminated with written notice, stating cause or causes,

14 to the employee, by a majority vote of the full membership of  
15 the board before March 1 of the then current year, or by written  
16 resignation of the employee on or before that date. The affected  
17 employee has the right of a hearing before the board, if  
18 requested, before final action is taken by the board upon the  
19 termination of such employment.

20 Those employees who have completed three years of  
21 acceptable employment as of the effective date of this  
22 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.**

1 (a) The superintendent, subject only to approval of the  
2 board, may assign, transfer, promote, demote or suspend school  
3 personnel and recommend their dismissal pursuant to  
4 provisions of this chapter. However, an employee shall be  
5 notified in writing by the superintendent on or before March 1  
6 if he or she is being considered for transfer or to be transferred.  
7 Only those employees whose consideration for transfer or  
8 intended transfer is based upon known or expected  
9 circumstances which will require the transfer of employees  
10 shall be considered for transfer or intended for transfer and the  
11 notification shall be limited to only those employees. Any  
12 teacher or employee who desires to protest the proposed  
13 transfer may request in writing a statement of the reasons for  
14 the proposed transfer. The statement of reasons shall be  
15 delivered to the teacher or employee within ten days of the  
16 receipt of the request. Within ten days of the receipt of the  
17 statement of the reasons, the teacher or employee may make  
18 written demand upon the superintendent for a hearing on the  
19 proposed transfer before the county board of education. The  
20 hearing on the proposed transfer shall be held on or before  
21 April 15. At the hearing, the reasons for the proposed transfer  
22 must be shown.



23 (b) The superintendent at a meeting of the board on or  
24 before April 15 shall furnish in writing to the board a list of  
25 teachers and other employees to be considered for transfer  
26 and subsequent assignment for the next ensuing school year.  
27 An employee who was not provided notice and an  
28 opportunity for a hearing pursuant to subsection (a) of this  
29 section may not be included on the list. All other teachers  
30 and employees not so listed shall be considered as reassigned  
31 to the positions or jobs held at the time of this meeting. The  
32 list of those recommended for transfer shall be included in the  
33 minute record of the meeting and all those so listed shall be  
34 notified in writing, which notice shall be delivered in writing,  
35 by certified mail, return receipt requested, to the persons' last  
36 known addresses within ten days following the board  
37 meeting, of their having been so recommended for transfer  
38 and subsequent assignment and the reasons therefor.

39 (c) The superintendent's authority to suspend school  
40 personnel shall be temporary only pending a hearing upon  
41 charges filed by the superintendent with the board of  
42 education and the period of suspension may not exceed thirty  
43 days unless extended by order of the board.

44 (d) The provisions of this section respecting hearing upon  
45 notice of transfer is not applicable in emergency situations  
46 where the school building becomes damaged or destroyed  
47 through an unforeseeable act and which act necessitates a  
48 transfer of the school personnel because of the  
49 aforementioned condition of the building.

**§18A-2-8a. Notice to probationary personnel of rehiring or nonrehiring; hearing.**

1 The superintendent at a meeting of the board on or before  
2 April 15 of each year shall provide in writing to the board a list  
3 of all probationary teachers that he or she recommends to be  
4 rehired for the next ensuing school year. The board shall act

5 upon the superintendent's recommendations at that meeting in  
6 accordance with section one of this article. The board at this  
7 same meeting shall also act upon the retention of other  
8 probationary employees as provided in sections two and five of  
9 this article. Any such probationary teacher or other  
10 probationary employee who is not rehired by the board at that  
11 meeting shall be notified in writing, by certified mail, return  
12 receipt requested, to such persons' last known addresses within  
13 ten days following said board meeting, of their not having been  
14 rehired or not having been recommended for rehiring.

15 Any probationary teacher who receives notice that he or she  
16 has not been recommended for rehiring or other probationary  
17 employee who has not been reemployed may within ten days  
18 after receiving the written notice request a statement of the  
19 reasons for not having been rehired and may request a hearing  
20 before the board. The hearing shall be held at the next regularly  
21 scheduled board of education meeting or a special meeting of the  
22 board called within thirty days of the request for hearing. At the  
23 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.**

1 (a) A county board of education shall make decisions affecting  
2 the hiring of professional personnel other than classroom teachers  
3 on the basis of the applicant with the highest qualifications.

4 (b) The county board shall make decisions affecting the  
5 hiring of new classroom teachers on the basis of the applicant  
6 with the highest qualifications.

7 (c) In judging qualifications for hiring employees  
8 pursuant to subsections (a) and (b) of this section,  
9 consideration shall be given to each of the following:

- 10           (1) Appropriate certification, licensure or both;
- 11           (2) Amount of experience relevant to the position; or, in  
12 the case of a classroom teaching position, the amount of  
13 teaching experience in the subject area;
- 14           (3) The amount of course work, degree level or both in  
15 the relevant field and degree level generally;
- 16           (4) Academic achievement;
- 17           (5) Relevant specialized training;
- 18           (6) Past performance evaluations conducted pursuant to  
19 section twelve, article two of this chapter; and
- 20           (7) Other measures or indicators upon which the relative  
21 qualifications of the applicant may fairly be judged.
- 22           (d) If one or more permanently employed instructional  
23 personnel apply for a classroom teaching position and meet  
24 the standards set forth in the job posting, the county board of  
25 education shall make a decision affecting the filling of the  
26 position on the basis of the following criteria:
- 27           (1) Appropriate certification, licensure or both;
- 28           (2) Total amount of teaching experience;
- 29           (3) The existence of teaching experience in the required  
30 certification area;
- 31           (4) Degree level in the required certification area;
- 32           (5) Specialized training directly related to the  
33 performance of the job as stated in the job description;

34           (6) Receiving an overall rating of satisfactory in the  
35 previous two evaluations conducted pursuant to section  
36 twelve, article two of this chapter; and

37           (7) Seniority.

38           (e) In filling positions pursuant to subsection (d) of this  
39 section, consideration shall be given to each criterion with  
40 each criterion being given equal weight. If the applicant with  
41 the most seniority is not selected for the position, upon the  
42 request of the applicant a written statement of reasons shall  
43 be given to the applicant with suggestions for improving the  
44 applicant's qualifications.

45           (f) With the exception of guidance counselors, the  
46 seniority of classroom teachers, as defined in section one,  
47 article one of this chapter shall be determined on the basis of  
48 the length of time the employee has been employed as a  
49 regular full-time certified and/or licensed professional  
50 educator by the county board of education and shall be  
51 granted in all areas that the employee is certified, licensed or  
52 both.

53           (g) Upon completion of one hundred thirty-three days of  
54 employment in any one school year, substitute teachers,  
55 except retired teachers and other retired professional  
56 educators employed as substitutes, shall accrue seniority  
57 exclusively for the purpose of applying for employment as a  
58 permanent, full-time professional employee. One hundred  
59 thirty-three days or more of said employment shall be  
60 prorated and shall vest as a fraction of the school year worked  
61 by the permanent, full-time teacher.

62           (h) Guidance counselors and all other professional  
63 employees, as defined in section one, article one of this  
64 chapter, except classroom teachers, shall gain seniority in  
65 their nonteaching area of professional employment on the

66 basis of the length of time the employee has been employed  
67 by the county board of education in that area: *Provided*, That  
68 if an employee is certified as a classroom teacher, the  
69 employee accrues classroom teaching seniority for the time  
70 that that employee is employed in another professional area.  
71 For the purposes of accruing seniority under this paragraph,  
72 employment as principal, supervisor or central office  
73 administrator, as defined in section one, article one of this  
74 chapter, shall be considered one area of employment.

75 (i) Employment for a full employment term shall equal  
76 one year of seniority, but no employee may accrue more than  
77 one year of seniority during any given fiscal year.  
78 Employment for less than the full employment term shall be  
79 prorated. A random selection system established by the  
80 employees and approved by the board shall be used to  
81 determine the priority if two or more employees accumulate  
82 identical seniority: *Provided*, That when two or more  
83 principals have accumulated identical seniority, decisions on  
84 reductions in force shall be based on qualifications.

85 (j) Whenever a county board is required to reduce the  
86 number of professional personnel in its employment, the  
87 employee with the least amount of seniority shall be properly  
88 notified and released from employment pursuant to the  
89 provisions of section two, article two of this chapter. The  
90 provisions of this subsection are subject to the following:

91 (1) All persons employed in a certification area to be  
92 reduced who are employed under a temporary permit shall be  
93 properly notified and released before a fully certified  
94 employee in such a position is subject to release;

95 (2) An employee subject to release shall be employed in  
96 any other professional position where the employee is  
97 certified and was previously employed or to any lateral area  
98 for which the employee is certified, licensed or both, if the

99 employee's seniority is greater than the seniority of any other  
100 employee in that area of certification, licensure or both;

101 (3) If an employee subject to release holds certification,  
102 licensure or both in more than one lateral area and if the  
103 employee's seniority is greater than the seniority of any other  
104 employee in one or more of those areas of certification,  
105 licensure or both, the employee subject to release shall be  
106 employed in the professional position held by the employee  
107 with the least seniority in any of those areas of certification,  
108 licensure or both; and

109 (4) If, prior to August 1, of the year a reduction in force  
110 is approved, the reason for any particular reduction in force  
111 no longer exists as determined by the county board in its sole  
112 and exclusive judgment, the board shall rescind the reduction  
113 in force or transfer and shall notify the released employee in  
114 writing of his or her right to be restored to his or her position  
115 of employment. Within five days of being so notified, the  
116 released employee shall notify the board, in writing, of his or  
117 her intent to resume his or her position of employment or the  
118 right to be restored shall terminate. Notwithstanding any  
119 other provision of this subdivision, if there is another  
120 employee on the preferred recall list with proper certification  
121 and higher seniority, that person shall be placed in the  
122 position restored as a result of the reduction in force being  
123 rescinded.

124 (k) For the purpose of this article, all positions which  
125 meet the definition of "classroom teacher" as defined in  
126 section one, article one of this chapter shall be lateral  
127 positions. For all other professional positions, the county  
128 board of education shall adopt a policy by October 31, 1993,  
129 and may modify the policy thereafter as necessary, which  
130 defines which positions shall be lateral positions. The board  
131 shall submit a copy of its policy to the state board within  
132 thirty days of adoption or any modification, and the state

133 board shall compile a report and submit the report to the  
134 Legislative Oversight Commission on Education  
135 Accountability by December 31, 1993, and by that date in  
136 any succeeding year in which any county board submits a  
137 modification of its policy relating to lateral positions. In  
138 adopting the policy, the board shall give consideration to the  
139 rank of each position in terms of title; nature of  
140 responsibilities; salary level; certification, licensure or both;  
141 and days in the period of employment.

142 (l) After the twentieth day prior to the beginning of the  
143 instructional term, no person employed and assigned to a  
144 professional position may transfer to another professional  
145 position in the county during that instructional term unless  
146 the person holding that position does not have valid  
147 certification. The provisions of this subsection are subject to  
148 the following:

149 (1) The person may apply for any posted, vacant  
150 positions with the successful applicant assuming the position  
151 at the beginning of the next instructional term;

152 (2) Professional personnel who have been on an approved  
153 leave of absence may fill these vacancies upon their return  
154 from the approved leave of absence;

155 (3) The county board, upon recommendation of the  
156 superintendent may fill a position before the next  
157 instructional term when it is determined to be in the best  
158 interest of the students. The county superintendent shall  
159 notify the state board of each transfer of a person employed  
160 in a professional position to another professional position  
161 after the twentieth day prior to the beginning of the  
162 instructional term;

163 (4) The provisions of this subsection do not apply to the  
164 filling of a position vacated because of resignation or

165 retirement that became effective on or before the twentieth  
166 day prior to the beginning of the instructional term, but not  
167 posted until after that date; and

168 (5) The Legislature finds that it is not in the best interest of the  
169 students particularly in the elementary grades to have multiple  
170 teachers for any one grade level or course during the instructional  
171 term. It is the intent of the Legislature that the filling of positions  
172 through transfers of personnel from one professional position to  
173 another after the twentieth day prior to the beginning of the  
174 instructional term should be kept to a minimum.

175 (m) All professional personnel whose seniority with the  
176 county board is insufficient to allow their retention by the  
177 county board during a reduction in work force shall be placed  
178 upon a preferred recall list. As to any professional position  
179 opening within the area where they had previously been  
180 employed or to any lateral area for which they have  
181 certification, licensure or both, the employee shall be recalled  
182 on the basis of seniority if no regular, full-time professional  
183 personnel, or those returning from leaves of absence with  
184 greater seniority, are qualified, apply for and accept the  
185 position.

186 (n) Before position openings that are known or expected  
187 to extend for twenty consecutive employment days or longer  
188 for professional personnel may be filled by the board, the  
189 board shall be required to notify all qualified professional  
190 personnel on the preferred list and give them an opportunity  
191 to apply, but failure to apply shall not cause the employee to  
192 forfeit any right to recall. The notice shall be sent by  
193 certified mail to the last known address of the employee, and  
194 it shall be the duty of each professional personnel to notify  
195 the board of continued availability annually, of any change in  
196 address or of any change in certification, licensure or both.



197 (o) Openings in established, existing or newly created  
198 positions shall be processed as follows:

199 (1) Boards shall be required to post and date notices  
200 which shall be subject to the following:

201 (A) The notices shall be posted in conspicuous working  
202 places for all professional personnel to observe for at least  
203 five working days;

204 (B) The notice shall be posted within twenty working  
205 days of the position openings and shall include the job  
206 description;

207 (C) Any special criteria or skills that are required by the  
208 position shall be specifically stated in the job description and  
209 directly related to the performance of the job;

210 (D) Postings for vacancies made pursuant to this section  
211 shall be written so as to ensure that the largest possible pool  
212 of qualified applicants may apply; and

213 (E) Job postings may not require criteria which are not  
214 necessary for the successful performance of the job and may  
215 not be written with the intent to favor a specific applicant;

216 (2) No vacancy shall be filled until after the five-day  
217 minimum posting period;

218 (3) If one or more applicants meets the qualifications  
219 listed in the job posting, the successful applicant to fill the  
220 vacancy shall be selected by the board within thirty working  
221 days of the end of the posting period;

222 (4) A position held by a teacher who is certified, licensed  
223 or both, who has been issued a permit for full-time  
224 employment and is working toward certification in the permit

225 area shall not be subject to posting if the certificate is  
226 awarded within five years; and

227 (5) Nothing provided herein shall prevent the county board  
228 of education from eliminating a position due to lack of need.

229 (p) Notwithstanding any other provision of the code to  
230 the contrary, where the total number of classroom teaching  
231 positions in an elementary school does not increase from one  
232 school year to the next, but there exists in that school a need  
233 to realign the number of teachers in one or more grade levels,  
234 kindergarten through six, teachers at the school may be  
235 reassigned to grade levels for which they are certified without  
236 that position being posted: *Provided*, That the employee and  
237 the county board of education mutually agree to the  
238 reassignment.

239 (q) Reductions in classroom teaching positions in  
240 elementary schools shall be processed as follows:

241 (1) When the total number of classroom teaching  
242 positions in an elementary school needs to be reduced, the  
243 reduction shall be made on the basis of seniority with the  
244 least senior classroom teacher being recommended for  
245 transfer; and

246 (2) When a specified grade level needs to be reduced and  
247 the least senior employee in the school is not in that grade  
248 level, the least senior classroom teacher in the grade level that  
249 needs to be reduced shall be reassigned to the position made  
250 vacant by the transfer of the least senior classroom teacher in  
251 the school without that position being posted: *Provided*, That  
252 the employee is certified, licensed or both and agrees to the  
253 reassignment.

254 (r) Any board failing to comply with the provisions of  
255 this article may be compelled to do so by mandamus and shall

256 be liable to any party prevailing against the board for court  
257 costs and reasonable attorney fees as determined and  
258 established by the court. Further, employees denied  
259 promotion or employment in violation of this section shall be  
260 awarded the job, pay and any applicable benefits retroactive  
261 to the date of the violation and payable entirely from local  
262 funds. Further, the board shall be liable to any party  
263 prevailing against the board for any court reporter costs  
264 including copies of transcripts.

265 (s) The county board shall compile, update annually on  
266 July 1 and make available by electronic or other means to all  
267 employees a list of all professional personnel employed by  
268 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.**

1           (a) The state board shall adopt a written system for the  
2 evaluation of the employment performance of personnel, which  
3 system shall be applied uniformly by county boards in the  
4 evaluation of the employment performance of personnel  
5 employed by the board.

6           (b) The system adopted by the state board for evaluating the  
7 employment performance of professional personnel shall be in  
8 accordance with the provisions of this section.

9           (c) For purposes of this section, “professional personnel”,  
10 “professional” or “professionals”, means professional personnel  
11 as defined in section one, article one of this chapter but does not  
12 include classroom teachers, principals and assistant principals  
13 subject to the evaluation processes established pursuant to the  
14 provisions of section two, article three-c of this chapter when the  
15 school at which these professional personnel are employed is  
16 selected to participate in those evaluation processes as part of the  
17 multi-step implementation leading to full statewide  
18 implementation by school year 2013-2014.

19           (d) In developing the professional personnel performance  
20 evaluation system, and amendments thereto, the state board shall  
21 consult with the Center for Professional Development created in  
22 article three-a of this chapter. The center shall participate  
23 actively with the state board in developing written standards for  
24 evaluation which clearly specify satisfactory performance and  
25 the criteria to be used to determine whether the performance of  
26 each professional meets those standards.

27           (e) The performance evaluation system shall contain, but not  
28 be limited to, the following information:

29           (1) The professional personnel positions to be evaluated,  
30 whether they be teachers, substitute teachers, administrators,  
31 principals or others;

32           (2) The frequency and duration of the evaluations, which  
33 shall be on a regular basis and of such frequency and duration as  
34 to insure the collection of a sufficient amount of data from which  
35 reliable conclusions and findings may be drawn. For school  
36 personnel with five or more years of experience who have not  
37 received an unsatisfactory rating, evaluations shall be conducted  
38 no more than once every three years unless the principal  
39 determines an evaluation for a particular school employee is  
40 needed more frequently. Until the school or school system at  
41 which they are employed is subject to the provisions of article  
42 three-c of this chapter, for classroom teachers with five or more  
43 years of experience who have not received an unsatisfactory

44 rating, an evaluation shall be conducted or professional growth  
45 and development plan required only when the principal  
46 determines it is necessary for a particular classroom teacher or  
47 when a classroom teacher exercises the option of being  
48 evaluated at more frequent intervals;

49 (3) The evaluation shall serve the following purposes:

50 (A) Serve as a basis for the improvement of the  
51 performance of the personnel in their assigned duties;

52 (B) Provide an indicator of satisfactory performance for  
53 individual professionals;

54 (C) Serve as documentation for a dismissal on the grounds  
55 of unsatisfactory performance; and

56 (D) Serve as a basis for programs to increase the  
57 professional growth and development of professional personnel;

58 (4) The standards for satisfactory performance for  
59 professional personnel and the criteria to be used to determine  
60 whether the performance of each professional meets those  
61 standards and other criteria for evaluation for each professional  
62 position evaluated. Professional personnel, as appropriate, shall  
63 demonstrate competency in the knowledge and implementation  
64 of the technology standards adopted by the state board. If a  
65 professional fails to demonstrate competency in the knowledge  
66 and implementation of these standards, he or she will be subject  
67 to an improvement plan to correct the deficiencies; and

68 (5) Provisions for a written improvement plan, which shall  
69 be specific as to what improvements, if any, are needed in the  
70 performance of the professional and shall clearly set forth  
71 recommendations for improvements, including  
72 recommendations for additional education and training during  
73 the professional's recertification process.

74 (f) A professional whose performance is considered to be  
75 unsatisfactory shall be given notice of deficiencies. A

76 remediation plan to correct deficiencies shall be developed by  
77 the employing county board and the professional. The  
78 professional shall be given a reasonable period of time for  
79 remediation of the deficiencies and shall receive a statement of  
80 the resources and assistance available for the purposes of  
81 correcting the deficiencies.

82 (g) No person may evaluate professional personnel for the  
83 purposes of this section unless the person has an administrative  
84 certificate issued by the state superintendent and has successfully  
85 completed education and training in evaluation skills through the  
86 center for professional development, or equivalent education  
87 training approved by the state board, which will enable the  
88 person to make fair, professional, and credible evaluations of the  
89 personnel whom the person is responsible for evaluating. After  
90 July 1, 1994, no person may be issued an administrative  
91 certificate or have an administrative certificate renewed unless  
92 the state board determines that the person has successfully  
93 completed education and training in evaluation skills through the  
94 center for professional development or equivalent education and  
95 training approved by the state board.

96 (h) Any professional whose performance evaluation  
97 includes a written improvement plan shall be given an  
98 opportunity to improve his or her performance through the  
99 implementation of the plan. If the next performance evaluation  
100 shows that the professional is now performing satisfactorily, no  
101 further action may be taken concerning the original performance  
102 evaluation. If the evaluation shows that the professional is still  
103 not performing satisfactorily, the evaluator either shall make  
104 additional recommendations for improvement or may  
105 recommend the dismissal of the professional in accordance with  
106 the provisions of section eight of this article.

107 (i) Lesson plans are intended to serve as a daily guide for  
108 teachers and substitutes for the orderly presentation of the  
109 curriculum. Lesson plans may not be used as a substitute for  
110 observations by an administrator in the performance evaluation  
111 process. A classroom teacher, as defined in section one, article

112 one of this chapter, may not be required to post his or her lesson  
113 plans on the Internet or otherwise make them available to  
114 students and parents or to include in his or her lesson plans any  
115 of the following:

116 (1) Teach and reteach strategies;

117 (2) Write to learn activities;

118 (3) Cultural diversity;

119 (4) Color coding; or

120 (5) Any other similar items which are not required to serve  
121 as a guide to the teacher or substitute for daily instruction; and

122 (j) The Legislature finds that classroom teachers must be  
123 free of unnecessary paper work so that they can focus their time  
124 on instruction. Therefore, classroom teachers may not be  
125 required to keep records or logs of routine contacts with parents  
126 or guardians.

127 (k) Nothing in this section may be construed to prohibit  
128 classroom teachers from voluntarily posting material on the  
129 Internet. Nothing in article three-c of this chapter may be  
130 construed to negate the provisions of subsections (i) and (j) of  
131 this section.

## **ARTICLE 3C. IMPROVING TEACHING AND LEARNING.**

### **§18A-3C-1. Findings; purposes and definition.**

1 (a) The Legislature makes the following findings:

2 (1) Processes set forth in this article for evaluation, teacher  
3 induction and professional growth is not intended to make up for  
4 substandard initial preparation of teachers, but instead is  
5 intended to build on a solid foundation created by the teacher  
6 preparation programs. Therefore, the Legislature expects the  
7 teacher preparation programs to graduate teachers who can



8 perform at a level that increases student achievement. The  
9 Legislature expects that the processes set forth in this article will  
10 allow a teacher to excel beyond that level in the classroom;

11 (2) The comprehensive system of support provided for in  
12 this article should be implemented in a way that, as compared  
13 with the beginning teacher internship system, much more  
14 effectively provides for the professional growth of teachers;

15 (3) In order for the comprehensive system of support to  
16 much more effectively provide for professional growth for  
17 teachers, funding should be greatly increased over and above  
18 what has been provided for the beginning teacher internship  
19 system; and

20 (4) Although the quality of the teacher in the classroom is  
21 extremely important to the academic achievement of students,  
22 students cannot learn if they are not in the classroom. Therefore,  
23 attending school on a regular basis is of utmost importance to the  
24 academic success of students.

25 (b) The purpose of this article is to create a comprehensive  
26 infrastructure that routinely supports a continuous process for  
27 improving teaching and learning. Its focus is on developing  
28 strong teaching and school leadership, without which effective  
29 learning does not occur. The general components of this  
30 infrastructure include the following:

31 (1) High-quality teacher preparation, induction and  
32 evaluation;

33 (2) Universal support for emerging teachers including  
34 comprehensive new teacher induction and support for student  
35 teachers, teachers teaching in assignments for which they have  
36 less than a full professional credential and teacher candidates  
37 pursuing certification through an alternative route;

38 (3) Evaluation of the performance of teachers and leaders in  
39 demonstrating high quality professional practice, leadership and  
40 collaboration and the resulting growth in student learning;

41           (4) Focused improvement in teaching and learning through  
42 the use of evaluation data to inform the delivery of professional  
43 development and additional supports to improve teaching based  
44 on the evaluation results and to inform the need for  
45 improvements in teacher preparation programs; and

46           (5) The creation of a leadership culture that seeks and builds  
47 powerful alliances among all stakeholders focused on  
48 continuous growth in student learning.

49           (c) For purposes of this article “professional personnel”  
50 includes classroom teachers, assistant principals and principals  
51 as defined in section one, article one chapter eighteen-a of this  
52 code.

### **§18A-3C-2. Performance evaluations of professional personnel.**

1           (a) The intent of the Legislature is to allow for a multi-step  
2 statewide implementation of performance evaluations for  
3 professional personnel pursuant to this section consistent with  
4 sound educational practices and resources available resulting in  
5 full state-wide implementation by no later than the school year  
6 2013-2014. Beginning with the schools included in the  
7 evaluation processes for professional personnel piloted by the  
8 Department of Education during the 2011-2012 school year,  
9 additional schools or school systems shall be subject to the  
10 provisions of this article in accordance with a plan established by  
11 the state board to achieve full statewide implementation by no  
12 later than the school year 2013-2014. For schools and school  
13 systems subject to the provisions of this article, the provisions of  
14 this article shall govern when they are in conflict with other  
15 provisions of this chapter and chapter eighteen of this code.  
16 Specifically, the provisions of this article govern for the  
17 performance evaluation of classroom teachers, principals and  
18 assistant principals employed in these schools and school  
19 systems. To the extent that this article conflicts with the  
20 provisions of section twelve, article two of this chapter relating  
21 to professional personnel performance evaluations, this article  
22 shall govern. The state board shall submit a report on its plan for

23 the phased implementation of this article to the Legislative  
24 Oversight Commission on Education Accountability at the  
25 Commission's July interim meeting in each year of the phased  
26 implementation. The report shall include an update on the  
27 implementation of this article including, but not limited to the  
28 evaluation process and a list of the schools and school systems  
29 subject to the provisions of this article. To assist the Legislative  
30 Oversight Commission on Education Accountability in  
31 monitoring the implementation of this article, the state board  
32 shall report to the Commission upon its request throughout the  
33 implementation process, including but not limited to, reports on  
34 the results of surveys of teachers and principals on the  
35 implementation and use of the new evaluation system, the  
36 adequacy of the professional development given to employees  
37 on the purposes, instruments and procedures of the evaluation  
38 process, the time consumed by the evaluation process and the  
39 various tasks required for employees of different levels of  
40 experience, the aggregate results of the evaluations and any  
41 recommendations for changes in the process or other aspects of  
42 the duties of affected employees to improve the focus on the  
43 core mission of schools of teaching and learning.

44 (b) Before July 1, 2013, the state board shall adopt a  
45 legislative rule in accordance with article three-b, chapter  
46 twenty-nine-a of this code, for evaluating the performance of  
47 each professional person each year. The state board shall submit  
48 a draft of the proposed rule to the Legislative Oversight  
49 Commission on Education Accountability by February 15, 2013,  
50 and a final draft proposed rule prior to adoption. The rule shall  
51 provide for performance evaluations of professional personnel  
52 to be conducted in accordance with this section in each school  
53 and school system beginning with the 2013-14 school year.

54 (c)(1) The process adopted by the state board for evaluating  
55 the performance of classroom teachers shall incorporate at least  
56 the following:

57 (A) Alignment with the West Virginia professional teaching  
58 standards adopted by the state board that establish the

59 foundation for educator preparation, teacher assessment and  
60 professional development throughout the state;

61 (B) Employment of the professional teaching standards to  
62 provide explicit and extensive measures of the work of teaching  
63 and what teachers must know and be able to do and provide  
64 evaluative measures of educator performance;

65 (C) The use of two pieces of evidence at two points in time  
66 over the instructional term to demonstrate student learning as an  
67 indicator of educator performance; and

68 (D) The use of school's school-wide student learning growth  
69 as measured by the state-wide summative assessment as an  
70 evaluative measure of all educators employed in the school.

71 (2) Eighty percent of the evaluation shall be based on an  
72 appraisal of the educator's ability to perform the critical standard  
73 elements of the professional teaching standards. The appraisal  
74 shall include conferences with the evaluator reinforced through  
75 observation. Fifteen percent of the evaluation shall be based on  
76 evidence of the learning of the students assigned to the educator  
77 in accordance with paragraph (C), subdivision (1) of this  
78 subsection, and five percent of the evaluation shall be based on  
79 student learning growth measured by the school-wide score on  
80 the state summative assessment in accordance with paragraph  
81 (D), subdivision (1) of this subsection.

82 (d)(1) The process adopted by the state board for evaluating  
83 the performance of principals and assistant principals shall  
84 include at least the following:

85 (A) Alignment with the West Virginia professional  
86 leadership standards adopted by the state board establishing the  
87 responsibility of principals for the collective success of their  
88 school including the learning, growth and achievement of  
89 students, staff and self;

90           (B) Employment of the professional leadership standards to  
91 provide explicit and extensive measures of the work of school  
92 leadership focused on the continuous improvement of teaching  
93 and learning. The process shall include conferences and goal  
94 setting with the superintendent or his or her designee and the use  
95 of a survey of stakeholders to assist in identifying the needs and  
96 establishing the goals for the school and the principal. The  
97 survey shall be distributed to at least the following stakeholders:  
98 Students, parents, teachers and service personnel. The  
99 evaluative measures shall include the use of data, evidence and  
100 artifacts to confirm the principal's performance on achieving the  
101 goals established by the principal and superintendent;

102           (C) The use of two pieces of evidence at two points in time  
103 over the instructional term to demonstrate the growth in student  
104 learning at the school; and

105           (D) The use of the school's school-wide student learning  
106 growth as measured by the state-wide summative assessment as  
107 an evaluative measure of all educators employed in the school.

108           (2) Eighty percent of the evaluation shall be based on an  
109 appraisal of the principal's or the assistant principal's ability to  
110 perform the critical standard elements of the professional  
111 leadership standards and achieve the goals established for the  
112 principal and the school. Fifteen percent of the evaluation shall  
113 be based on evidence of the learning of the students assigned to  
114 the school in accordance with paragraph (C), subdivision (1) of  
115 this subsection, and five percent of the evaluation shall be based  
116 on student learning growth measured by the school-wide score  
117 on the state summative assessment in accordance with paragraph  
118 (D), subdivision (1) of this subsection.

119           (e) Evaluations of the performance of professional  
120 personnel shall serve the following purposes:

121           (1) Serve as a basis for the improvement of the performance  
122 of the professional personnel in their assigned duties;

123           (2) Serve as the basis for providing professional  
124 development specifically targeted on the area or areas identified  
125 through the evaluation process as needing improvement. If  
126 possible, this targeted professional development should be  
127 delivered at the school-site using collaborative processes,  
128 mentoring or coaching or other approaches that maximize use of  
129 the instructional setting;

130           (3) Serve as the basis for establishing priorities for the  
131 provision of county-level professional development when  
132 aggregate evaluation data from the county's schools indicates an  
133 area or areas of needed improvement;

134           (4) Serve as a basis for informing the teacher preparation  
135 programs in this state of an area or areas of needed improvement  
136 in the programs, or informing a specific program of needed  
137 improvement, when state-level aggregate evaluation data  
138 indicates that beginning teachers who have graduated from the  
139 program have specific weaknesses;

140           (5) Provide an indicator of level of performance of the  
141 professional personnel;

142           (6) Serve as a basis for programs to increase the  
143 professional growth and development of professional personnel;  
144 and

145           (7) Serve as documentation for a dismissal on the grounds of  
146 unsatisfactory performance.

147           (f) The rule adopted by the state board shall include  
148 standards for performance of professional personnel and the  
149 criteria to be used to determine whether their performance meets  
150 the standards. The rule also shall include guidance on best  
151 practices for providing time within the school day for teachers  
152 subject to performance evaluations under this section to  
153 participate in the collaborative mentoring or coaching and  
154 planning processes necessary for execution of the performance

155 evaluation process and achieving advanced levels of  
156 performance.

157 (g) The rule adopted by the state board shall include  
158 provisions for written improvement plans when necessary to  
159 improve the performance of the professional personnel. The  
160 written improvement plan shall be specific as to what  
161 improvements are needed in the performance of the professional  
162 personnel and shall clearly set forth recommendations for  
163 improvements including recommendations for additional  
164 education and training of professionals subject to recertification.  
165 Professional personnel whose performance evaluation includes  
166 a written improvement plan shall be given an opportunity to  
167 improve his or her performance through the implementation of  
168 the plan.

169 (h) A professional person whose performance is considered  
170 to be unsatisfactory shall be given written notice of his or her  
171 deficiencies. A written improvement plan to correct these  
172 deficiencies shall be developed by the employing county board  
173 and the employee. The professional person shall be given a  
174 reasonable period of time, not exceeding twelve months, to  
175 accomplish the requirements of the improvement plan and shall  
176 receive a written statement of the resources and assistance  
177 available for the purposes of correcting the deficiencies. If the  
178 next performance evaluation shows that the professional is now  
179 performing satisfactorily, no further action may be taken  
180 concerning the original performance evaluation. If the  
181 evaluation shows that the professional is still not performing  
182 satisfactorily, the evaluator either shall make additional written  
183 recommendations for improvement or may recommend the  
184 dismissal of the professional personnel in accordance with the  
185 provisions of section eight, article two of this chapter.

186 (i) No person may evaluate professional personnel for the  
187 purposes of this section unless the person has an administrative  
188 certificate issued by the state superintendent and has successfully  
189 completed education and training in evaluation skills through the  
190 center for professional development, or equivalent education

191 training approved by the state board, which will enable the  
192 person to make fair, professional, and credible evaluations of the  
193 personnel whom the person is responsible for evaluating.

194 (j) Prior to implementation of the evaluation process  
195 pursuant to this section at a school, each affected employee shall  
196 be given training to ensure that the employees have a full  
197 understanding of the purposes, instruments and procedures used  
198 in evaluating their performance. Thereafter, this training shall be  
199 held annually at the beginning of the employment term.

**§18A-3C-3. Comprehensive system for teacher induction and professional growth.**

1 (a) The intent of the Legislature is to allow for a multistep  
2 statewide implementation of a comprehensive system of support  
3 for building professional practice of beginning teachers,  
4 specifically those on the initial and intermediate progressions,  
5 consistent with sound educational practices and resources  
6 available. In this regard, it is the intent of the Legislature that the  
7 transition of schools and school systems to a comprehensive  
8 system of support that includes support for improved  
9 professional performance targeted on deficiencies identified  
10 through the evaluation process will be implemented concurrent  
11 with the first year that a school or system receives final  
12 evaluation results from the performance evaluation process  
13 pursuant to section two of this article. Further, because of  
14 significant variability among the counties, not only in the size of  
15 their teaching force, distribution of facilities and available  
16 resources, but also because of their varying needs, the  
17 Legislature intends for the implementation of this section to be  
18 accomplished in a manner that provides adequate flexibility to  
19 the counties to design and implement a comprehensive system  
20 of support for improving professional performance that best  
21 achieves the goals of this section within the county. Finally,  
22 because of the critical importance of ensuring that all teachers  
23 perform at the accomplished level or higher in the delivery of  
24 instruction that at least meets the West Virginia professional  
25 teaching standards and because achieving this objective at a



26 minimum entails providing assistance to address the needs as  
27 indicated by the data informed results of annual performance  
28 evaluations, including the self-assessed needs of the teachers  
29 themselves, the Legislature expects the highest priority for  
30 county, regional and state professional development will be on  
31 meeting these needs and that the transition to a comprehensive  
32 system of support for improving professional practice will reflect  
33 substantial redirection of existing professional development  
34 resources toward this highest priority.

35 (b) On or before July 1, 2012, the state board shall publish  
36 guidelines on the design and implementation of a  
37 comprehensive system of support for improving professional  
38 practice. The purpose of the guidelines is to assist the county  
39 board with the design and implementation of a system that best  
40 achieves the goals of this section within the county. The  
41 guidelines may include examples of best practices and resources  
42 available to county boards to assist them with the design and  
43 implementation of a comprehensive system.

44 (c) For schools and school systems subject to the provisions  
45 of this article, the provisions of this article govern when they are  
46 in conflict with section two-b, article three of this chapter  
47 relating to beginning teacher internships, or in conflict with other  
48 provisions of this chapter and chapter eighteen of this code.

49 (d) Effective for the school year beginning July 1, 2013, and  
50 thereafter, a county board is not eligible to receive state funding  
51 appropriated for the purposes of this section or any other  
52 provision of law related to beginning teacher internships and  
53 mentor teachers unless it has adopted a plan for implementation  
54 of a comprehensive system of support for improving  
55 professional practice, the plan has been verified by the state  
56 board as meeting the requirements of this section and the county  
57 is implementing the plan. The plan shall address the following:

58 (1) The manner in which the county will provide the strong  
59 school-based support and supervision that will assist beginning  
60 teachers in developing instructional and management strategies,

61 procedural and policy expertise, and other professional practices  
62 they need to be successful in the classroom and perform at the  
63 accomplished level. Nothing in this subdivision prohibits a  
64 school or school system that was granted an exception or waiver  
65 from section two-c, article three of this chapter prior to the  
66 effective date of this section from continuing implementation of  
67 the program in accordance with the exception or waiver;

68 (2) The manner in which the county in cooperation with the  
69 teacher preparation programs in this state will provide strong  
70 school-based support and assistance necessary to make student  
71 teaching a productive learning experience;

72 (3) The manner in which the county will use the data from  
73 the educator performance evaluation system to serve as the basis  
74 for providing professional development specifically targeted on  
75 the area or areas identified through the evaluation process as  
76 needing improvement. If possible, this targeted professional  
77 development should be delivered at the school-site using  
78 collaborative processes, mentoring or coaching or other  
79 approaches that maximize use of the instructional setting;

80 (4) The manner in which the county will use the data from  
81 the educator performance evaluation system to serve as the basis  
82 for establishing priorities for the provision of county-level  
83 professional development when aggregate evaluation data from  
84 the county's schools indicates an area or areas of needed  
85 improvement;

86 (5) If a county uses master teachers, mentors, academic  
87 coaches or any other approaches using individual employees to  
88 provide support, supervision or other professional development  
89 or training to other employees for the purpose of improving their  
90 professional practice, the manner in which the county will select  
91 each of these individual employees based on demonstrated  
92 superior performance and competence as well as the manner in  
93 which the county will coordinate support for these employees:  
94 *Provided*, That the employment of persons for these positions  
95 shall adhere to the posting and other provisions of section seven-

96 a, article four of this chapter utilizing subsection (c) of said  
97 section seven-a to judge the qualifications of the applicants. If  
98 the duties of the position are to provide mentoring to an  
99 individual teacher at only one school, then priority shall being  
100 given to applicants employed at the school at which those duties  
101 will be performed;

102 (6) The manner in which the county will use local resources  
103 available including, but not limited to, funds for professional  
104 development and academic coaches, to focus on the priority  
105 professional development goals of this section;

106 (7) The manner in which the county will adjust its  
107 scheduling, use of substitutes, collaborative planning time,  
108 calendar or other measures as may be necessary to provide  
109 sufficient time for professional personnel to accomplish the  
110 goals of this section as set forth in the county's plan; and

111 (8) The manner in which the county will monitor and  
112 evaluate the effectiveness of implementation and outcomes of the  
113 county system of support for improving professional practice.

114 (e) Effective the school year beginning July 1, 2013, and  
115 thereafter, appropriations for beginning teacher mentors and any  
116 new appropriation which may be made for the purposes of this  
117 section shall be expended by county boards only to accomplish  
118 the activities as set forth in their county plan pursuant to this  
119 section. Effective the school year beginning July 1, 2013, and  
120 thereafter, no specific level of compensation is guaranteed for  
121 any employee service or employment as a mentor and such  
122 service or employment is not subject to the provisions of this  
123 code governing extra duty contracts except as provided in  
124 subdivision (5), subsection (c) of this section.

125 (f) The Legislative Oversight Commission on Education  
126 Accountability shall review the progress of the implementation  
127 of this article and may make any recommendations it considers  
128 necessary to the Legislature during the 2013 regular legislative  
129 session.

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## CHAPTER 166

**(Com. Sub. for H. B. 4101 - By Delegates  
Perry, Shaver, D. Campbell, Lawrence,  
Pethel, 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.**

1 (a) The education of professional educators in the state is  
2 under the general direction and control of the state board after  
3 consultation with the Secretary of Education and the Arts and  
4 the Chancellor for Higher Education who shall represent the  
5 interests of educator preparation programs within the institutions  
6 of higher education in this state as defined in section two, article  
7 one, chapter eighteen-b of this code.

8 The education of professional educators in the state includes  
9 all programs leading to certification to teach or serve in the  
10 public schools. The programs include the following:

11 (1) Programs in all institutions of higher education,  
12 including student teaching and teacher-in-residence programs as  
13 provided in this section;

14 (2) Beginning teacher internship and induction programs;

15 (3) Granting West Virginia certification to persons who  
16 received their preparation to teach outside the boundaries of this  
17 state, except as provided in subsection (b) of this section;

18 (4) Alternative preparation programs in this state leading to  
19 certification, including programs established pursuant to the  
20 provisions of section one-a of this article and programs which  
21 are in effect on the effective date of this section; and

22 (5) Continuing professional education, professional  
23 development and in-service training programs for professional  
24 educators employed in the public schools in the state.

25 (b) After consultation with the Secretary of Education and  
26 the Arts and the Chancellor for Higher Education, the state board  
27 shall adopt standards for the education of professional educators  
28 in the state and for awarding certificates valid in the public  
29 schools of this state. The standards include, but are not limited to  
30 to the following:

31 (1) A provision for the study of multicultural education. As  
32 used in this section, multicultural education means the study of  
33 the pluralistic nature of American society including its values,  
34 institutions, organizations, groups, status positions and social  
35 roles;

36 (2) A provision for the study of classroom management  
37 techniques, including methods of effective management of  
38 disruptive behavior including societal factors and their impact on  
39 student behavior; and

40 (3) A teacher from another state shall be awarded a teaching  
41 certificate for a comparable grade level and subject area valid in  
42 the public schools of this state, subject to section ten of this  
43 article, if he or she has met the following requirements:

44 (A) Holds a valid teaching certificate or a certificate of  
45 eligibility issued by another state;

46 (B) Has graduated from an educator preparation program at  
47 a regionally accredited institution of higher education;

48 (C) Possesses the minimum of a bachelor's degree; and

49 (D) Meets all of the requirements of the state for full  
50 certification except employment.

51 (c) The state board may enter into an agreement with county  
52 boards for the use of the public schools in order to give  
53 prospective teachers the teaching experience needed to

54 demonstrate competence as a prerequisite to certification to  
55 teach in the West Virginia public schools.

56 (d) An agreement established pursuant to subsection (c) of  
57 this section shall recognize student teaching as a joint  
58 responsibility of the educator preparation institution and the  
59 cooperating public schools. The agreement shall include the  
60 following items:

61 (1) The minimum qualifications for the employment of  
62 public school teachers selected as supervising teachers,  
63 including the requirement that field-based and clinical  
64 experiences be supervised by a teacher fully certified in the state  
65 in which that teacher is supervising;

66 (2) The remuneration to be paid to public school teachers by  
67 the state board, in addition to their contractual salaries, for  
68 supervising student teachers;

69 (3) Minimum standards to guarantee the adequacy of the  
70 facilities and program of the public school selected for student  
71 teaching;

72 (4) Assurance that the student teacher, under the direction  
73 and supervision of the supervising teacher, shall exercise the  
74 authority of a substitute teacher; and

75 (5) A provision requiring any higher education institution  
76 with an educator preparation program to document that the  
77 student teacher's field-based and clinical experiences include  
78 participation and instruction with multicultural, at-risk and  
79 exceptional children at each programmatic level for which the  
80 student teacher seeks certification;

81 (6) A provision authorizing a school or school district that  
82 has implemented a comprehensive beginning teacher induction  
83 program, to enter into an agreement that provides for the training

84 and supervision of student teachers consistent with the  
85 educational objectives of this subsection by using an alternate  
86 structure implemented for the support, supervision and  
87 mentoring of beginning teachers. The agreement is in lieu of  
88 any specific provisions of this subsection and is subject to the  
89 approval of the state board.

90 (e) *Teacher-in-residence programs.* --

91 (1) In lieu of the provisions of subsections (c) and (d) of this  
92 section and subject to approval of the state board, an institution  
93 of higher education with a program for the education of  
94 professional educators in the state approved by the state board  
95 may enter into an agreement with county boards for the use of  
96 teacher-in-residence programs in the public schools.

97 (2) A “teacher-in-residence program” means an intensively  
98 supervised and mentored residency program for prospective  
99 teachers during their senior year that refines their professional  
100 practice skills and helps them gain the teaching experience  
101 needed to demonstrate competence as a prerequisite to  
102 certification to teach in the West Virginia public schools.

103 (3) The authorization for the higher education institution and  
104 the county board to implement a teacher-in-residence program  
105 is subject to state board approval. The provisions of the  
106 agreement include, but are not limited to, the following items:

107 (A) A requirement that the prospective teacher in a  
108 teacher-in-residence program shall have completed the  
109 content area preparation courses and shall have passed the  
110 appropriate basic skills and subject matter test or tests  
111 required by the state board for teachers to become certified in  
112 the area for which licensure is sought;

113 (B) A requirement that the teacher-in-residence serve  
114 only in a teaching position in the county which has been



115 posted and for which no other teacher fully certified for the  
116 position has been employed;

117 (C) Specifics regarding the program of instruction for the  
118 teacher-in-residence setting forth the responsibilities for  
119 supervision and mentoring by the higher education  
120 institution's educator preparation program, the school  
121 principal, and peer teachers and mentors, and the  
122 responsibilities for the formal instruction or professional  
123 development necessary for the teacher-in-residence to perfect  
124 his or her professional practice skills. The program also may  
125 include other instructional items as considered appropriate.

126 (D) A requirement that the teacher-in-residence hold a  
127 teacher-in-residence permit qualifying the individual to teach  
128 in his or her assigned position as the teacher of record;

129 (E) A requirement that the salary and benefit costs for the  
130 position to which the teacher-in-residence is assigned shall be  
131 used only for program support and to pay a stipend to the  
132 teacher-in-residence as specified in the agreement, subject to  
133 the following:

134 (i) The teacher-in-residence is a student enrolled in the  
135 teacher preparation program of the institution of higher  
136 education and is not a regularly employed employee of the  
137 county board;

138 (ii) The teacher-in-residence is included on the certified  
139 list of employees of the county eligible for state aid funding  
140 the same as an employee of the county at the appropriate  
141 level based on their permit and level of experience;

142 (iii) All state aid funding due to the county board for the  
143 teacher-in-residence shall be used only in accordance with  
144 the agreement with the institution of higher education for  
145 support of the program as provided in the agreement,

146 including costs associated with instruction and supervision as  
147 set forth in paragraph (C) of this subdivision;

148 (iv) The teacher-in-residence is provided the same  
149 liability insurance coverage as other employees; and

150 (v) All state aid funding due to the county for the teacher-  
151 in-residence and not required for support of the program shall  
152 be paid as a stipend to the teacher-in-residence: *Provided*,  
153 That the stipend paid to the teacher-in-residence shall be no  
154 less than sixty-five percent of all state aid funding due the  
155 county for the teacher-in-residence.

156 (4) Other provisions that may be required by the state  
157 board.

158 (f) In lieu of the student teaching experience in a public  
159 school setting required by this section, an institution of higher  
160 education may provide an alternate student teaching  
161 experience in a nonpublic school setting if the institution of  
162 higher education meets the following criteria:

163 (1) Complies with the provisions of this section;

164 (2) Has a state board approved educator preparation  
165 program; and

166 (3) Enters into an agreement pursuant to subdivisions (g)  
167 and (h) of this section.

168 (g) At the discretion of the higher education institution,  
169 an agreement for an alternate student teaching experience  
170 between an institution of higher education and a nonpublic  
171 school shall require one of the following:

172 (1) The student teacher shall complete at least one half of  
173 the clinical experience in a public school; or

174           (2) The educator preparation program shall include a  
175 requirement that any student performing student teaching in  
176 a nonpublic school shall complete the following:

177           (A) At least two hundred clock hours of field-based  
178 training in a public school; and

179           (B) A course, which is a component of the institution's  
180 state board approved educator preparation program, that  
181 provides information to prospective teachers equivalent to the  
182 teaching experience needed to demonstrate competence as a  
183 prerequisite to certification to teach in the public schools in  
184 West Virginia. The course also shall include instruction on  
185 at least the following elements:

186           (i) State board policy and provisions of this code  
187 governing public education;

188           (ii) Requirements for federal and state accountability,  
189 including the mandatory reporting of child abuse;

190           (iii) Federal and state mandated curriculum and  
191 assessment requirements, including multicultural education,  
192 safe schools and student code of conduct;

193           (iv) Federal and state regulations for the instruction of  
194 exceptional students as defined by the Individuals with  
195 Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

196           (v) Varied approaches for effective instruction for  
197 students who are at-risk.

198           (h) In addition to the requirements set forth in subsection  
199 (g) of this section, an agreement for an alternate student  
200 teaching experience between an institution of higher  
201 education and a nonpublic school shall include the following:

202           (1) A requirement that the higher education institution  
203 with an educator preparation program shall document that the  
204 student teacher's field-based and clinical experiences include  
205 participation and instruction with multicultural, at-risk and  
206 exceptional children at each programmatic level for which the  
207 student teacher seeks certification; and

208           (2) The minimum qualifications for the employment of  
209 school teachers selected as supervising teachers, including  
210 the requirement that field-based and clinical experiences be  
211 supervised by a teacher fully certified in the state in which  
212 that teacher is supervising.

213           (i) The state superintendent may issue certificates as  
214 provided in section two-a of this article to graduates of  
215 educator preparation programs and alternative educator  
216 preparation programs approved by the state board. The  
217 certificates are issued in accordance with this section and  
218 rules adopted by the state board after consultation with the  
219 Secretary of Education and the Arts and the Chancellor for  
220 Higher Education.

221           (1) A certificate to teach may be granted only to a person  
222 who meets the following criteria:

223           (A) Is a citizen of the United States, except as provided  
224 in subdivision (2) of this subsection;

225           (B) Is of good moral character;

226           (C) Is physically, mentally and emotionally qualified to  
227 perform the duties of a teacher; and

228           (D) Is at least eighteen years of age on or before October  
229 1, of the year in which his or her certificate is issued.

230           (2) A permit to teach in the public schools of this state  
231 may be granted to a person who is an exchange teacher from  
232 a foreign country or an alien person who meets the  
233 requirements to teach.

234           (j) In consultation with the Secretary of Education and  
235 the Arts and the Chancellor for Higher Education, institutions  
236 of higher education approved for educator preparation may  
237 cooperate with each other, with the center for professional  
238 development and with one or more county boards to organize  
239 and operate centers to provide selected phases of the educator  
240 preparation program. The phases include, but are not limited  
241 to the following:

242           (1) Student teaching and teacher-in-residence programs;

243           (2) Beginning teacher internship and induction programs;

244           (3) Instruction in methodology; and

245           (4) Seminar programs for college students, teachers with  
246 provisional certification, professional support team members  
247 and supervising teachers.

248           By mutual agreement, the institutions of higher  
249 education, the center for professional development and  
250 county boards may budget and expend funds to operate the  
251 centers through payments to the appropriate fiscal office of  
252 the participating institutions, the center for professional  
253 development and the county boards.

254           (k) The provisions of this section do not require  
255 discontinuation of an existing student teacher training center  
256 or school which meets the standards of the state board.

257           (l) All institutions of higher education approved for  
258 educator preparation in the 1962-63 school year continue to

259 hold that distinction so long as they meet the minimum  
260 standards for educator preparation. Nothing in this section  
261 infringes upon the rights granted to any institution by charter  
262 given according to law previous to the adoption of this code.

263 (m) *Definitions.* -- For the purposes of this section, the  
264 following words have the meanings ascribed to them unless  
265 the context clearly indicates a different meaning:

266 (1) “Nonpublic school” means a private school, parochial  
267 school, church school, school operated by a religious order or  
268 other nonpublic school that elects to meet the following  
269 conditions:

270 (A) Comply with the provisions of article twenty-eight,  
271 chapter eighteen of this code;

272 (B) Participate on a voluntary basis in a state operated or  
273 state sponsored program provided to this type school  
274 pursuant to this section; and

275 (C) Comply with the provisions of this section;

276 (2) “At-risk” means a student who has the potential for  
277 academic failure, including, but not limited to, the risk of  
278 dropping out of school, involvement in delinquent activity or  
279 poverty as indicated by free or reduced lunch status; and

280 (3) “Exceptional child” or “exceptional children” has the  
281 meaning ascribed to these terms pursuant to section one,  
282 article twenty, chapter eighteen of this code, but, as used in  
283 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.**

1 In accordance with state board rules for the education of  
2 professional educators adopted pursuant to section one of this

3 article and subject to the limitations and conditions of that  
4 section, the state superintendent may issue the following  
5 certificates valid in the public schools of the state:

6 (a) *Professional teaching certificates.* --

7 (1) A professional teaching certificate for teaching in the  
8 public schools may be issued to a person who meets the  
9 following conditions:

10 (A) Holds at least a bachelor's degree from an accredited  
11 institution of higher education in this state, and

12 (i) Has completed a program for the education of teachers  
13 which meets the requirements approved by the state board; or

14 (ii) Has met equivalent standards at institutions in other  
15 states and has passed appropriate state board approved basic  
16 skills and subject matter tests or has completed three years of  
17 successful experience within the last seven years in the area  
18 for which licensure is being sought; or

19 (B) Holds at least a bachelor's degree in a discipline  
20 taught in the public schools from an accredited institution of  
21 higher education, and

22 (i) Has passed appropriate state board approved basic  
23 skills and subject matter tests; or

24 (ii) Has completed three years of successful experience  
25 within the last seven years in the area for which licensure is  
26 being sought; and

27 (I) Has completed an alternative program for teacher  
28 education approved by the state board,

29           (II) Is recommended for a certificate in accordance with  
30 the provisions of sections one-a and one-b of this article  
31 relating to the program, or

32           (III) Is recommended by the state superintendent based  
33 on documentation submitted.

34           (2) The certificate shall be endorsed to indicate the grade  
35 level or levels or areas of specialization in which the person  
36 is certified to teach or to serve in the public schools.

37           (3) The initial professional certificate is issued  
38 provisionally for a period of three years from the date of  
39 issuance:

40           (A) The certificate may be converted to a professional  
41 certificate valid for five years subject to successful  
42 completion of a beginning teacher internship or induction  
43 program, if applicable; or

44           (B) The certificate may be renewed subject to rules  
45 adopted by the state board.

46           (b) *Alternative program teacher certificate.* -- An  
47 alternative program teacher certificate may be issued to a  
48 candidate who is enrolled in an alternative program for the  
49 education of teachers in accordance with the provisions of  
50 section one-a of this article.

51           (1) The certificate is valid only for the alternative  
52 program position in which the candidate is employed and is  
53 subject to enrollment in the program.

54           (2) The certificate is valid for one year and may be  
55 renewed for each of the following two consecutive years  
56 only.



57           (c) *Professional administrative certificate.* --

58           (1) A professional administrative certificate, endorsed for  
59           serving in the public schools, with specific endorsement as a  
60           principal, vocational administrator, supervisor of instructions  
61           or superintendent, may be issued to a person who has  
62           completed requirements all to be approved by the state board  
63           as follows:

64           (A) Holds at least a master's degree from an institution of  
65           higher education accredited to offer a master's degree; and

66           (i) Has successfully completed an approved program for  
67           administrative certification developed by the state board in  
68           cooperation with the chancellor for higher education, and

69           (ii) Has successfully completed education and training in  
70           evaluation skills through the center for professional  
71           development, or equivalent education and training in  
72           evaluation skills approved by the state board, and

73           (iii) Possesses three years of management level  
74           experience.

75           (2) Any person serving in the position of dean of students  
76           on June 4, 1992, is not required to hold a professional  
77           administrative certificate.

78           (3) The initial professional administrative certificate is  
79           issued provisionally for a period of five years. This  
80           certificate may be converted to a professional administrative  
81           certificate valid for five years or renewed, subject to the  
82           regulations of the state board.

83           (d) *Paraprofessional certificate.* -- A paraprofessional  
84           certificate may be issued to a person who meets the following  
85           conditions:

86 (1) Has completed thirty-six semester hours of post-  
87 secondary education or its equivalent in subjects directly  
88 related to performance of the job, all approved by the state  
89 board; and

90 (2) Demonstrates the proficiencies to perform duties as  
91 required of a paraprofessional as defined in section eight,  
92 article four of this chapter.

93 (e) *Other certificates; permits. --*

94 (1) Other certificates and permits may be issued, subject  
95 to the approval of the state board, to persons who do not  
96 qualify for the professional or paraprofessional certificate.

97 (2) A certificate or permit may not be given permanent  
98 status and a person holding one of these credentials shall  
99 meet renewal requirements provided by law and by  
100 regulation, unless the state board declares certain of these  
101 certificates to be the equivalent of the professional certificate.

102 (3) Within the category of other certificates and permits,  
103 the state superintendent may issue certificates for persons to  
104 serve in the public schools as athletic coaches or coaches of  
105 other extracurricular activities, whose duties may include the  
106 supervision of students, subject to the following limitations:

107 (A) The person is employed under a contract with the  
108 county board of education.

109 (i) The contract specifies the duties to be performed,  
110 specifies a rate of pay that is equivalent to the rate of pay for  
111 professional educators in the district who accept similar  
112 duties as extra duty assignments, and provides for liability  
113 insurance associated with the activity; and

114 (ii) The person holding this certificate is not considered  
115 an employee of the board for salary and benefit purposes  
116 other than as specified in the contract.

117 (B) A currently employed certified professional educator  
118 has not applied for the position; and

119 (C) The person completes an orientation program  
120 designed and approved in accordance with state board rules.

121 (f) *Teacher-In-Residence Permit.* --

122 (1) A teacher-in-residence permit may be issued to a  
123 candidate who is enrolled in a teacher-in-residence program  
124 in accordance with an agreement between an institution of  
125 higher education and a county board. The agreement is  
126 developed pursuant to subsection (f), section one of this  
127 article and requires approval by the state board.

128 (2) The permit is valid only for the teacher-in-residence  
129 program position in which the candidate is enrolled and is  
130 subject to enrollment in the program. The permit is valid for  
131 no more than one school year and may not be renewed.



## CHAPTER 167

**(Com. Sub. for H. B. 4122 - By Delegates  
Perry, Shaver, D. Campbell, Lawrence,  
Pethtel, Armstead, Duke, Savilla,  
Sigler, Paxton and M. Poling)**

[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
- 2 following terms have the meaning ascribed to them, unless the
- 3 context in which a term is used clearly requires a different
- 4 meaning:

5           (1) “Alternative program teacher certificate” means a  
6 certificate issued for one year to a candidate who does not meet  
7 the standard educational requirements for teacher certification;

8           (2) “Approved education provider” means a partnership  
9 between one or more schools, school districts or regional  
10 educational service agencies and an institution of higher  
11 education in this state with a regionally accredited program for  
12 the education of professional educators approved by the state  
13 board or an entity affiliated with such an institution’s approved  
14 program, that has submitted to the state board a plan and  
15 agreement between the organizations for the delivery of an  
16 alternative program in accordance with this section, and the state  
17 board has approved the plan and agreement; and

18           (3) “Area of critical need and shortage” means an opening  
19 in an established, existing or newly-created position which has  
20 been posted at least two times in accordance with section  
21 seven-a, article four of this chapter and for which no  
22 fully-qualified applicant has been employed.

23           (b) *Establishment of alternative teacher education*  
24 *programs.* -- After consultation with the Secretary of Education  
25 and the Arts and the Chancellor of the Higher Education Policy  
26 Commission, the state board shall promulgate a legislative rule  
27 or rules in accordance with article three-b, chapter twenty-nine-a  
28 of this code to implement the provisions of this section. The  
29 proposed rule or rules shall be submitted to the Legislative  
30 Oversight Commission on Education Accountability for review  
31 prior to adoption. The rule or rules shall include, but are not  
32 limited to, the following issues:

33           (1) Separate procedures for the approval and operation of  
34 each of the alternative teacher education programs as provided  
35 in this section:

36 (A) These programs are an alternative to the regular college  
37 or university programs for the education of teachers and may  
38 only be offered by approved education providers; and

39 (B) Each program is separate from other programs  
40 established by this section;

41 (2) Procedures for approving an approved education  
42 provider as defined in this section. Approval is required prior to  
43 implementation of the provider's program leading to  
44 certification to teach in the public schools of this state;

45 (3) An alternative program teacher may not be employed in  
46 a school, school district or regional educational service agency  
47 unless the school, school district or regional educational service  
48 agency is a part of a partnership that qualifies as an approved  
49 education provider as defined in subsection (a) of this section;

50 (4) Provisions for setting tuition charges to offset program  
51 costs;

52 (5) The recommendation to rehire an alternative education  
53 program teacher is subject to satisfactory progress in the  
54 applicable alternative education program by the holder of the  
55 alternative program certificate; and

56 (6) When making decisions affecting the hiring of a teacher  
57 authorized to teach under an alternative program certificate as  
58 provided in this section, a county board shall give preference to  
59 applicants who hold a valid West Virginia professional teaching  
60 certificate.

61 (c) *Alternative teacher education program.* --

62 (1) To participate in an approved alternative teacher  
63 education program, the candidate must hold an alternative  
64 program teacher certificate issued by the state superintendent

65 and endorsed for the instructional field in which the candidate  
66 seeks certification.

67 (2) The certificate may be renewed twice and no individual  
68 may hold an alternative program teacher certificate for a period  
69 exceeding three years. The alternative program teacher  
70 certificate is equivalent to a professional teaching certificate for  
71 the purpose of issuing a continuing contract.

72 (3) To be eligible for an alternative program teacher  
73 certificate, an applicant shall meet the following criteria:

74 (A) Possess at least a bachelor's degree from a regionally  
75 accredited institution of higher education in a discipline taught  
76 in the public schools.

77 (B) Pass the same basic skills and subject matter test or tests  
78 required by the state board for traditional program candidates to  
79 become certified in the area for which licensure is being sought;

80 (C) Hold United States citizenship; be of good moral  
81 character and be physically, mentally and emotionally qualified  
82 to perform the duties of a teacher;

83 (D) Attain the age of eighteen years on or before October 1  
84 of the year in which the alternative program teacher certificate  
85 is issued;

86 (E) Receive a formal offer of employment in an area of  
87 critical need and shortage from a county superintendent;

88 (F) Qualify for employment following a criminal history  
89 check pursuant to section ten of this article;

90 (G) In the case of an applicant pursuing certification to teach  
91 American Sign Language, in lieu of paragraphs (A) and (B) of  
92 this subdivision, the applicant shall possess at least a bachelor's

93 degree from a regionally accredited institution of higher  
94 education and pass an appropriate state board approved test or  
95 tests demonstrating the applicant's proficiency in American Sign  
96 Language; and

97 (H) In the case of applicants who have at least four years of  
98 experience in the subject field and are pursuing certification to  
99 teach in selected vocational and technical areas, in lieu of  
100 paragraphs (A) and (B) of this subdivision, the applicant shall  
101 pass an appropriate state board approved test or tests  
102 demonstrating the applicant's proficiency in the basic skills and  
103 occupational content areas.

104 (4) A person who satisfies the requirements set forth in  
105 subdivision (3) of this subsection shall be granted a formal  
106 document authorizing him or her to work in a public school in  
107 West Virginia.

108 (5) An approved alternative program provides essential  
109 knowledge and skills to alternative program teachers through the  
110 following phases of training:

111 (A) *Instruction.* -- The alternative preparation program shall  
112 provide a minimum of eighteen semester hours of instruction in  
113 the areas of student assessment; development and learning;  
114 curriculum; classroom management; the use of educational  
115 computers and other technology; and special education and  
116 diversity. All programs shall contain a minimum of three  
117 semester hours of instruction in special education and diversity  
118 out of the minimum eighteen required semester hours. Subject  
119 to the approval of the state board, an approved education  
120 provider may provide instruction equivalent to the eighteen  
121 semester hours required by this paragraph through nontraditional  
122 methods, including, but not limited to, methods such as a series  
123 of modules covering the various topics, electronically delivered  
124 instruction, summer sessions, professional development and  
125 job-embedded mentoring.



126           (B) *Phase I.* -- Phase I consists of a period of intensive,  
127 on-the-job supervision by an assigned mentor and the school  
128 administrator for a period of not fewer than two weeks. The  
129 assigned mentor shall meet the requirements for a beginning  
130 teacher internship mentor set forth in section two-b of this article  
131 and shall be paid the stipend authorized pursuant to that section.  
132 The state board shall provide, in its rule for the approval and  
133 operation of this program, requirements for the frequency and  
134 duration of time periods for the person holding an alternative  
135 certificate to observe in the classroom of the mentor. The person  
136 holding an alternative certificate shall be observed daily by the  
137 mentor or the school administrator during this phase. This phase  
138 includes an orientation to the policies, organization and  
139 curriculum of the employing district. The alternative program  
140 teacher shall receive formal instruction in those areas listed in  
141 paragraph (A) of this subdivision.

142           (C) *Phase II.* -- Phase II consists of a period of intensive,  
143 on-the-job supervision beginning the first day following the  
144 completion of Phase I and continuing for a period of at least ten  
145 weeks. During Phase II, the alternative program teacher is  
146 visited and critiqued at least one time per week by members of  
147 a professional support team, as defined in subdivision (6) of this  
148 subsection, and is observed by the appropriately certified  
149 members of the team at the end of five weeks and again at  
150 five-week intervals until the completion of this phase. At the  
151 completion of this phase, the alternative program teacher shall  
152 receive a formal evaluation by the principal. The alternative  
153 program teacher shall continue to receive formal instruction in  
154 those areas listed in paragraph (A), of this subdivision.

155           (D) *Phase III.* -- Phase III consists of an additional period of  
156 continued supervision and evaluation of no fewer than twenty  
157 weeks duration. The professional support team determines the  
158 requirements of this phase, but those requirements shall include  
159 at least one formal evaluation conducted at the completion of the  
160 phase by the principal. The alternative program teacher shall

161 continue to receive formal instruction in those areas listed in  
162 paragraph (A) of this subdivision, and shall be given  
163 opportunities to observe the teaching of experienced colleagues.

164 (6) *Professional support team.* --

165 (A) Training and supervision of alternative program  
166 teachers are provided by a professional support team comprised  
167 of a school principal, or his or her designee, an experienced  
168 classroom teacher who satisfies the requirements for mentor for  
169 the Beginning Educator Internship pursuant to section two-b of  
170 this article, a representative of the institution of higher education  
171 that is a part of the partnership that qualifies as an approved  
172 education provider as defined in subsection (a) of this section or  
173 an entity affiliated with that institution, and a curriculum  
174 supervisor or other central office administrator with certification  
175 and training relevant to the training and supervision of the  
176 alternative program candidate.

177 (B) Districts or schools which have been unable to establish  
178 a relationship with a college or university shall provide for  
179 comparable expertise on the team.

180 (C) The school principal, or his or her designee, serves as  
181 chairperson of the team.

182 (D) The duration of each of the three phases of the program  
183 specified in paragraphs (B), (C) and (D), subdivision (5) of this  
184 subsection, in excess of the minimum durations provided in  
185 those paragraphs, shall be determined by the professional  
186 support team within guidelines provided by the state board in its  
187 rule for the approval and operation of this program.

188 (E) In addition to other duties assigned to it under this  
189 section and section one-b of this article, the approved education  
190 provider shall submit a written evaluation of the alternative  
191 program teacher to the county superintendent. The written

192 evaluation shall be in a form specified by the county  
193 superintendent and submitted on a date specified by the county  
194 superintendent that is prior to the first Monday of May. The  
195 evaluation shall report the progress of the alternative program  
196 teacher toward meeting the academic and performance  
197 requirements of the program.

198 (F) The training for professional support team members may  
199 be coordinated and provided by the Center for Professional  
200 Development in coordination with the approved education  
201 provider as set forth in the plan approved by the state board  
202 pursuant to subdivision (8) of this subsection.

203 (7) In lieu of and as an alternative to the professional  
204 support team specified in subdivision (6) of this subsection and  
205 its specific duties throughout the program phases as set forth in  
206 subdivision (5) of this section, a school or school district that has  
207 implemented a comprehensive beginning teacher induction  
208 program may, subject to the approval of the state board, provide  
209 for the training and supervision of alternative program teachers  
210 using a structure consistent with the structure implemented for  
211 the support, supervision and mentoring of beginning teachers:  
212 *Provided*, That all final decisions on the progress of the  
213 alternative program teacher and recommendations upon program  
214 completion shall rest with the principal.

215 (8) An approved education provider seeking approval for an  
216 alternative certification program shall submit a plan to the state  
217 board.

218 (A) No alternative certification program may be  
219 implemented prior to receiving state board approval.

220 (B) Each plan shall describe how the proposed training  
221 program will accomplish the key elements of an alternative  
222 program for the education of teachers as set forth in this section.

223           (d) *Alternative highly qualified special education teacher*  
224 *education program.* --

225           (1) These programs are separate from the programs  
226 established under the other provisions of this section and are  
227 applicable only to teachers who have at least a bachelor's  
228 degree in a program for the preparation of teachers from a  
229 regionally accredited institution of higher education.

230           (2) These programs are subject to the other provisions of  
231 this section only to the extent specifically provided in the  
232 rule.

233           (3) These programs may be an alternative to the regular  
234 college and university programs for the education of special  
235 education teachers and also may address the content area  
236 preparation of certified special education teachers.

237           (4) The programs shall incorporate professional  
238 development to the maximum extent possible to help teachers  
239 who are currently certified in special education to obtain the  
240 required content area preparation.

241           (5) Participation in an alternative education program  
242 pursuant to this subsection may not affect any rights,  
243 privileges or benefits to which the participant otherwise  
244 would be entitled as a regular employee and may not alter  
245 any rights, privileges or benefits of participants on continuing  
246 contract status.

247           (e) *Additional alternative education program to prepare*  
248 *highly qualified special education teachers.* --

249           (1) These programs are separate from the programs  
250 established under the other provisions of this section and are  
251 applicable only to persons who hold a bachelor's degree from  
252 a regionally accredited institution of higher education.

253           (2) These programs are subject to the other provisions of  
254 this section only to the extent specifically provided in the  
255 rule.

256           (3) These programs may be an alternative to the regular  
257 college and university programs for the education of special  
258 education teachers and also may address the content area  
259 preparation of these persons.

**§18A-3-1b. Recommendation for certification of alternative  
program teachers.**

1           At the conclusion of an alternative teacher education  
2 program, the approved education provider shall prepare a  
3 comprehensive evaluation report on the alternative program  
4 teacher's performance. This report shall be submitted directly  
5 to the State Superintendent of Schools and shall contain a  
6 recommendation as to whether or not a professional certificate  
7 should be issued to the alternative program teacher. The report  
8 shall be made on standard forms developed by the State  
9 Superintendent.

10           The comprehensive evaluation report shall include one of  
11 the following recommendations:

12           (1) Approved: Recommends issuance of a professional  
13 certificate;

14           (2) Insufficient: Recommends that a professional  
15 certificate not be issued but that the candidate be allowed to  
16 seek reentry on one or more occasions in the future into an  
17 approved alternative teacher education program; or

18           (3) Disapproved: Recommends that a professional  
19 certificate not be issued and that the candidate not be allowed  
20 to enter into another approved alternative teacher education  
21 program in this state, but shall not be prohibited from pursuing  
22 teacher certification through other approved programs for the  
23 education of teachers in this state.

24 The approved education provider shall provide the  
25 alternative program teacher with a copy of the alternative  
26 program teacher's written evaluation report and certification  
27 recommendation before submitting it to the state  
28 superintendent. If the alternative program teacher disagrees  
29 with the provider's recommendation, the alternative program  
30 teacher may, within fifteen days of receipt, request an appeal  
31 in accordance with the certification appeals process  
32 established by the State Board of Education.

**§18A-3-12. Technology integration specialists.**

1 The Legislature finds that technology integration  
2 specialists are becoming more crucial as technology plays a  
3 continuously increasing role in the education of students. In  
4 order to address the need for more technology integration  
5 specialists, the teacher preparation programs in this state shall  
6 cooperate with the state board to ensure that:

7 (1) A portion of the technology integration hours required  
8 to apply for the Advanced Credential endorsed for  
9 Technology Integration Specialist is offered at each teacher  
10 preparation program while students are still working toward  
11 their teaching degree;

12 (2) Teacher education program students are aware of the  
13 option of attaining a Technology Integration Specialist  
14 Advanced Credential and Temporary Authorization early  
15 enough so that they can take advantage of the hours offered; and

16 (3) Alternative education programs are established by the  
17 teacher preparation programs to assist teachers who have  
18 already received their teaching certification attain the  
19 required hours necessary to earn a Technology Integration  
20 Specialist Advanced Credential. These alternative education  
21 programs are separate from programs required to be  
22 established by section one-a of this article.

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**CHAPTER 168**

**(Com. Sub. for S. B. 221 - By Senators Beach,  
Kessler, Mr. President, Miller and Stollings)**

[Passed February 29, 2012; in effect July 1, 2012.]  
[Approved by the Governor on March 12, 2012.]

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  
2 two, chapter eighteen of this code, through this project the  
3 Center for Professional Development shall:

4 (1) Identify, coordinate, arrange and otherwise assist in  
5 the delivery of professional development programs and  
6 activities that help professional educators acquire the  
7 knowledge, skills, attitudes, practices and other such  
8 pertinent complements considered essential for an individual  
9 to demonstrate appropriate performance as a professional  
10 person in the public schools of West Virginia. The basis for

11 the performance shall be the laws, policies and regulations  
12 adopted for the public schools of West Virginia, and  
13 amendments thereto. The center also may permit and  
14 encourage school personnel such as classroom aides, higher  
15 education teacher education faculty and higher education  
16 faculty in programs such as articulated tech prep associate  
17 degree and other programs to participate in appropriate  
18 professional development programs and activities with public  
19 school professional educators;

20 (2) Identify, coordinate, arrange and otherwise assist in  
21 the delivery of professional development programs and  
22 activities that help principals and administrators acquire  
23 knowledge, skills, attitudes and practices in academic  
24 leadership and management principles for principals and  
25 administrators and such other pertinent complements  
26 considered essential for principals and administrators to  
27 demonstrate appropriate performance in the public schools of  
28 West Virginia. The basis for the performance shall be the  
29 laws, policies and regulations adopted for the public schools  
30 of West Virginia, and amendments thereto;

31 (3) Serve in a coordinating capacity to assure that the  
32 knowledge, skills, attitude and other pertinent complements  
33 of appropriate professional performance which evolve over  
34 time in the public school environment are appropriately  
35 reflected in the programs approved for the education of  
36 professional personnel, including, but not limited to, advising  
37 the teacher education programs of major statutory and policy  
38 changes in the public schools which affect the job  
39 performance requirements of professional educators,  
40 including principals and administrators;

41 (4) Provide for the routine updating of professional skills  
42 of professional educators, including principals and  
43 administrators, through in-service and other programs. The  
44 routine updating may be provided by the center through



45 statewide or regional institutes which may require a  
46 registration fee;

47 (5) Provide for the routine education of all professional  
48 educators, including principals and administrators, and those  
49 service personnel having direct contact with students on  
50 warning signs and resources to assist in suicide prevention  
51 under guidelines established by the state board. The  
52 education may be accomplished through self review of  
53 suicide prevention materials and resources approved by the  
54 state board. The provisions of this paragraph may be known  
55 and cited as the “Jason Flatt Act of 2012”;

56 (6) Provide consultation and assistance to county staff  
57 development councils established under the provisions of  
58 section eight, article three of this chapter in planning,  
59 designing, coordinating, arranging for and delivering  
60 professional development programs to meet the needs of the  
61 professional educators of their district. From legislative  
62 appropriations to the center, exclusive of the amounts  
63 required for the expenses of the principals academy, the  
64 center shall, unless otherwise directed by the Legislature,  
65 provide assistance in the delivery of programs and activities  
66 to meet the expressed needs of the school districts for  
67 professional development to help teachers, principals and  
68 administrators demonstrate appropriate performance based on  
69 the laws, policies and regulations adopted for the public  
70 schools of West Virginia; and

71 (7) Cooperate and coordinate with the institutions of  
72 higher education to provide professional staff development  
73 programs that satisfy some or all of the criteria necessary for  
74 currently certified professional educators to meet the  
75 requirements for an additional endorsement in an area of  
76 certification and for certification to teach in the middle school  
77 grades.

78 If the center is not able to reach agreement with the  
79 representatives of the institutions providing teacher education  
80 programs on which courses will be approved for credit  
81 toward additional endorsements, the state board may certify  
82 certain professional staff development courses to meet criteria  
83 required by the state board. This certification shall be done  
84 on a course by course basis.

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## 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.**

1 (a) Beginning July 1, 2011, and continuing thereafter,  
 2 each teacher shall receive the amount prescribed in the State  
 3 Minimum Salary Schedule as set forth in this section, specific  
 4 additional amounts prescribed in this section or article and  
 5 any county supplement in effect in a county pursuant to  
 6 section five-a of this article during the contract year.

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STATE MINIMUM SALARY SCHEDULE

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
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Years	4th	3rd	2nd	A.B.		M.A.	M.A.	M.A.	M.A.	Doc-
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Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate
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0	26,917	27,606	27,872	29,315	30,076	31,843	32,604	33,365	34,126	35,161
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1	27,245	27,934	28,200	29,833	30,594	32,362	33,123	33,883	34,644	35,679
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13

2	27,574	28,262	28,528	30,352	31,113	32,880	33,641	34,402	35,163	36,198
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14

3	27,902	28,590	28,856	30,871	31,631	33,399	34,160	34,920	35,681	36,716
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4	28,474	29,162	29,428	31,633	32,394	34,162	34,923	35,683	36,444	37,479
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5	28,802	29,490	29,756	32,152	32,913	34,680	35,441	36,202	36,963	37,998
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6	29,130	29,818	30,084	32,670	33,431	35,199	35,960	36,720	37,481	38,516
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7	29,458	30,147	30,412	33,189	33,950	35,717	36,478	37,239	38,000	39,035
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8	29,786	30,475	30,741	33,707	34,468	36,236	36,997	37,757	38,518	39,553
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9	30,114	30,803	31,069	34,226	34,987	36,754	37,515	38,276	39,037	40,072
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10	30,443	31,131	31,397	34,746	35,506	37,274	38,035	38,796	39,556	40,591
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11	30,771	31,459	31,725	35,264	36,025	37,793	38,553	39,314	40,075	41,110
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12	31,099	31,787	32,053	35,783	36,543	38,311	39,072	39,833	40,593	41,628
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13	31,427	32,115	32,381	36,301	37,062	38,830	39,590	40,351	41,112	42,147
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STATE MINIMUM SALARY SCHEDULE

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(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Years	4th	3rd	2nd		A.B.		M.A.	M.A.	M.A.	Doc-
Exp.	Class	Class	Class	A.B.	+15	M.A.	+15	+30	+45	torate

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14	31,755	32,443	32,709	36,820	37,580	39,348	40,109	40,870	41,630	42,665
15	32,083	32,771	33,037	37,338	38,099	39,867	40,627	41,388	42,149	43,184
16	32,411	33,099	33,365	37,857	38,617	40,385	41,146	41,907	42,667	43,702
17	32,739	33,428	33,693	38,375	39,136	40,904	41,665	42,425	43,186	44,221
18	33,067	33,756	34,022	38,894	39,655	41,422	42,183	42,944	43,705	44,740
19	33,395	34,084	34,350	39,412	40,173	41,941	42,702	43,462	44,223	45,258
20	33,723	34,412	34,678	39,931	40,692	42,459	43,220	43,981	44,742	45,777
21	34,052	34,740	35,006	40,449	41,210	42,978	43,739	44,499	45,260	46,295
22	34,380	35,068	35,334	40,968	41,729	43,496	44,257	45,018	45,779	46,814
23	34,708	35,396	35,662	41,487	42,247	44,015	44,776	45,536	46,297	47,332
24	35,036	35,724	35,990	42,005	42,766	44,534	45,294	46,055	46,816	47,851
25	35,364	36,052	36,318	42,524	43,284	45,052	45,813	46,574	47,334	48,369
26	35,692	36,380	36,646	43,042	43,803	45,571	46,331	47,092	47,853	48,888
27	36,020	36,708	36,974	43,561	44,321	46,089	46,850	47,611	48,371	49,406
28	36,348	37,037	37,302	44,079	44,840	46,608	47,368	48,129	48,890	49,925
29	36,676	37,365	37,631	44,598	45,358	47,126	47,887	48,648	49,408	50,443
30	37,004	37,693	37,959	45,116	45,877	47,645	48,405	49,166	49,927	50,962
31	37,333	38,021	38,287	45,635	46,396	48,163	48,924	49,685	50,445	51,480
32	37,661	38,349	38,615	46,153	46,914	48,682	49,443	50,203	50,964	51,999
33	37,989	38,677	38,943	46,672	47,433	49,200	49,961	50,722	51,483	52,518
34	38,317	39,005	39,271	47,190	47,951	49,719	50,480	51,240	52,001	53,036
35	38,645	39,333	39,599	47,709	48,470	50,237	50,998	51,759	52,520	53,555

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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

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54 in the applicable state minimum salary schedule; (ii) shall be  
55 paid in equal monthly installments; and (iii) shall be  
56 considered a part of the state minimum salaries for teachers.

57 (c) To meet the objective of salary equity among the  
58 counties as set forth in section five of this article, each  
59 teacher shall be paid an equity supplement amount as  
60 applicable for his or her classification of certification or  
61 classification of training and years of experience as follows,  
62 subject to the provisions of that section:

63 (1) For “4th Class” at zero years of experience, \$1,781.  
64 An additional \$38 shall be paid for each year of experience  
65 up to and including thirty-five years of experience;

66 (2) For “3rd Class” at zero years of experience, \$1,796.  
67 An additional \$67 shall be paid for each year of experience  
68 up to and including thirty-five years of experience;

69 (3) For “2nd Class” at zero years of experience, \$1,877.  
70 An additional \$69 shall be paid for each year of experience  
71 up to and including thirty-five years of experience;

72 (4) For “A. B.” at zero years of experience, \$2,360. An  
73 additional \$69 shall be paid for each year of experience up to  
74 and including thirty-five years of experience;

75 (5) For “A. B. + 15” at zero years of experience, \$2,452.  
76 An additional \$69 shall be paid for each year of experience  
77 up to and including thirty-five years of experience;

78 (6) For “M. A.” at zero years of experience, \$2,644. An  
79 additional \$69 shall be paid for each year of experience up to  
80 and including thirty-five years of experience;

81 (7) For “M. A. + 15” at zero years of experience, \$2,740.  
82 An additional \$69 shall be paid for each year of experience  
83 up to and including thirty-five years of experience;

84 (8) For “M. A. + 30” at zero years of experience, \$2,836.  
85 An additional \$69 shall be paid for each year of experience  
86 up to and including thirty-five years of experience;

87 (9) For “M. A. + 45” at zero years of experience, \$2,836.  
88 An additional \$69 shall be paid for each year of experience  
89 up to and including thirty-five years of experience; and

90 (10) For “Doctorate” at zero years of experience, \$2,927.  
91 An additional \$69 shall be paid for each year of experience  
92 up to and including thirty-five years of experience.

93 These payments: (i) Shall be in addition to any amounts  
94 prescribed in the applicable State Minimum Salary Schedule,  
95 any specific additional amounts prescribed in this section and  
96 article and any county supplement in effect in a county  
97 pursuant to section five-a of this article; (ii) shall be paid in  
98 equal monthly installments; and (iii) shall be considered a  
99 part of the state minimum salaries for teachers.

**§18A-4-5. Salary equity among the counties; state salary supplement.**

1 (a) For the purposes of this section, salary equity among  
2 the counties means that the salary potential of school  
3 employees employed by the various districts throughout the  
4 state does not differ by greater than ten percent between those  
5 offering the highest salaries and those offering the lowest  
6 salaries. In the case of professional educators, the difference  
7 shall be calculated using the average of the professional  
8 educator salary schedules, degree classifications B. A.  
9 through doctorate and the years of experience provided in the  
10 most recent state minimum salary schedule for teachers, in  
11 effect in the ten counties offering the highest salary schedules  
12 compared to the lowest salary schedule in effect among the  
13 fifty-five counties. In the case of school service personnel,  
14 the difference shall be calculated utilizing the average of the  
15 school service personnel salary schedules, pay grades A

16 through H and the years of experience provided in the most  
17 recent state minimum pay scale pay grade for service  
18 personnel, in effect in the ten counties offering the highest  
19 salary schedules compared to the lowest salary schedule in  
20 effect among the fifty-five counties.

21 (b) To meet the objective of salary equity among the  
22 counties, as defined in subsection (a) of this section, on and  
23 after July 1, 1984, subject to available state appropriations  
24 and the conditions set forth herein, each teacher and school  
25 service personnel shall receive an equity supplement amount  
26 as specified in sections two and eight-a, respectively, of this  
27 article in addition to the amount from the state minimum  
28 salary schedules provided in those sections.

29 (c) State funds for this purpose shall be paid within the  
30 West Virginia public school support plan in accordance with  
31 article nine-a, chapter eighteen of this code. The amount  
32 allocated for salary equity shall be apportioned between  
33 teachers and school service personnel in direct proportion to  
34 that amount necessary to support the professional salaries and  
35 service personnel salaries statewide under sections four, five  
36 and eight, article nine-a, chapter eighteen of this code. In the  
37 event the Department of Education determines that the  
38 objective of salary equity among the counties has not been  
39 met, it shall include in its budget request for the public school  
40 support plan for the next school year a request for funding  
41 sufficient to meet the objective of salary equity through an  
42 across-the-board increase in the equity supplement amount of  
43 the affected class of employees.

44 (d) Pursuant to this section, each teacher and service  
45 person shall receive from state funds the equity supplement  
46 amount indicated in subsection (c), section two and  
47 subsection (f), section eight-a of this article, as applicable,  
48 reduced by any amount provided by the county as a salary  
49 supplement for teachers and school service personnel on  
50 January 1, 1984.

51 (e) The amount received pursuant to this section shall not  
 52 be decreased as a result of any county supplement increase  
 53 instituted after January 1, 1984: *Provided*, That any amount  
 54 received pursuant to this section may be reduced  
 55 proportionately based upon the amount of funds appropriated  
 56 for this purpose. No county may reduce any salary  
 57 supplement that was in effect on January 1, 1984, except as  
 58 permitted by sections five-a and five-b of this article.

**§18A-4-8a. Service personnel minimum monthly salaries.**

1 (a) The minimum monthly pay for each service employee  
 2 shall be as follows:

3 (1) Beginning July 1, 2011, and continuing thereafter, the  
 4 minimum monthly pay for each service employee whose  
 5 employment is for a period of more than three and one-half  
 6 hours a day shall be at least the amounts indicated in the State  
 7 Minimum Pay Scale Pay Grade and the minimum monthly  
 8 pay for each service employee whose employment is for a  
 9 period of three and one-half hours or less a day shall be at  
 10 least one half the amount indicated in the State Minimum Pay  
 11 Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE									
Years	Pay Grade								
Exp.	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>	
0	1,627	1,648	1,689	1,741	1,793	1,855	1,886	1,958	
1	1,659	1,680	1,721	1,773	1,825	1,887	1,918	1,990	
2	1,691	1,712	1,753	1,805	1,857	1,919	1,950	2,022	
3	1,723	1,744	1,785	1,837	1,889	1,951	1,982	2,054	
4	1,755	1,776	1,817	1,869	1,921	1,983	2,014	2,087	
5	1,787	1,808	1,849	1,901	1,953	2,015	2,046	2,119	



21		STATE MINIMUM PAY SCALE PAY GRADE							
22	Years								
23	Exp.	Pay Grade							
		<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
24	6	1,819	1,840	1,882	1,933	1,985	2,047	2,078	2,151
25	7	1,852	1,872	1,914	1,965	2,017	2,079	2,110	2,183
26	8	1,884	1,904	1,946	1,997	2,049	2,111	2,142	2,215
27	9	1,916	1,936	1,978	2,030	2,081	2,143	2,174	2,247
28	10	1,948	1,969	2,010	2,062	2,113	2,176	2,207	2,279
29	11	1,980	2,001	2,042	2,094	2,145	2,208	2,239	2,311
30	12	2,012	2,033	2,074	2,126	2,178	2,240	2,271	2,343
31	13	2,044	2,065	2,106	2,158	2,210	2,272	2,303	2,375
32	14	2,076	2,097	2,138	2,190	2,242	2,304	2,335	2,407
33	15	2,108	2,129	2,170	2,222	2,274	2,336	2,367	2,439
34	16	2,140	2,161	2,202	2,254	2,306	2,368	2,399	2,472
35	17	2,172	2,193	2,235	2,286	2,338	2,400	2,431	2,504
36	18	2,204	2,225	2,267	2,318	2,370	2,432	2,463	2,536
37	19	2,237	2,257	2,299	2,350	2,402	2,464	2,495	2,568
38	20	2,269	2,289	2,331	2,383	2,434	2,496	2,527	2,601
39	21	2,301	2,321	2,363	2,415	2,466	2,528	2,559	2,634
40	22	2,333	2,354	2,395	2,447	2,498	2,561	2,593	2,666
41	23	2,365	2,386	2,427	2,479	2,531	2,594	2,625	2,699
42	24	2,397	2,418	2,459	2,511	2,563	2,627	2,658	2,732
43	25	2,429	2,450	2,491	2,543	2,596	2,659	2,691	2,764
44	26	2,461	2,482	2,523	2,576	2,629	2,692	2,723	2,797
45	27	2,493	2,514	2,555	2,608	2,661	2,724	2,756	2,829
46	28	2,525	2,546	2,588	2,641	2,694	2,757	2,789	2,863

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SCHOOL PERSONNEL

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47

STATE MINIMUM PAY SCALE PAY GRADE

48

Years

49

Exp.

Pay Grade

A      B      C      D      E      F      G      H

50

29

2,557

2,579

2,621

2,673

2,726

2,790

2,821

2,896

51

30

2,591

2,611

2,654

2,706

2,759

2,822

2,854

2,928

52

31

2,623

2,644

2,687

2,739

2,792

2,855

2,887

2,961

53

32

2,656

2,676

2,719

2,772

2,824

2,888

2,919

2,994

54

33

2,689

2,709

2,752

2,805

2,857

2,920

2,953

3,026

55

34

2,721

2,743

2,785

2,838

2,890

2,954

2,986

3,059

56

35

2,754

2,775

2,817

2,870

2,923

2,987

3,018

3,092

57

36

2,787

2,808

2,850

2,903

2,956

3,019

3,051

3,124

58

37

2,819

2,841

2,883

2,936

2,989

3,052

3,083

3,157

59

38

2,852

2,873

2,915

2,968

3,021

3,084

3,116

3,190

60

39

2,885

2,906

2,948

3,001

3,054

3,117

3,149

3,222

61

40

2,917

2,939

2,980

3,033

3,087

3,150

3,181

3,256

62

(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:

63

64

65

66

CLASS TITLE

PAY GRADE

67

Accountant I . . . . . D

68

Accountant II . . . . . E

69

Accountant III . . . . . F

70

Accounts Payable Supervisor . . . . . G

71

Aide I . . . . . A

72

Aide II . . . . . B

73

Aide III . . . . . C

74	Aide IV . . . . .	D
75	Audiovisual Technician . . . . .	C
76	Auditor . . . . .	G
77	Autism Mentor . . . . .	F
78	Braille or Sign Language Specialist . . . . .	E
79	Bus Operator . . . . .	D
80	Buyer . . . . .	F
81	Cabinetmaker . . . . .	G
82	Cafeteria Manager . . . . .	D
83	Carpenter I . . . . .	E
84	Carpenter II . . . . .	F
85	Chief Mechanic . . . . .	G
86	Clerk I . . . . .	B
87	Clerk II . . . . .	C
88	Computer Operator . . . . .	E
89	Cook I . . . . .	A
90	Cook II . . . . .	B
91	Cook III . . . . .	C
92	Crew Leader . . . . .	F
93	Custodian I . . . . .	A
94	Custodian II . . . . .	B
95	Custodian III . . . . .	C
96	Custodian IV . . . . .	D
97	Director or Coordinator of Services . . . . .	H
98	Draftsman . . . . .	D
99	Electrician I . . . . .	F
100	Electrician II . . . . .	G
101	Electronic Technician I . . . . .	F
102	Electronic Technician II . . . . .	G
103	Executive Secretary . . . . .	G
104	Food Services Supervisor . . . . .	G
105	Foreman . . . . .	G
106	General Maintenance . . . . .	C
107	Glazier . . . . .	D
108	Graphic Artist . . . . .	D
109	Groundsman . . . . .	B
110	Handyman . . . . .	B

111	Heating and Air Conditioning Mechanic I . . . . .	E
112	Heating and Air Conditioning Mechanic II . . . . .	G
113	Heavy Equipment Operator . . . . .	E
114	Inventory Supervisor . . . . .	D
115	Key Punch Operator . . . . .	B
116	Licensed Practical Nurse . . . . .	F
117	Locksmith . . . . .	G
118	Lubrication Man . . . . .	C
119	Machinist . . . . .	F
120	Mail Clerk . . . . .	D
121	Maintenance Clerk . . . . .	C
122	Mason . . . . .	G
123	Mechanic . . . . .	F
124	Mechanic Assistant . . . . .	E
125	Office Equipment Repairman I . . . . .	F
126	Office Equipment Repairman II . . . . .	G
127	Painter . . . . .	E
128	Paraprofessional . . . . .	F
129	Payroll Supervisor . . . . .	G
130	Plumber I . . . . .	E
131	Plumber II . . . . .	G
132	Printing Operator . . . . .	B
133	Printing Supervisor . . . . .	D
134	Programmer . . . . .	H
135	Roofing/Sheet Metal Mechanic . . . . .	F
136	Sanitation Plant Operator . . . . .	G
137	School Bus Supervisor . . . . .	E
138	Secretary I . . . . .	D
139	Secretary II . . . . .	E
140	Secretary III . . . . .	F
141	Supervisor of Maintenance . . . . .	H
142	Supervisor of Transportation . . . . .	H
143	Switchboard Operator-Receptionist . . . . .	D
144	Truck Driver . . . . .	D
145	Warehouse Clerk . . . . .	C
146	Watchman . . . . .	B
147	Welder . . . . .	F
148	WVEIS Data Entry and Administrative Clerk . . . . .	B

149           (b) An additional \$12 per month shall be added to the  
150 minimum monthly pay of each service employee who holds  
151 a high school diploma or its equivalent.

152           (c) An additional \$11 per month also shall be added to the  
153 minimum monthly pay of each service employee for each of  
154 the following:

155           (1) A service employee who holds twelve college hours  
156 or comparable credit obtained in a trade or vocational school  
157 as approved by the state board;

158           (2) A service employee who holds twenty-four college  
159 hours or comparable credit obtained in a trade or vocational  
160 school as approved by the state board;

161           (3) A service employee who holds thirty-six college  
162 hours or comparable credit obtained in a trade or vocational  
163 school as approved by the state board;

164           (4) A service employee who holds forty-eight college  
165 hours or comparable credit obtained in a trade or vocational  
166 school as approved by the state board;

167           (5) A service employee who holds sixty college hours or  
168 comparable credit obtained in a trade or vocational school as  
169 approved by the state board;

170           (6) A service employee who holds seventy-two college  
171 hours or comparable credit obtained in a trade or vocational  
172 school as approved by the state board;

173           (7) A service employee who holds eighty-four college  
174 hours or comparable credit obtained in a trade or vocational  
175 school as approved by the state board;

176 (8) A service employee who holds ninety-six college  
177 hours or comparable credit obtained in a trade or vocational  
178 school as approved by the state board;

179 (9) A service employee who holds one hundred eight  
180 college hours or comparable credit obtained in a trade or  
181 vocational school as approved by the state board;

182 (10) A service employee who holds one hundred twenty  
183 college hours or comparable credit obtained in a trade or  
184 vocational school as approved by the state board;

185 (d) An additional \$40 per month also shall be added to  
186 the minimum monthly pay of each service employee for each  
187 of the following:

188 (1) A service employee who holds an associate's degree;

189 (2) A service employee who holds a bachelor's degree;

190 (3) A service employee who holds a master's degree;

191 (4) A service employee who holds a doctorate degree.

192 (e) An additional \$11 per month shall be added to the  
193 minimum monthly pay of each service employee for each of  
194 the following:

195 (1) A service employee who holds a bachelor's degree  
196 plus fifteen college hours;

197 (2) A service employee who holds a master's degree plus  
198 fifteen college hours;

199 (3) A service employee who holds a master's degree plus  
200 thirty college hours;

201 (4) A service employee who holds a master's degree plus  
202 forty-five college hours; and

203 (5) A service employee who holds a master's degree plus  
204 sixty college hours.

205 (f) To meet the objective of salary equity among the  
206 counties, each service employee shall be paid an equity  
207 supplement, as set forth in section five of this article, of \$152  
208 per month, subject to the provisions of that section. These  
209 payments: (i) Shall be in addition to any amounts prescribed  
210 in the applicable State Minimum Pay Scale Pay Grade, any  
211 specific additional amounts prescribed in this section and  
212 article and any county supplement in effect in a county  
213 pursuant to section five-b of this article; (ii) shall be paid in  
214 equal monthly installments; and (iii) shall be considered a  
215 part of the state minimum salaries for service personnel.

216 (g) When any part of a school service employee's daily  
217 shift of work is performed between the hours of six o'clock  
218 p. m. and five o'clock a. m. the following day, the employee  
219 shall be paid no less than an additional \$10 per month and  
220 one half of the pay shall be paid with local funds.

221 (h) Any service employee required to work on any legal  
222 school holiday shall be paid at a rate one and one-half times  
223 the employee's usual hourly rate.

224 (i) Any full-time service personnel required to work in  
225 excess of their normal working day during any week which  
226 contains a school holiday for which they are paid shall be  
227 paid for the additional hours or fraction of the additional  
228 hours at a rate of one and one-half times their usual hourly  
229 rate and paid entirely from county board funds.

230 (j) No service employee may have his or her daily work  
231 schedule changed during the school year without the

232 employee's written consent and the employee's required  
233 daily work hours may not be changed to prevent the payment  
234 of time and one-half wages or the employment of another  
235 employee.

236 (k) The minimum hourly rate of pay for extra duty  
237 assignments as defined in section eight-b of this article shall  
238 be no less than one seventh of the employee's daily total  
239 salary for each hour the employee is involved in performing  
240 the assignment and paid entirely from local funds: *Provided,*  
241 That an alternative minimum hourly rate of pay for  
242 performing extra duty assignments within a particular  
243 category of employment may be used if the alternate hourly  
244 rate of pay is approved both by the county board and by the  
245 affirmative vote of a two-thirds majority of the regular full-  
246 time employees within that classification category of  
247 employment within that county: *Provided, however,* That the  
248 vote shall be by secret ballot if requested by a service person  
249 within that classification category within that county. The  
250 salary for any fraction of an hour the employee is involved in  
251 performing the assignment shall be prorated accordingly.  
252 When performing extra duty assignments, employees who are  
253 regularly employed on a one-half day salary basis shall  
254 receive the same hourly extra duty assignment pay computed  
255 as though the employee were employed on a full-day salary  
256 basis.

257 (l) The minimum pay for any service personnel  
258 employees engaged in the removal of asbestos material or  
259 related duties required for asbestos removal shall be their  
260 regular total daily rate of pay and no less than an additional  
261 \$3 per hour or no less than \$5 per hour for service personnel  
262 supervising asbestos removal responsibilities for each hour  
263 these employees are involved in asbestos-related duties.  
264 Related duties required for asbestos removal include, but are  
265 not limited to, travel, preparation of the work site, removal of  
266 asbestos decontamination of the work site, placing and



267 removal of equipment and removal of structures from the site.  
268 If any member of an asbestos crew is engaged in asbestos  
269 related duties outside of the employee's regular employment  
270 county, the daily rate of pay shall be no less than the  
271 minimum amount as established in the employee's regular  
272 employment county for asbestos removal and an additional  
273 \$30 per each day the employee is engaged in asbestos  
274 removal and related duties. The additional pay for asbestos  
275 removal and related duties shall be payable entirely from  
276 county funds. Before service personnel employees may be  
277 used in the removal of asbestos material or related duties,  
278 they shall have completed a federal Environmental Protection  
279 Act approved training program and be licensed. The  
280 employer shall provide all necessary protective equipment  
281 and maintain all records required by the Environmental  
282 Protection Act.

283 (m) For the purpose of qualifying for additional pay as  
284 provided in section eight, article five of this chapter, an aide  
285 shall be considered to be exercising the authority of a  
286 supervisory aide and control over pupils if the aide is  
287 required to supervise, control, direct, monitor, escort or  
288 render service to a child or children when not under the direct  
289 supervision of a certified professional person within the  
290 classroom, library, hallway, lunchroom, gymnasium, school  
291 building, school grounds or wherever supervision is required.  
292 For purposes of this section, "under the direct supervision of  
293 a certified professional person" means that certified  
294 professional person is present, with and accompanying the  
295 aide.

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**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
- 2 competency tests for all of the classification titles defined in
- 3 section eight of this article and listed in section eight-a of this
- 4 article for service personnel. Each classification title defined
- 5 and listed is considered a separate classification category of
- 6 employment for service personnel and has a separate
- 7 competency test, except for those class titles having Roman
- 8 numeral designations, which are considered a single
- 9 classification of employment and have a single competency test.

10           (1) The cafeteria manager class title is included in the  
11 same classification category as cooks and has the same  
12 competency test.

13           (2) The executive secretary class title is included in the  
14 same classification category as secretaries and has the same  
15 competency test.

16           (3) The classification titles of chief mechanic, mechanic  
17 and assistant mechanic are included in one classification title  
18 and have the same competency test.

19           (b) The purpose of these tests is to provide county boards  
20 a uniform means of determining whether school service  
21 personnel who do not hold a classification title in a particular  
22 category of employment meet the definition of the  
23 classification title in another category of employment as  
24 defined in section eight of this article. Competency tests may  
25 not be used to evaluate employees who hold the classification  
26 title in the category of their employment.

27           (c) The competency test consists of an objective written  
28 or performance test, or both. Applicants may take the written  
29 test orally if requested. Oral tests are recorded mechanically  
30 and kept on file. The oral test is administered by persons  
31 who do not know the applicant personally.

32           (1) The performance test for all classifications and  
33 categories other than bus operator is administered by an  
34 employee of the county board or an employee of a  
35 multicounty vocational school that serves the county at a  
36 location designated by the superintendent and approved by  
37 the board. The location may be a vocational school that  
38 serves the county.

39           (2) A standard passing score is established by the state  
40 Department of Education for each test and is used by county  
41 boards.

42           (3) The subject matter of each competency test is  
43 commensurate with the requirements of the definitions of the  
44 classification titles as provided in section eight of this article.  
45 The subject matter of each competency test is designed in  
46 such a manner that achieving a passing grade does not require  
47 knowledge and skill in excess of the requirements of the  
48 definitions of the classification titles. Achieving a passing  
49 score conclusively demonstrates the qualification of an  
50 applicant for a classification title.

51           (4) Once an employee passes the competency test of a  
52 classification title, the applicant is fully qualified to fill  
53 vacancies in that classification category of employment as  
54 provided in section eight-b of this article and may not be  
55 required to take the competency test again.

56           (d) An applicant who fails to achieve a passing score is  
57 given other opportunities to pass the competency test when  
58 applying for another vacancy within the classification  
59 category.

60           (e) Competency tests are administered to applicants in a  
61 uniform manner under uniform testing conditions. County  
62 boards are responsible for scheduling competency tests,  
63 notifying applicants of the date and time of the one day of  
64 training prior to taking the test, and the date and time of the  
65 test. County boards may not use a competency test other than  
66 the test authorized by this section.

67           (f) When scheduling of the competency test conflicts with  
68 the work schedule of a school employee who has applied for  
69 a vacancy, the employee is excused from work to take the  
70 competency test without loss of pay.

71           (g) A minimum of one day of appropriate in-service  
72 training is provided to employees to assist them in preparing  
73 to take the competency tests.

74 (h) Competency tests are used to determine the  
75 qualification of new applicants seeking initial employment in  
76 a particular classification title as either a regular or substitute  
77 employee.

78 (i) Notwithstanding any provisions in this code to the  
79 contrary, once an employee holds or has held a classification  
80 title in a category of employment, that employee is  
81 considered qualified for the classification title even though  
82 that employee no longer holds that classification.

83 (j) The requirements of this section do not alter the  
84 definitions of class titles as provided in section eight of this  
85 article or the procedure and requirements of section eight-b  
86 of this article.

87 (k) Notwithstanding any other provision of this code to  
88 the contrary and notwithstanding any rules of the School  
89 Board concerning school bus operator certification, the  
90 certification test for school bus operators shall be required as  
91 follows, and school bus operators may not be required to take  
92 the certification test more frequently:

93 (1) For substitute school bus operators and for school bus  
94 operators with regular employee status but on a probationary  
95 contract, the certification test shall be administered annually;

96 (2) For school bus operators with regular employee status  
97 and continuing contract status, the certification test shall be  
98 administered triennially; and

99 (3) For substitute school bus operators who are retired  
100 from a county board and who at the time of retirement had  
101 ten years of experience as a regular full-time bus operator, the  
102 certification test shall be administered triennially.

103 (4) *School bus operator certificate.* —

104 (A) A school bus operator certificate may be issued to a  
105 person who has attained the age of twenty-one, completed the  
106 required training set forth in State Board rule, and met the  
107 physical requirements and other criteria to operate a school  
108 bus set forth in State Board rule.

109 (B) The State Superintendent may, after ten days' notice  
110 and upon proper evidence, revoke the certificate of any bus  
111 operator for any of the following causes:

112 (i) Intemperance, untruthfulness, cruelty or immorality;

113 (ii) Conviction of or guilty plea or plea of no contest to a  
114 felony charge;

115 (iii) Conviction of or guilty plea or plea of no contest to  
116 any charge involving sexual misconduct with a minor or a  
117 student;

118 (iv) Just and sufficient cause for revocation as specified  
119 by State Board rule; and

120 (v) Using fraudulent, unapproved or insufficient credit to  
121 obtain the certificates.

122 (vi) Of the causes for certificate revocation listed in this  
123 paragraph (B), the following causes constitute grounds for  
124 revocation only if there is a rational nexus between the  
125 conduct of the bus operator and the performance of the job:

126 (I) Intemperance, untruthfulness, cruelty or immorality;

127 (II) Just and sufficient cause for revocation as specified  
128 by State Board rule; and

129 (III) Using fraudulent, unapproved or insufficient credit  
130 to obtain the certificate.

131 (C) The certificate of a bus operator may not be revoked  
132 for either of the following unless it can be proven by clear  
133 and convincing evidence that the bus operator has committed  
134 one of the offenses listed in this subsection and his or her  
135 actions render him or her unfit to operate a school bus:

136 (i) Any matter for which the bus operator was disciplined,  
137 less than dismissal, by the employing county board; or

138 (ii) Any matter for which the bus operator is meeting or  
139 has met an improvement plan determined by the county  
140 board.

141 (D) The State Superintendent shall designate a review  
142 panel to conduct hearings on certificate revocations or denials  
143 and make recommendations for action by the State  
144 Superintendent. The State Board, after consultation with  
145 employee organizations representing school service  
146 personnel, shall promulgate a rule to establish the review  
147 panel membership and composition, method of appointment,  
148 governing principles and meeting schedule.

149 (E) It is the duty of any county superintendent who  
150 knows of any acts on the part of a bus operator for which a  
151 certificate may be revoked in accordance with this section to  
152 report the same, together with all the facts and evidence, to  
153 the State Superintendent for such action as in the State  
154 Superintendent's judgment may be proper.

155 (F) If a certificate has been granted through an error,  
156 oversight or misinformation, the State Superintendent may  
157 recall the certificate and make such corrections as will  
158 conform to the requirements of law and State Board rules.

159 (5) The State Board shall promulgate in accordance with  
160 article three-b, chapter twenty-nine-a of this code, revised  
161 rules in compliance with this subsection.

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**CHAPTER 171**

**(Com. Sub. for S. B. 528 - By Senators Snyder,  
Kessler, Mr. President, Unger, Palumbo, Browning,  
Laird, D. Facemire, Edgell, Miller, K. Facemyer,  
Jenkins, Kirkendoll, Foster and Beach)**

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

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.**

1           (a) For the purposes of this section, the following terms  
2     have the following meanings.

3           (1) “Business registration certificate” has the same  
4     meaning ascribed to it in section two, article twelve, chapter  
5     eleven of this code.

6           (2) “Purchaser” means any person in the business of  
7     purchasing scrap metal or used auto parts, any salvage yard  
8     owner or operator, or any public or commercial recycling  
9     facility owner or operator, or any agent or employee thereof,  
10    who purchases any form of scrap metal or used auto parts.

11          (3) “Scrap metal” means any form of copper, aluminum,  
12     brass, lead or other nonferrous metal of any kind, a catalytic  
13     converter or any materials derived from a catalytic converter,  
14     or steel railroad track and track material.

15          (b) In addition to any requirement necessary to do  
16     business in this state, a scrap metal dealer shall:

17          (1) Have a current valid business registration certificate  
18     from the Tax Commissioner;

19          (2) Register any scales used for weighing scrap metal  
20     with the Division of Labor Weights and Measures office;

21          (3) Provide a notice of recycling activity to the  
22     Department of Environmental Protection; and

23           (4) Register as a scrap metal dealer with the Secretary of  
24 State, who is hereby directed to maintain a list of scrap metal  
25 dealers and make it publically available. The list shall  
26 include the dealer's business address, hours of operation,  
27 physical address, phone number, facsimile number, if any,  
28 and the name of the owners or principal officers of the  
29 business.

30           (c) Any purchaser of scrap metal shall make a record of  
31 such purchase that shall contain the following information for  
32 each transaction:

33           (1) The full name, permanent home and business  
34 addresses and telephone number, if available, of the seller;

35           (2) A description and the motor vehicle license number  
36 of any vehicle used to transport the purchased scrap metal to  
37 the place of purchase;

38           (3) The time and date of the transaction;

39           (4) A complete description of the kind, character and  
40 weight of the scrap metal purchased; and

41           (5) A statement of whether the scrap metal was  
42 purchased, taken as collateral for a loan or taken on  
43 consignment.

44           (d) A purchaser also shall require and retain from the  
45 seller of the scrap metal the following:

46           (1) A signed certificate of ownership of the scrap metal  
47 being sold or a signed authorization from the owner of the  
48 scrap metal to sell said scrap metal; and

49           (2) A photocopy of a valid driver's license or  
50 identification card issued by the West Virginia Division of

51 Motor Vehicles of the person delivering the scrap metal, or  
52 in lieu thereof, any other valid photo identification of the  
53 seller issued by any other state or the federal government:  
54 *Provided*, That, if the purchaser has a copy of the seller's  
55 valid photo identification on file, the purchaser may reference  
56 the identification that is on file, without making a separate  
57 photocopy for each transaction.

58 (e) It is unlawful for any purchaser to purchase any scrap  
59 metal without obtaining and recording the information  
60 required under subsections (c) and (d) of this section. The  
61 provisions of this subsection do not apply to purchases made  
62 at wholesale under contract or as a result of a bidding  
63 process: *Provided*, That the purchaser retains and makes  
64 available for review consistent with subsection (g) of this  
65 section the contract, bill of sale or similar documentation of  
66 the purchase made at wholesale under contract or as a result  
67 of a bidding process: *Provided, however*, That the purchaser  
68 may redact any pricing or other commercially sensitive  
69 information from said contract, bill of sale or similar  
70 documentation before making it available for inspection.

71 (f) No purchaser of scrap metal may knowingly purchase  
72 or possess a stainless steel or aluminum beer keg, whether  
73 damaged or undamaged, or any reasonably recognizable part  
74 thereof, for the intended purpose of reselling as scrap metal  
75 unless the purchaser receives the keg or keg parts from the  
76 beer manufacturer or its authorized representative.

77 (g) Using a form provided by the West Virginia State  
78 Police, or his or her own form, a purchaser of scrap metal  
79 shall retain the records required by this section at his or her  
80 place of business for not less than three years after the date of  
81 the purchase. Upon completion of a purchase, the records  
82 required to be retained at a purchaser's place of business shall  
83 be available for inspection by any law-enforcement officer or,  
84 upon written request and during the purchaser's regular

85 business hours, by any investigator employed by a public  
86 utility or railroad to investigate the theft of public utility or  
87 railroad property: *Provided*, That in lieu of the purchaser  
88 keeping the records at their place of business, the purchaser  
89 shall file the records with the local detachment of the State  
90 Police and with the chief of police of the municipality or the  
91 sheriff of the county wherein he or she is transacting business  
92 within seventy-two hours of completion of the purchase. The  
93 records shall be retained by the State Police and the chief of  
94 police of the municipality or the sheriff for a period of not  
95 less than three years.

96 (h) To the extent otherwise permitted by law, any  
97 investigator employed by a public utility or railroad to  
98 investigate the theft of public utility or railroad property may  
99 accompany a law-enforcement officer upon the premises of  
100 a purchaser in the execution of a valid warrant or assist law  
101 enforcement in the review of records required to be retained  
102 pursuant to this section.

103 (i) Upon the entry of a final determination and order by  
104 a court of competent jurisdiction, scrap metal found to have  
105 been misappropriated, stolen or taken under false pretenses  
106 may be returned to the proper owner of such material.

107 (j) Nothing in this section applies to scrap purchases by  
108 manufacturing facilities that melt, or otherwise alter the form  
109 of scrap metal and transform it into a new product or to the  
110 purchase or transportation of food and beverage containers or  
111 other nonindustrial materials having a marginal value per  
112 individual unit.

113 (k) (1) Nothing in this section applies to a purchaser of a  
114 vehicle on which a catalytic converter is installed, a  
115 purchaser of a catalytic converter intended for installation on  
116 a vehicle owned or leased by the purchaser, or any person  
117 who purchases, other than for purposes of resale, a catalytic

118 converter or a motor vehicle on which a catalytic converter  
119 is installed, for personal, family, household or business use.

120 (2) In transactions not exempted by subdivision (1) of this  
121 subsection, any person delivering five or more automobile  
122 catalytic converters to a scrap metal dealer shall, in addition  
123 to the requirements set forth in subsection (c) of this section,  
124 execute a document stating he or she is the lawful owner of  
125 the catalytic converters, or authorized by the lawful owner to  
126 sell the catalytic converters. Next to his or her signature he  
127 or she shall place a clear impression of his or her index finger  
128 or thumb that is in ink and free of smearing. This  
129 documentation shall be maintained consistent with subsection  
130 (c) of this section.

131 (1) Any person who knowingly or with fraudulent intent  
132 violates any provision of this section for which no penalty is  
133 specifically set forth, including the knowing failure to make  
134 a report or the knowing falsification of any required  
135 information, is guilty of a misdemeanor and, upon conviction  
136 of a first offense thereof, shall be fined not less than \$1,000  
137 nor more than \$3,000; upon conviction of a second offense  
138 thereof, shall be fined not less than \$2,000 and not more than  
139 \$4,000 and, notwithstanding the provisions of section five,  
140 article twelve, chapter eleven of this code, the court in which  
141 the conviction occurred shall issue an order directing the Tax  
142 Commissioner to suspend for a period of six months any  
143 business registration certificate held by that person; and upon  
144 conviction of a third or subsequent offense thereof shall be  
145 fined not less than \$3,000 and not more than \$5,000 and,  
146 notwithstanding the provisions of section five, article twelve,  
147 chapter eleven of this code, the court in which the conviction  
148 occurred shall issue an order directing the Tax Commissioner  
149 to cancel any business registration certificate held by that  
150 person and state the date said cancellation shall take effect.

151 (m) No person may have or take possession of any scrap  
152 metal that he or she knows, or has reason to know, has been  
153 stolen or unlawfully obtained. Any person violating this  
154 subsection is guilty of larceny.

155 (n) No scrap metal dealer may purchase, possess or  
156 receive scrap metal that the scrap metal dealer knows, or has  
157 reason to know, has been stolen or unlawfully obtained by  
158 the seller. Any person violating this subsection is guilty of  
159 larceny.

160 (o) No scrap metal dealer may purchase, possess or  
161 receive any of the following items of scrap metal, or any  
162 reasonably recognizable part thereof, without obtaining  
163 written documentation which reflects that the seller is  
164 authorized to possess and sell the item or items and that the  
165 seller is in lawful possession of the item of scrap metal:

166 (1) Utility access covers;

167 (2) Street light poles or fixtures;

168 (3) Road or bridge guard rails;

169 (4) Water meter covers;

170 (5) Highway or street signs;

171 (6) Traffic directional or traffic control signs;

172 (7) Traffic light signals;

173 (8) Any metal marked with any form of the name or  
174 initials of a governmental entity;

175 (9) Property marked as or readily identifiable as owned  
176 by a telephone, cable, electric, water or other utility provider;

- 177       (10) Property owned and marked by a railroad;
- 178       (11) Cemetery markers or vases;
- 179       (12) Historical markers;
- 180       (13) Utility manhole covers and storm water grates; and
- 181       (14) Fire hydrant or fire hydrant caps; or
- 182       (15) Twisted pair copper telecommunications wiring of  
183 twenty-five pair or greater in nineteen, twenty-two, twenty-  
184 four or twenty-six gauge.
- 185       (p) Nothing in this section prohibits a scrap dealer from  
186 purchasing or taking possession of scrap metal knowing or  
187 have reason to know that it is stolen or obtained illegally if it  
188 is done pursuant to a written agreement with law-enforcement  
189 officials.

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## CHAPTER 172

**(Com. Sub. for H. B. 4062 - By Delegates Williams,  
D. Campbell, Cann, Moye, Perdue, Pino,  
Stephens, Walker and Hamilton)**

[Passed March 10, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2012.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5P-15, relating to establishing an in-home care registry; defining terms; requiring the Bureau of Senior Services to develop and maintain the registry; providing legislative rule-making

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.**

1           (a) There is established within the Bureau of Senior  
2 Services an in-home care worker registry which is to be  
3 maintained by the bureau. The purpose of the registry is to  
4 provide the public a list of in-home care workers, along with  
5 their qualifications, who voluntarily agree to be included and  
6 who have passed a criminal background check.

7           (b) “In-home care worker” means an unlicensed person  
8 who provides personal care or other services and supports to  
9 persons with disabilities or to the elderly in order to enhance  
10 their well-being and which involves face-to-face direct  
11 contact with the person. Functions performed may include  
12 but are not limited to assistance and training in activities of  
13 daily living, personal care services, and job-related supports.

14           (c) The bureau shall propose rules for legislative approval  
15 in accordance with the provisions of article three, chapter  
16 twenty-nine-a of this code, to establish the following:

17           (1) The registry of in-home care workers;

18           (2) The requirements for inclusion on the registry as an  
19 ‘in-home care worker’, including educational attainment;

20           (3) A fee schedule of proposed rates for those services  
21 and supports provided by the in-home care worker based



22 upon qualifications of the in-home care workers, such as  
23 educational attainment;

24 (4) Requirement of completion and passage of a criminal  
25 background check, consisting of checking the National  
26 Instant Criminal Background Check System and the West  
27 Virginia criminal history record responses. If an in-home  
28 care worker is included on the list with a criminal history  
29 indicated on his or her criminal background check, that  
30 information shall be noted on the registry. The bureau may  
31 not remove a person from the registry if the criminal  
32 background check reveals any negative information;

33 (5) How a person obtains information from the registry;  
34 and

35 (6) Any other requirement necessary to implement the  
36 provisions of this section.

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## 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.**

1           (a) The provisions of this article apply both retroactively  
2           and prospectively.

3           (b) Any person who has been convicted of an offense or  
4           an attempted offense or has been found not guilty by reason  
5           of mental illness, mental retardation or addiction of an  
6           offense under any of the following provisions of chapter  
7           sixty-one of this code or under a statutory provision of  
8           another state, the United States Code or the Uniform Code of  
9           Military Justice which requires proof of the same essential  
10          elements shall register as set forth in subsection (d) of this  
11          section and according to the internal management rules  
12          promulgated by the superintendent under authority of section  
13          twenty-five, article two of this chapter:

14           (1) Article eight-a;

15           (2) Article eight-b, including the provisions of former  
16          section six of said article, relating to the offense of sexual  
17          assault of a spouse, which was repealed by an Act of the  
18          Legislature during the year 2000 legislative session;

19           (3) Article eight-c;

20           (4) Sections five and six, article eight-d;

21           (5) Section fourteen, article two;

22 (6) Sections six, seven, twelve and thirteen, article eight;  
23 or

24 (7) Section fourteen-b, article three-c, as it relates to  
25 violations of those provisions of chapter sixty-one listed in  
26 this subsection.

27 (c) Any person who has been convicted of a criminal  
28 offense and the sentencing judge made a written finding that  
29 the offense was sexually motivated shall also register as set  
30 forth in this article.

31 (d) Persons required to register under the provisions of  
32 this article shall register in person at the West Virginia State  
33 Police detachment responsible for covering the county of his  
34 or her residence, and in doing so, provide or cooperate in  
35 providing, at a minimum, the following when registering:

36 (1) The full name of the registrant, including any aliases,  
37 nicknames or other names used by the registrant;

38 (2) The address where the registrant intends to reside or  
39 resides at the time of registration, the address of any habitable  
40 real property owned or leased by the registrant that he or she  
41 regularly visits: *Provided*, That a post office box may not be  
42 provided in lieu of a physical residential address, the name  
43 and address of the registrant's employer or place of  
44 occupation at the time of registration, the names and  
45 addresses of any anticipated future employers or places of  
46 occupation, the name and address of any school or training  
47 facility the registrant is attending at the time of registration  
48 and the names and addresses of any schools or training  
49 facilities the registrant expects to attend;

50 (3) The registrant's Social Security number;

51 (4) A full-face photograph of the registrant at the time of  
52 registration;

53 (5) A brief description of the crime or crimes for which  
54 the registrant was convicted;

55 (6) Fingerprints and palm prints;

56 (7) Information related to any motor vehicle, trailer or  
57 motor home owned or regularly operated by a registrant,  
58 including vehicle make, model, color and license plate  
59 number: *Provided*, That for the purposes of this article, the  
60 term “trailer” shall mean travel trailer, fold-down camping  
61 trailer and house trailer as those terms are defined in section  
62 one, article one, chapter seventeen-a of this code;

63 (8) Information relating to any Internet accounts the  
64 registrant has and the screen names, user names or aliases the  
65 registrant uses on the Internet; and

66 (9) Information related to any telephone or electronic  
67 paging device numbers that the registrant has or uses,  
68 including, but not limited to, residential, work and mobile  
69 telephone numbers.

70 (e) (1) On the date that any person convicted or found not  
71 guilty by reason of mental illness, mental retardation or  
72 addiction of any of the crimes listed in subsection (b) of this  
73 section, hereinafter referred to as a “qualifying offense”,  
74 including those persons who are continuing under some  
75 post-conviction supervisory status, are released, granted  
76 probation or a suspended sentence, released on parole,  
77 probation, home detention, work release, conditional release  
78 or any other release from confinement, the Commissioner of  
79 Corrections, regional jail administrator, city official or sheriff  
80 operating a jail or Secretary of the Department of Health and  
81 Human Resources who releases the person and any parole or  
82 probation officer who releases the person or supervises the  
83 person following the release, shall obtain all information

84 required by subsection (d) of this section prior to the release  
85 of the person, inform the person of his or her duty to register  
86 and send written notice of the release of the person to the  
87 State Police within three business days of receiving the  
88 information. The notice must include the information  
89 required by said subsection. Any person having a duty to  
90 register for a qualifying offense shall register upon  
91 conviction, unless that person is confined or incarcerated, in  
92 which case he or she shall register within three business days  
93 of release, transfer or other change in disposition status. Any  
94 person currently registered who is incarcerated for any  
95 offense shall re-register within three business days of his or  
96 her release.

97 (2) Notwithstanding any provision of this article to the  
98 contrary, a court of this state shall, upon presiding over a  
99 criminal matter resulting in conviction or a finding of not  
100 guilty by reason of mental illness, mental retardation or  
101 addiction of a qualifying offense, cause, within seventy-two  
102 hours of entry of the commitment or sentencing order, the  
103 transmittal to the sex offender registry for inclusion in the  
104 registry all information required for registration by a  
105 registrant as well as the following nonidentifying information  
106 regarding the victim or victims:

107 (A) His or her sex;

108 (B) His or her age at the time of the offense; and

109 (C) The relationship between the victim and the  
110 perpetrator.

111 The provisions of this paragraph do not relieve a person  
112 required to register pursuant to this section from complying  
113 with any provision of this article.

114           (f) For any person determined to be a sexually violent  
115 predator, the notice required by subsection (d) of this section  
116 must also include:

117           (1) Identifying factors, including physical characteristics;

118           (2) History of the offense; and

119           (3) Documentation of any treatment received for the  
120 mental abnormality or personality disorder.

121           (g) At the time the person is convicted or found not guilty  
122 by reason of mental illness, mental retardation or addiction in  
123 a court of this state of the crimes set forth in subsection (b) of  
124 this section, the person shall sign in open court a statement  
125 acknowledging that he or she understands the requirements  
126 imposed by this article. The court shall inform the person so  
127 convicted of the requirements to register imposed by this  
128 article and shall further satisfy itself by interrogation of the  
129 defendant or his or her counsel that the defendant has  
130 received notice of the provisions of this article and that the  
131 defendant understands the provisions. The statement, when  
132 signed and witnessed, constitutes prima facie evidence that  
133 the person had knowledge of the requirements of this article.  
134 Upon completion of the statement, the court shall provide a  
135 copy to the registry. Persons who have not signed a  
136 statement under the provisions of this subsection and who are  
137 subject to the registration requirements of this article must be  
138 informed of the requirement by the State Police whenever the  
139 State Police obtain information that the person is subject to  
140 registration requirements.

141           (h) The State Police shall maintain a central registry of all  
142 persons who register under this article and shall release  
143 information only as provided in this article. The information  
144 required to be made public by the State Police by subdivision  
145 (2), subsection (b), section five of this article is to be

146 accessible through the Internet. No information relating to  
147 telephone or electronic paging device numbers a registrant  
148 has or uses may be released through the Internet.

149 (I) For the purpose of this article, "sexually violent  
150 offense" means:

151 (1) Sexual assault in the first degree as set forth in section  
152 three, article eight-b, chapter sixty-one of this code or of a  
153 similar provision in another state, federal or military  
154 jurisdiction;

155 (2) Sexual assault in the second degree as set forth in  
156 section four, article eight-b, chapter sixty-one of this code or  
157 of a similar provision in another state, federal or military  
158 jurisdiction;

159 (3) Sexual assault of a spouse as set forth in the former  
160 provisions of section six, article eight-b, chapter sixty-one of  
161 this code, which was repealed by an Act of the Legislature  
162 during the 2000 legislative session, or of a similar provision  
163 in another state, federal or military jurisdiction;

164 (4) Sexual abuse in the first degree as set forth in section  
165 seven, article eight-b, chapter sixty-one of this code or of a  
166 similar provision in another state, federal or military  
167 jurisdiction.

168 (j) For purposes of this article, the term "sexually  
169 motivated" means that one of the purposes for which a person  
170 committed the crime was for any person's sexual  
171 gratification.

172 (k) For purposes of this article, the term "sexually violent  
173 predator" means a person who has been convicted or found  
174 not guilty by reason of mental illness, mental retardation or  
175 addiction of a sexually violent offense and who suffers from

176 a mental abnormality or personality disorder that makes the  
177 person likely to engage in predatory sexually violent  
178 offenses.

179 (l) For purposes of this article, the term “mental  
180 abnormality” means a congenital or acquired condition of a  
181 person, that affects the emotional or volitional capacity of the  
182 person in a manner that predisposes that person to the  
183 commission of criminal sexual acts to a degree that makes the  
184 person a menace to the health and safety of other persons.

185 (m) For purposes of this article, the term “predatory act”  
186 means an act directed at a stranger or at a person with whom  
187 a relationship has been established or promoted for the  
188 primary purpose of victimization.

189 (n) For the purposes of this article, the term “business  
190 days” means days exclusive of Saturdays, Sundays and legal  
191 holidays as defined in section one, article two, chapter two of  
192 this code.

### **§15-12-3. Change in registry information.**

1 When any person required to register under this article  
2 changes his or her residence, address, place of employment  
3 or occupation, motor vehicle, trailer or motor home  
4 information required by section two of this article, or school  
5 or training facility which he or she is attending, or when any  
6 of the other information required by this article changes, he  
7 or she shall, within ten business days, inform the West  
8 Virginia State Police of the changes in the manner prescribed  
9 by the Superintendent of State Police in procedural rules  
10 promulgated in accordance with the provisions of article  
11 three, chapter twenty-nine-a of this code: *Provided*, That  
12 when any person required to register under this article  
13 changes his or her residence, place of employment or  
14 occupation or school or training facility he or she is attending



15 from one county of this state to another county of this state,  
16 he or she shall inform the West Virginia State Police  
17 detachment responsible for covering the county of his or her  
18 residence within ten business days of the change in the  
19 manner prescribed by the superintendent in procedural rules  
20 promulgated in accordance with the provisions of article  
21 three, chapter twenty-nine-a of this code.

**§15-12-5. Distribution and disclosure of information;  
community information programs by  
prosecuting attorney and State Police; petition  
to circuit court.**

1 (a) Within five business days after receiving any  
2 notification as described in this article, the State Police shall  
3 distribute a copy of the notification statement to:

4 (1) The supervisor of each county and municipal law-  
5 enforcement office and any campus police department in the  
6 city and county where the registrant resides, owns or leases  
7 habitable real property that he or she regularly visits, is  
8 employed or attends school or a training facility;

9 (2) The county superintendent of schools in each county  
10 where the registrant resides, owns or leases habitable real  
11 property that he or she regularly visits, is employed or attends  
12 school or a training facility;

13 (3) The child protective services office charged with  
14 investigating allegations of child abuse or neglect in the  
15 county where the registrant resides, owns or leases habitable  
16 real property that he or she regularly visits, is employed or  
17 attends school or a training facility;

18 (4) All community organizations or religious  
19 organizations which regularly provide services to youths in  
20 the county where the registrant resides, owns or leases

21 habitable real property that he or she regularly visits, is  
22 employed or attends school or a training facility;

23 (5) Individuals and organizations which provide day care  
24 services for youths or day care, residential or respite care, or  
25 other supportive services for mentally or physically  
26 incapacitated or infirm persons in the county where the  
27 registrant resides, owns or leases habitable real property that  
28 he or she regularly visits, is employed or attends school or a  
29 training facility; and

30 (6) The Federal Bureau of Investigation (FBI).

31 (7) The State Police detachments in the county of the  
32 offender's occupation, employment, owned or leased  
33 habitable real property and school or training.

34 (b) Information concerning persons whose names are  
35 contained in the sex offender registry is not subject to the  
36 requirements of the West Virginia Freedom of Information  
37 Act, as set forth in chapter twenty-nine-b of this code, and  
38 may be disclosed and disseminated only as otherwise  
39 provided in this article and as follows:

40 (1) When a person has been determined to be a sexually  
41 violent predator under the terms of section two-a of this  
42 article, the State Police shall notify the prosecuting attorney  
43 of the county in which the person resides, owns or leases  
44 habitable real property that he or she regularly visits, is  
45 employed or attends a school or training facility. The  
46 prosecuting attorney shall cooperate with the State Police in  
47 conducting a community notification program which is to  
48 include publication of the offender's name, photograph, place  
49 of residence, location of regularly visited habitable real  
50 property owned or leased by the offender, county of  
51 employment and place at which the offender attends school  
52 or a training facility, as well as information concerning the

53 legal rights and obligations of both the offender and the  
54 community. Information relating to the victim of an offense  
55 requiring registration may not be released to the public except  
56 to the extent the prosecuting attorney and the State Police  
57 consider it necessary to best educate the public as to the  
58 nature of sexual offenses: *Provided*, That no victim's name  
59 may be released in any public notification pursuant to this  
60 subsection. No information relating to telephone or  
61 electronic paging device numbers a registrant has or uses may  
62 be released to the public with this notification program. The  
63 prosecuting attorney and State Police may conduct a  
64 community notification program in the county where a person  
65 who is required to register for life under the terms of  
66 subdivision (2), subsection (a), section four of this article  
67 resides, owns or leases habitable real property that he or she  
68 regularly visits, is employed or attends a school or training  
69 facility. Community notification may be repeated when  
70 determined to be appropriate by the prosecuting attorney;

71 (2) The State Police shall maintain and make available to  
72 the public at least quarterly the list of all persons who are  
73 required to register for life according to the terms of  
74 subdivision (2), subsection (a), section four of this article.  
75 No information concerning the identity of a victim of an  
76 offense requiring registration or telephone or electronic  
77 paging device numbers a registrant has or uses may be  
78 released with this list. The method of publication and access  
79 to this list are to be determined by the superintendent; and

80 (3) A resident of a county may petition the circuit court  
81 for an order requiring the State Police to release information  
82 about persons that reside or own or lease habitable real  
83 property that the persons regularly visit in that county and  
84 who are required to register under section two of this article.  
85 The court shall determine whether information contained on  
86 the list is relevant to public safety and whether its relevance  
87 outweighs the importance of confidentiality. If the court

88 orders information to be released, it may further order  
89 limitations upon secondary dissemination by the resident  
90 seeking the information. In no event may information  
91 concerning the identity of a victim of an offense requiring  
92 registration or information relating to telephone or electronic  
93 paging device numbers a registrant has or uses be released.

94 (c) The State Police may furnish information and  
95 documentation required in connection with the registration to  
96 authorized law-enforcement, campus police and  
97 governmental agencies of the United States and its territories,  
98 of foreign countries duly authorized to receive the same, of  
99 other states within the United States and of the State of West  
100 Virginia upon proper request stating that the records will be  
101 used solely for law-enforcement-related purposes. The State  
102 Police may disclose information collected under this article  
103 to federal, state and local governmental agencies responsible  
104 for conducting preemployment checks. The State Police also  
105 may disclose information collected under this article to the  
106 Division of Motor Vehicles pursuant to the provisions of  
107 section three, article two, chapter seventeen-b of this code.

108 (d) An elected public official, public employee or public  
109 agency is immune from civil liability for damages arising out  
110 of any action relating to the provisions of this section except  
111 when the official, employee or agency acted with gross  
112 negligence or in bad faith.

#### **§15-12-10. Address and online information verification.**

1 All registrants, including those for whom there has been  
2 no change in registration information since their initial  
3 registration or previous address verification, must report, in  
4 the month of their birth, or in the case of a sexually violent  
5 predator in the months of January, April, July and October,  
6 to the State Police detachment responsible for covering their  
7 county of registration and must respond to all verification

8 inquiries and informational requests, including, but not  
9 limited to, requests for online information made by the State  
10 Police pursuant to this section. The State Police shall verify  
11 addresses of those persons registered as sexually violent  
12 predators every ninety days and all other registered persons  
13 once a year. As used in this section, the term “online  
14 information” shall mean all information required by  
15 subdivision (8), subsection (d), section two, article twelve,  
16 chapter fifteen of this code. The State Police may require  
17 registrants to periodically submit to new fingerprints and  
18 photographs as part of the verification process. The method  
19 of verification shall be in accordance with internal  
20 management rules pertaining thereto promulgated by the  
21 superintendent under authority of section twenty-five, article  
22 two, chapter fifteen of this code.

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## CHAPTER 174

**(Com. Sub. for H. B. 2740 - By Delegates Manypenny,  
Doyle, Mahan, Guthrie, Canterbury, Iaquina,  
Barker, Hartman, Brown and Hatfield)**

[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.**

1           (a) It is the policy of the state to promote and encourage  
2 the residential and commercial use of solar energy systems  
3 and to remove obstacles thereto to promote energy efficiency  
4 and pollution reduction. Therefore, any covenant, restriction,  
5 or condition contained in any governing document of a  
6 housing association executed or recorded after the effective  
7 date of this section that effectively prohibits or restricts the  
8 installation or use of a solar energy system is void and  
9 unenforceable: *Provided*, That a housing association may, by  
10 vote of its members, establish or remove a restriction that  
11 prohibits or restricts the installation or use of a solar energy  
12 system.

13           (b) For the purposes of this section:

14           (1) “Solar energy system” means a system affixed to a  
15 building or buildings that uses solar devices, which are  
16 thermally isolated from living space or any other area where  
17 the energy is used, to provide for the collection, storage, or  
18 distribution of solar energy; and

19           (2) “Reasonable restriction” means those restrictions that  
20 do not effectually result in a prohibition of their use by  
21 eliminating the system’s energy conservation benefits or  
22 economic practicality.

23           (c) This section does not apply to provisions that impose  
24 reasonable restrictions on solar energy systems including  
25 restrictions for historical preservation, architectural  
26 significance, religious or cultural importance to a given

27 community. Nothing in this section precludes the regulation  
28 of solar energy systems by state and local authorities which  
29 may establish land use, health and safety standards. Nothing  
30 in this section precludes housing associations from restricting  
31 or limiting the installation of solar energy systems installed  
32 in common areas and common structures.

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## 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.**

1           Notwithstanding any provision of subsection (d), section  
2 eighteen-a of this article to the contrary, the deposit of \$5  
3 million into the State Park Improvement Fund set forth in  
4 section eighteen-a of this article is for the fiscal year  
5 beginning July 1, 2012, only. For the fiscal year beginning  
6 July 1, 2013, and each fiscal year thereafter, in lieu of the  
7 deposits required under subdivision (7), subsection (d),  
8 section eighteen-a of this article, the commission shall  
9 deposit an amount equal to the certified debt service  
10 requirement for the following fiscal year, not to exceed \$3  
11 million in any one fiscal year, into the Cacapon and Beech  
12 Fork State Park Lottery Revenue Debt Service Fund created  
13 in section sixteen-b, article fifteen, chapter thirty-one of this  
14 code, to be used in accordance with the provisions of that  
15 section, and second, deposit \$5 million into the State Park  
16 Improvement Fund, established in subsection (d), section  
17 eighteen-a of this article, to be used in accordance with the  
18 provisions of that section.

**CHAPTER 31. CORPORATIONS.****ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.****§31-15-16b. Lottery revenue bonds for Cacapon Resort State Park and Beech Fork State Park.**

1           (a)(1) The economic development authority shall, in  
2 accordance with the provisions of this article, issue revenue



3 bonds, in one or more series, from time to time, to pay for all  
4 or a portion of the cost of constructing, equipping, improving  
5 or maintaining capital improvement projects under this  
6 section or to refund the bonds, at the discretion of the  
7 authority. The principal amount of the bonds issued under  
8 this section shall not exceed, in the aggregate principal  
9 amount of \$52.5 million. Any revenue bonds issued on or  
10 after the effective date of this section which are secured by  
11 lottery proceeds shall mature at a time or times not exceeding  
12 thirty years from their respective dates. The principal of, and  
13 the interest and redemption premium, if any, on the bonds  
14 shall be payable solely from the Cacapon and Beech Fork  
15 State Parks Lottery Revenue Debt Service Fund established  
16 in this section.

17 (2) There is hereby created in the State Treasury a special  
18 revenue fund named the “Cacapon and Beech Fork State  
19 Parks Lottery Revenue Service Fund” into which shall be  
20 deposited those amounts specified in section eighteen-e,  
21 article twenty-two, chapter twenty-nine of this code. All  
22 amounts deposited in the fund shall be pledged to the  
23 repayment of the principal, interest and redemption premium,  
24 if any, on any revenue bonds or refunding revenue bonds  
25 authorized by this section. The authority may further provide  
26 in the trust agreement for priorities on the revenues paid into  
27 the Cacapon and Beech Fork State Parks Lottery Revenue  
28 Debt Service Fund as may be necessary for the protection of  
29 the prior rights of the holders of bonds issued at different  
30 times under the provisions of this section. The Cacapon and  
31 Beech Fork State Parks Lottery Revenue Debt Service Fund  
32 shall be pledged solely for the repayment of bonds issued  
33 pursuant to this section. On or prior to May 1 of each year,  
34 commencing May 1, 2014, the authority shall certify to the  
35 state lottery director the principal and interest and coverage  
36 ratio requirements for the following fiscal year on any  
37 revenue bonds or refunding revenue bonds issued pursuant to  
38 this section, and for which moneys deposited in the Cacapon

39 and Beech Fork State Parks Lottery Revenue Debt Service  
40 Fund have been pledged, or will be pledged, for repayment  
41 pursuant to this section.

42 (3) After the authority has issued bonds authorized by  
43 this section, and after the requirements of all funds have been  
44 satisfied, including coverage and reserve funds established in  
45 connection with the bonds issued pursuant to this section, any  
46 balance remaining in the Cacapon and Beech Fork State  
47 Parks Lottery Revenue Debt Service Fund may be used for  
48 the redemption of any of the outstanding bonds issued under  
49 this section which, by their terms, are then redeemable or for  
50 the purchase of the outstanding bonds at the market price, but  
51 not to exceed the price, if any, at which redeemable, and all  
52 bonds redeemed or purchased shall be immediately canceled  
53 and shall not again be issued.

54 (b) The authority shall expend the bond proceeds, net of  
55 issuance costs, reserve funds and refunding costs, for  
56 certified capital improvement projects at Cacapon Resort  
57 State Park and Beech Fork State Park. The Division of  
58 Natural Resources shall submit a proposed list of capital  
59 improvement projects to the Governor on or before January  
60 1, 2013. Thereafter, the Governor shall certify to the  
61 authority on or before February 1, 2013, a list of those capital  
62 improvement projects at Cacapon Resort State Park and  
63 Beech Fork State Park that will receive funds from the  
64 proceeds of bonds issued pursuant to this section.

65 At any time prior to the issuance of bonds under this  
66 section, the Governor may certify to the authority a revised  
67 list of capital improvement projects at Cacapon Resort State  
68 Park and Beech Fork State Park that will receive funds from  
69 the proceeds of bonds issued pursuant to this section. The  
70 Governor shall consult with the Division of Natural  
71 Resources prior to certifying a revised list of capital  
72 improvement projects to the authority.

73           (c) Except as may otherwise be expressly provided by the  
74 authority, every issue of its notes or bonds shall be special  
75 obligations of the authority, payable solely from the property,  
76 revenues or other sources of or available to the authority  
77 pledged therefor.

78           (d) The bonds and the notes shall be authorized by the  
79 authority pursuant to this section, and shall be secured, be in  
80 such denominations, may bear interest at such rate or rates,  
81 taxable or tax-exempt, be in such form, either coupon or  
82 registered, carry such registration privileges, be payable in  
83 such medium of payment and at such place or places and  
84 such time or times and be subject to such terms of redemption  
85 as the authority may authorize. The bonds and notes of the  
86 authority may be sold by the authority, at public or private  
87 sale, at or not less than the price the authority determines.  
88 The bonds and notes shall be executed by manual or facsimile  
89 signature by the chairman of the board, and the official seal  
90 of the authority or a facsimile thereof shall be affixed to or  
91 printed on each bond and note and attested, manually or by  
92 facsimile signature, by the secretary of the board, and any  
93 coupons attached to any bond or note shall bear the manual  
94 or facsimile signature of the chairman of the board. In case  
95 any officer whose signature, or a facsimile of whose  
96 signature, appears on any bonds, notes or coupons ceases to  
97 be such officer before delivery of such bonds or notes, such  
98 signature or facsimile is nevertheless sufficient for all  
99 purposes the same as if he or she had remained in office until  
100 such delivery; and, in case the seal of the authority has been  
101 changed after a facsimile has been imprinted on such bonds  
102 or notes, such facsimile seal will continue to be sufficient for  
103 all purposes.

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## 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
- 2 State Police which shall consist of the number of troops,
- 3 districts and detachments required for the proper
- 4 administration of the State Police. Each troop, district or
- 5 detachment shall be composed of the number of officers and
- 6 members the superintendent determines are necessary to meet
- 7 operational needs and are required for the efficient operation

8 of the State Police. The superintendent shall establish the  
9 general organizational structure of the State Police by  
10 interpretive rule in accordance with the provisions of article  
11 three, chapter twenty-nine-a of this code. The superintendent  
12 shall provide adequate facilities for the training of all  
13 members of the State Police and shall prescribe basic training  
14 requirements for newly enlisted members. He or she shall  
15 also provide advanced or in-service training from time to  
16 time for all members of the State Police. The superintendent  
17 shall hold entry-level training classes for other law-  
18 enforcement officers in the state without cost to those  
19 officers, except actual expenses for food, lodging and school  
20 supplies. The superintendent may hold advanced levels of  
21 training classes for other law-enforcement officers in the state  
22 for a reasonable daily fee per student not to exceed \$100.

23 (b) There is hereby created in the State Treasury a special  
24 revenue account, which shall be an interest bearing account,  
25 to be known as the Academy Training and Professional  
26 Development Fund. The special revenue account shall  
27 consist of training fees, any appropriations that may be made  
28 by the Legislature, income from the investment of moneys  
29 held in the special revenue account and all other sums  
30 available for deposit to the special revenue account from any  
31 source, public or private. No expenditures for purposes of  
32 this section are authorized from collections except in  
33 accordance with the provisions of article three, chapter  
34 twelve of this code and upon fulfillment of the provisions set  
35 forth in article two, chapter eleven-b of this code. Any  
36 balance remaining in the special revenue account at the end  
37 of any state fiscal year does not revert to the General  
38 Revenue Fund but remains in the special revenue account and  
39 shall be used solely in a manner consistent with this article.  
40 The superintendent is authorized to expend funds from the  
41 account to offset operational and training costs; for building  
42 maintenance and repair, for purchases and for equipment  
43 repair or replacement for the West Virginia State Police

44 Academy; and to defray necessary expenses incidental to  
45 those and other activities associated with law-enforcement  
46 training.

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## 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.**

- 1 (a) The superintendent shall appoint, from the enlisted
- 2 membership of the State Police, a deputy superintendent who
- 3 shall hold the rank of lieutenant colonel and be next in
- 4 authority to the superintendent. The superintendent shall
- 5 appoint, from the enlisted membership of the State Police, the

6 number of other officers and members he or she considers  
7 necessary to operate and maintain the executive offices,  
8 training school and forensic laboratory; and to keep records  
9 relating to crimes and criminals, coordinate traffic safety  
10 activities, maintain a system of supplies and accounting and  
11 perform other necessary services.

12 (b) The ranks within the membership of the State Police  
13 shall be colonel, lieutenant colonel, major, captain, first  
14 lieutenant, second lieutenant, first sergeant, sergeant,  
15 corporal, trooper first class, senior trooper, trooper or cadet  
16 trooper. Each member while in uniform shall wear the  
17 insignia of rank as provided by law and written State Police  
18 policies. Members assigned to the forensic laboratory shall  
19 hold the title of trooper, be classified as criminalists and wear  
20 the insignia of classification as provided by written State  
21 Police policies.

22 The superintendent may appoint from the membership of  
23 the State Police nineteen principal supervisors who shall  
24 receive the compensation and hold the temporary rank of  
25 lieutenant colonel, major or captain at the will and pleasure  
26 of the superintendent. The superintendent may also appoint  
27 from the membership of the executive protection section of  
28 the State Police two additional supervisors who shall receive  
29 the compensation and hold the temporary rank of first  
30 lieutenant and serve at the will and pleasure of the  
31 superintendent. Appointments are exempt from any eligibility  
32 requirements established by the career progression system:  
33 *Provided*, That any member appointed from within the  
34 executive protection section of the State Police to the  
35 temporary rank of first lieutenant must have completed a  
36 minimum of two years service within the executive protection  
37 section prior to becoming eligible for such appointment. Any  
38 person appointed to a temporary rank under the provisions of  
39 this article remains eligible for promotion or reclassification  
40 under the provisions of the career progression system if his or

41 her permanent rank is below that of first lieutenant. Upon the  
42 termination of a temporary appointment by the  
43 superintendent, the member may not be reduced to a rank or  
44 classification below his or her permanent rank or  
45 classification, unless the reduction results from disciplinary  
46 action, and remains eligible for subsequent appointment to a  
47 temporary rank.

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## 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.**

- 1 (a) The superintendent shall establish within the West
- 2 Virginia State Police a system to provide for: The promotion



3 of members to the supervisory ranks of sergeant, first  
4 sergeant, second lieutenant and first lieutenant; the  
5 classification of nonsupervisory members within the field  
6 operations force to the ranks of trooper, senior trooper,  
7 trooper first class or corporal; the classification of members  
8 assigned to the forensic laboratory as criminalist I-VIII; and  
9 the temporary reclassification of members assigned to  
10 administrative duties as administrative support specialist I-  
11 VIII.

12 (b) The superintendent may propose legislative rules for  
13 promulgation in accordance with article three, chapter  
14 twenty-nine-a of this code for the purpose of ensuring  
15 consistency, predictability and independent review of any  
16 system developed under the provisions of this section.

17 (c) The superintendent shall provide to each member a  
18 written manual governing any system established under the  
19 provisions of this section and specific procedures shall be  
20 identified for the evaluation and testing of members for  
21 promotion or reclassification and the subsequent placement  
22 of any members on a promotional eligibility or  
23 reclassification recommendation list.

24 (d) Beginning on July 1, 2008, through June 30, 2011,  
25 members shall receive annual salaries as follows:

26 **ANNUAL SALARY SCHEDULE (BASE PAY)**

27 **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

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31	Trooper Third Year	41,679
32	Senior Trooper	42,078
33	Trooper First Class	42,684
34	Corporal	43,290
35	Sergeant	47,591
36	First Sergeant	49,742
37	Second Lieutenant	51,892
38	First Lieutenant	54,043
39	Captain	56,194
40	Major	58,344
41	Lieutenant Colonel	60,495
42	<b>ANNUAL SALARY SCHEDULE (BASE PAY)</b>	
43	<b>ADMINISTRATION SUPPORT SPECIALIST</b>	
44	<b>CLASSIFICATION</b>	
45	I	\$ 41,679
46	II	42,078
47	III	42,684
48	IV	43,290
49	V	47,591

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50	VI	49,742
51	VII	51,892
52	VIII	54,043

53           **ANNUAL SALARY SCHEDULE (BASE PAY)**

54                   **CRIMINALIST CLASSIFICATION**

55	I	\$ 41,679
56	II	42,078
57	III	42,684
58	IV	43,290
59	V	47,591
60	VI	49,742
61	VII	51,892
62	VIII	54,043

63           Beginning on July 1, 2011, and continuing thereafter,  
64           members shall receive annual salaries as follows:

65                   **ANNUAL SALARY SCHEDULE (BASE PAY)**

66                   **SUPERVISORY AND NONSUPERVISORY RANKS**

67	Cadet During Training	\$ 2,833 Mo.	\$ 33,994
68	Cadet Trooper After Training	3,438 Mo.	41,258

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69	Trooper Second Year	42,266
70	Trooper Third Year	42,649
71	Senior Trooper	43,048
72	Trooper First Class	43,654
73	Corporal	44,260
74	Sergeant	48,561
75	First Sergeant	50,712
76	Second Lieutenant	52,862
77	First Lieutenant	55,013
78	Captain	57,164
79	Major	59,314
80	Lieutenant Colonel	61,465
81	<b>ANNUAL SALARY SCHEDULE (BASE PAY)</b>	
82	<b>ADMINISTRATION SUPPORT SPECIALIST</b>	
83	<b>CLASSIFICATION</b>	
84	I	42,266
85	II	43,048
86	III	43,654
87	IV	44,260

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88	V	48,561
89	VI	50,712
90	VII	52,862
91	VIII	55,013

92           **ANNUAL SALARY SCHEDULE (BASE PAY)**

93                   **CRIMINALIST CLASSIFICATION**

94	I	42,266
95	II	43,048
96	III	43,654
97	IV	44,260
98	V	48,561
99	VI	50,712
100	VII	52,862
101	VIII	55,013

102           Each member of the West Virginia State Police whose  
103 salary is fixed and specified in this annual salary schedule is  
104 entitled to the length of service increases set forth in  
105 subsection (e) of this section and supplemental pay as  
106 provided in subsection (g) of this section.

107           (e) Each member of the West Virginia State Police whose  
108 salary is fixed and specified pursuant to this section shall  
109 receive, and is entitled to, an increase in salary over that set

110 forth in subsection (d) of this section for grade in rank, based  
111 on length of service, including that service served before and  
112 after the effective date of this section with the West Virginia  
113 State Police as follows: At the end of two years of service  
114 with the West Virginia State Police, the member shall receive  
115 a salary increase of \$400 to be effective during his or her next  
116 year of service and a like increase at yearly intervals  
117 thereafter, with the increases to be cumulative.

118 (f) In applying the salary schedules set forth in this  
119 section where salary increases are provided for length of  
120 service, members of the West Virginia State Police in service  
121 at the time the schedules become effective shall be given  
122 credit for prior service and shall be paid the salaries the same  
123 length of service entitles them to receive under the provisions  
124 of this section.

125 (g) The Legislature finds and declares that because of the  
126 unique duties of members of the West Virginia State Police,  
127 it is not appropriate to apply the provisions of state wage and  
128 hour laws to them. Accordingly, members of the West  
129 Virginia State Police are excluded from the provisions of  
130 state wage and hour law. This express exclusion shall not be  
131 construed as any indication that the members were or were  
132 not covered by the wage and hour law prior to this exclusion.

133 In lieu of any overtime pay they might otherwise have  
134 received under the wage and hour law, and in addition to  
135 their salaries and increases for length of service, members  
136 who have completed basic training and who are exempt from  
137 federal Fair Labor Standards Act guidelines may receive  
138 supplemental pay as provided in this section.

139 The authority of the superintendent to propose a  
140 legislative rule or amendment thereto for promulgation in  
141 accordance with article three, chapter twenty-nine-a of this  
142 code to establish the number of hours per month which

143 constitute the standard work month for the members of the  
144 West Virginia State Police is hereby continued. The rule  
145 shall further establish, on a graduated hourly basis, the  
146 criteria for receipt of a portion or all of supplemental payment  
147 when hours are worked in excess of the standard work month.  
148 The superintendent shall certify monthly to the West Virginia  
149 State Police's payroll officer the names of those members  
150 who have worked in excess of the standard work month and  
151 the amount of their entitlement to supplemental payment.  
152 The supplemental payment may not exceed \$400 monthly.  
153 The superintendent and civilian employees of the West  
154 Virginia State Police are not eligible for any supplemental  
155 payments.

156 (h) Each member of the West Virginia State Police,  
157 except the superintendent and civilian employees, shall  
158 execute, before entering upon the discharge of his or her  
159 duties, a bond with security in the sum of \$5,000 payable to  
160 the State of West Virginia, conditioned upon the faithful  
161 performance of his or her duties, and the bond shall be  
162 approved as to form by the Attorney General and as to  
163 sufficiency by the Governor.

164 (i) In consideration for compensation paid by the West  
165 Virginia State Police to its members during those members'  
166 participation in the West Virginia State Police Cadet Training  
167 Program pursuant to section eight, article twenty-nine,  
168 chapter thirty of this code, the West Virginia State Police  
169 may require of its members by written agreement entered into  
170 with each of them in advance of such participation in the  
171 program that, if a member should voluntarily discontinue  
172 employment any time within one year immediately following  
173 completion of the training program, he or she shall be  
174 obligated to pay to the West Virginia State Police a pro rata  
175 portion of such compensation equal to that part of such year  
176 which the member has chosen not to remain in the employ of  
177 the West Virginia State Police.

178 (j) Any member of the West Virginia State Police who is  
179 called to perform active duty training or inactive duty training  
180 in the National Guard or any reserve component of the  
181 Armed Forces of the United States annually shall be granted,  
182 upon request, leave time not to exceed thirty calendar days  
183 for the purpose of performing the active duty training or  
184 inactive duty training and the time granted may not be  
185 deducted from any leave accumulated as a member of the  
186 West Virginia State Police.

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## 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.**

1 (a) As a result of any administrative proceeding under  
2 this article, at the request of any person, a sum equal to the



3 aggregate amount of all costs and expenses, including  
4 attorney fees, as determined by the court or the Surface Mine  
5 Board to have been reasonably incurred by the requesting  
6 person for or in connection with his or her participation in the  
7 administrative proceeding, including any judicial review of  
8 agency actions, may be assessed against either party as the  
9 court, resulting from judicial review or the Surface Mine  
10 Board, resulting from administrative proceedings, considers  
11 proper.

12 (b) On a finding that a claim was brought in bad faith or  
13 for the purposes of harassment, the Surface Mine Board or  
14 the court, whichever is appropriate, may award to the  
15 defendant or respondent, however designated, a sum equal to  
16 the aggregate amount of all costs and expenses, including  
17 attorney fees, as determined to have been reasonably  
18 incurred.

19 (c) The secretary shall propose rules for legislative  
20 approval in accordance with the provisions of article three,  
21 chapter twenty-nine-a of this code that are necessary to  
22 implement the provisions of this section.

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## 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.**

1 (a) After a surface mining permit application has been  
2 approved pursuant to this article, but before a permit has been  
3 issued, each operator shall furnish a penal bond, on a form to  
4 be prescribed and furnished by the secretary, payable to the  
5 State of West Virginia and conditioned upon the operator  
6 faithfully performing all of the requirements of this article  
7 and of the permit. The penal amount of the bond shall be not  
8 less than \$1000 nor more than \$5000 for each acre or fraction  
9 of an acre: *Provided*, That the minimum amount of bond  
10 furnished for any type of reclamation bonding shall be  
11 \$10,000. The bond shall cover: (1) The entire permit area; or  
12 (2) that increment of land within the permit area upon which  
13 the operator will initiate and conduct surface mining and  
14 reclamation operations within the initial term of the permit.  
15 If the operator chooses to use incremental bonding, as  
16 succeeding increments of surface mining and reclamation  
17 operations are to be initiated and conducted within the permit  
18 area, the operator shall file with the secretary an additional  
19 bond or bonds to cover the increments in accordance with

20 this section: *Provided, however,* That once the operator has  
21 chosen to proceed with bonding either the entire permit area  
22 or with incremental bonding, the operator shall continue  
23 bonding in that manner for the term of the permit.

24 (b) The period of liability for bond coverage begins with  
25 issuance of a permit and continues for the full term of the  
26 permit plus any additional period necessary to achieve  
27 compliance with the requirements in the reclamation plan of  
28 the permit.

29 (c) (1) The form of the bond shall be approved by the  
30 secretary and may include, at the option of the operator,  
31 surety bonding, collateral bonding (including cash and  
32 securities), establishment of an escrow account, self bonding  
33 or a combination of these methods. If collateral bonding is  
34 used, the operator may elect to deposit cash or collateral  
35 securities or certificates as follows: Bonds of the United  
36 States or its possessions of the Federal Land Bank or of the  
37 Homeowners' Loan Corporation; full faith and credit general  
38 obligation bonds of the State of West Virginia or other states  
39 and of any county, district or municipality of the State of  
40 West Virginia or other states; or certificates of deposit in a  
41 bank in this state, which certificates shall be in favor of the  
42 department. The cash deposit or market value of the  
43 securities or certificates shall be equal to or greater than the  
44 penal sum of the bond. The secretary shall, upon receipt of  
45 any deposit of cash, securities or certificates, promptly place  
46 the same with the Treasurer of the State of West Virginia  
47 whose duty it is to receive and hold the deposit in the name  
48 of the state in trust for the purpose for which the deposit is  
49 made when the permit is issued. The operator making the  
50 deposit is entitled, from time to time, to receive from the  
51 State Treasurer, upon the written approval of the secretary,  
52 the whole or any portion of any cash, securities or certificates  
53 so deposited, upon depositing with him or her in lieu thereof  
54 cash or other securities or certificates of the classes specified

55 in this subsection having value equal to or greater than the  
56 sum of the bond.

57 (2) The secretary may approve an alternative bonding  
58 system if it will: (A) Reasonably assure that sufficient funds  
59 will be available to complete the reclamation, restoration and  
60 abatement provisions for all permit areas which may be in  
61 default at any time; and (B) provide a substantial economic  
62 incentive for the permittee to comply with all reclamation  
63 provisions.

64 (d) The secretary may accept the bond of the applicant  
65 itself without separate surety when the applicant  
66 demonstrates to the satisfaction of the secretary the existence  
67 of a suitable agent to receive service of process and a history  
68 of financial solvency and continuous operation sufficient for  
69 authorization to self insure.

70 (e) It is unlawful for the owner of surface or mineral  
71 rights to interfere with the present operator in the discharge  
72 of the operator's obligations to the state for the reclamation of  
73 lands disturbed by the operator.

74 (f) All bond releases shall be accomplished in accordance  
75 with the provisions of section twenty-three of this article.

76 (g) The Special Reclamation Fund previously created is  
77 continued. The Special Reclamation Water Trust Fund is  
78 created within the State Treasury into and from which  
79 moneys shall be paid for the purpose of assuring a reliable  
80 source of capital to reclaim and restore water treatment  
81 systems on forfeited sites. The moneys accrued in both  
82 funds, any interest earned thereon and yield from investments  
83 by the State Treasurer or West Virginia Investment  
84 Management Board are reserved solely and exclusively for  
85 the purposes set forth in this section and section seventeen,  
86 article one of this chapter. The funds shall be administered  
87 by the secretary who is authorized to expend the moneys in

88 both funds for the reclamation and rehabilitation of lands  
89 which were subjected to permitted surface mining operations  
90 and abandoned after August 3, 1977, where the amount of the  
91 bond posted and forfeited on the land is less than the actual  
92 cost of reclamation, and where the land is not eligible for  
93 abandoned mine land reclamation funds under article two of  
94 this chapter. The secretary shall develop a long-range  
95 planning process for selection and prioritization of sites to be  
96 reclaimed so as to avoid inordinate short-term obligations of  
97 the assets in both funds of such magnitude that the solvency  
98 of either is jeopardized. The secretary may use both funds  
99 for the purpose of designing, constructing and maintaining  
100 water treatment systems when they are required for a  
101 complete reclamation of the affected lands described in this  
102 subsection. The secretary may also expend an amount not to  
103 exceed ten percent of the total annual assets in both funds to  
104 implement and administer the provisions of this article and,  
105 as they apply to the Surface Mine Board, articles one and  
106 four, chapter twenty-two-b of this code.

107 (h) (1) *Rate, deposits and review.*

108 (A) For tax periods commencing on and after July 1, 2009,  
109 every person conducting coal surface mining shall remit a  
110 special reclamation tax of fourteen and four-tenths cents per ton  
111 of clean coal mined, the proceeds of which shall be allocated by  
112 the secretary for deposit in the Special Reclamation Fund and  
113 the Special Reclamation Water Trust Fund.

114 (B) For tax periods commencing on and after July 1,  
115 2012, the rate of tax specified in paragraph (A) of this  
116 subdivision is discontinued and is replaced by the rate of tax  
117 specified in this paragraph (B). For tax periods  
118 commencing on and after July 1, 2012, every person  
119 conducting coal surface mining shall remit a special  
120 reclamation tax of twenty-seven and nine-tenths cents per  
121 ton of clean coal mined, the proceeds of which shall be  
122 allocated by the secretary for deposit in the Special

123 Reclamation Fund and the Special Reclamation Water Trust  
124 Fund. Of that amount, fifteen cents per ton of clean coal  
125 mined shall be deposited into the Special Reclamation  
126 Water Trust Fund.

127 (C) The tax shall be levied upon each ton of clean coal  
128 severed or clean coal obtained from refuse pile and slurry  
129 pond recovery or clean coal from other mining methods  
130 extracting a combination of coal and waste material as part of  
131 a fuel supply.

132 (D) Beginning with the tax period commencing on July  
133 1, 2009, and every two years thereafter, the special  
134 reclamation tax shall be reviewed by the Legislature to  
135 determine whether the tax should be continued: *Provided*,  
136 That the tax may not be reduced until the Special  
137 Reclamation Fund and Special Reclamation Water Trust  
138 Fund have sufficient moneys to meet the reclamation  
139 responsibilities of the state established in this section.

140 (2) In managing the Special Reclamation Program, the  
141 secretary shall: (A) Pursue cost-effective alternative water  
142 treatment strategies; and (B) conduct formal actuarial studies  
143 every two years and conduct informal reviews annually on  
144 the Special Reclamation Fund and Special Reclamation  
145 Water Trust Fund.

146 (3) Prior to December 31, 2008, the secretary shall:

147 (A) Determine the feasibility of creating an alternate  
148 program, on a voluntary basis, for financially sound operators  
149 by which those operators pay an increased tax into the  
150 Special Reclamation Fund in exchange for a maximum per-  
151 acre bond that is less than the maximum established in  
152 subsection (a) of this section;

153 (B) Determine the feasibility of creating an incremental  
154 bonding program by which operators can post a reclamation

155 bond for those areas actually disturbed within a permit area,  
156 but for less than all of the proposed disturbance and obtain  
157 incremental release of portions of that bond as reclamation  
158 advances so that the released bond can be applied to  
159 approved future disturbance; and

160 (C) Determine the feasibility for sites requiring water  
161 reclamation by creating a separate water reclamation security  
162 account or bond for the costs so that the existing reclamation  
163 bond in place may be released to the extent it exceeds the  
164 costs of water reclamation.

165 (4) If the secretary determines that the alternative program,  
166 the incremental bonding program or the water reclamation  
167 account or bonding programs reasonably assure that sufficient  
168 funds will be available to complete the reclamation of a  
169 forfeited site and that the Special Reclamation Fund will remain  
170 fiscally stable, the secretary is authorized to propose legislative  
171 rules in accordance with article three, chapter twenty-nine-a of  
172 this code to implement an alternate program, a water  
173 reclamation account or bonding program or other funding  
174 mechanisms or a combination thereof.

175 (i) This special reclamation tax shall be collected by the  
176 State Tax Commissioner in the same manner, at the same  
177 time and upon the same tonnage as the minimum severance  
178 tax imposed by article twelve-b, chapter eleven of this code  
179 is collected: *Provided*, That under no circumstance shall the  
180 special reclamation tax be construed to be an increase in  
181 either the minimum severance tax imposed by said article or  
182 the severance tax imposed by article thirteen of said chapter.

183 (j) Every person liable for payment of the special  
184 reclamation tax shall pay the amount due without notice or  
185 demand for payment.

186 (k) The Tax Commissioner shall provide to the secretary  
187 a quarterly listing of all persons known to be delinquent in  
188 payment of the special reclamation tax. The secretary may

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189 take the delinquencies into account in making determinations  
190 on the issuance, renewal or revision of any permit.

191 (l) The Tax Commissioner shall deposit the moneys  
192 collected with the Treasurer of the State of West Virginia to  
193 the credit of the Special Reclamation Fund and Special  
194 Reclamation Water Trust Fund.

195 (m) At the beginning of each quarter, the secretary shall  
196 advise the State Tax Commissioner and the Governor of the  
197 assets, excluding payments, expenditures and liabilities, in  
198 both funds.

199 (n) To the extent that this section modifies any powers,  
200 duties, functions and responsibilities of the department that  
201 may require approval of one or more federal agencies or  
202 officials in order to avoid disruption of the federal-state  
203 relationship involved in the implementation of the federal  
204 Surface Mining Control and Reclamation Act, 30 U. S. C.  
205 §1270 by the state, the modifications will become effective  
206 upon the approval of the modifications by the appropriate  
207 federal agency or official.

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## 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  
2 and Law-Enforcement Officer Survivor Benefit Act.”

3 (b) It is the intent of the Legislature to provide for the  
4 payment of death benefits to the surviving spouse, designated  
5 beneficiary, children or parents of firefighters, EMS and law-  
6 enforcement personnel killed in the performance of their  
7 duties.

**§5H-1-2. Death benefit for survivors.**

1 (a) In the event a firefighter, EMS or law-enforcement  
2 provider is killed in the performance of his or her duties, the  
3 department chief, within thirty days from the date of death shall  
4 submit certification of the death to the Governor’s office.

5 (b) This act includes both paid and volunteer fire, EMS  
6 and law-enforcement personnel acting in the performance of  
7 his or her duties of any fire, EMS or law-enforcement  
8 department certified by the State of West Virginia.

9 (c) A firefighter, EMS or law-enforcement provider is  
10 considered to be acting in the performance of his or her duties  
11 for the purposes of this act when he or she is participating in  
12 any role of a fire, EMS or law-enforcement department  
13 function. This includes training, administration meetings,  
14 fire, EMS or law-enforcement incidents, service calls,  
15 apparatus, equipment or station maintenance, fundraisers and  
16 travel to or from such functions.

17 (d) Travel includes riding upon or in any apparatus or  
18 vehicle which is owned or used by the fire, EMS or law-  
19 enforcement department, or any other vehicle going to or  
20 directly returning from a firefighter's home, place of business  
21 or other place where he or she shall have been prior to  
22 participating in a fire, EMS or law-enforcement department  
23 function or upon the authorization of the chief of the  
24 department, agency head or other person in charge.

25 (e) Certification shall include the name of the certified  
26 fire, EMS or law-enforcement program, the name of the  
27 deceased firefighter, EMS or law-enforcement provider, the  
28 name and address of the beneficiary, any documentation  
29 designating a beneficiary or beneficiaries and setting forth the  
30 circumstances that qualify the deceased individual for death  
31 benefits under this act. Upon receipt of the certification from  
32 the certified fire, EMS or law-enforcement program, the state  
33 shall, from moneys from the State Treasury, General Fund,  
34 pay to the certified fire, EMS or law-enforcement program the  
35 sum of \$50,000 in the name of the beneficiary of the death  
36 benefit. Within five days of receipt of this sum from the state,  
37 the fire, EMS or law-enforcement program certified by the

38 state shall pay the sum as a benefit to the surviving spouse or  
39 designated beneficiary. If there is no surviving spouse or  
40 designated beneficiary, then to the minor children of the  
41 firefighter, EMS or law-enforcement provider killed in the  
42 performance of duty. When no spouse, designated  
43 beneficiary, or minor children survive, the benefit shall be  
44 paid to the parent or parents of the firefighter, EMS or law-  
45 enforcement provider. It is the responsibility of the certified  
46 fire or EMS program to document the surviving spouse or  
47 beneficiary for purposes of reporting to the Governor's office.

48 (f) Any death ruled by a physician to be a result of an  
49 injury sustained during any of the above mentioned  
50 performance of fire department, EMS or law-enforcement  
51 duties will be eligible for this benefit, even if this death  
52 occurs at a later time.

53 (g) Those individuals who are covered by this article are  
54 eligible for only one death benefit payment.

55 (h) Every department or agency head employing persons  
56 to which this article applies shall provide notice of the benefit  
57 provided hereby to such employees and encourage covered  
58 employees to provide a written designation of beneficiary to  
59 be maintained in the employee's personnel file.

### **§5H-1-3. Effective date.**

1 The effective date for this act is January 1, 2007. The  
2 operation of the amendments to this article enacted during the  
3 year 2012 shall be effective retroactively to January 1, 2012.

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## 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  
3       property and personal property included within or to be  
4       included within a qualified capital addition to a  
5       manufacturing facility that has been certified by the State Tax  
6       Commissioner in accordance with section four of this article:

7 *Provided*, That airplanes and motor vehicles licensed by the  
8 Division of Motor Vehicles shall in no event constitute  
9 certified capital addition property.

10 (b) “Manufacturing” means any business activity  
11 classified as having a sector identifier, consisting of the first  
12 two digits of the six-digit North American Industry  
13 Classification System code number of thirty-one, thirty-two  
14 or thirty-three or the six digit code number 211112.

15 (c) “Manufacturing facility” means any factory, mill,  
16 chemical plant, refinery, warehouse, building or complex of  
17 buildings, including land on which it is located, and all  
18 machinery, equipment, improvements and other real property  
19 and personal property located at or within the facility used in  
20 connection with the operation of the facility in a  
21 manufacturing business.

22 (d) “Personal property” means all property specified in  
23 subdivision (q), section ten, article two, chapter two of this  
24 code and includes, but is not limited to, furniture, fixtures,  
25 machinery and equipment, pollution control equipment,  
26 computers and related data processing equipment, spare parts  
27 and supplies.

28 (e) “Qualified capital addition to a manufacturing  
29 facility” means either:

30 (1) All real property and personal property, the  
31 combined original cost of which exceeds \$50 million to be  
32 constructed, located or installed at or within two miles of a  
33 manufacturing facility owned or operated by the person  
34 making the capital addition that has a total original cost  
35 before the capital addition of at least \$100 million. If the  
36 capital addition is made in a steel, chemical or polymer  
37 alliance zone as designated from time-to-time by executive  
38 order of the Governor, then the person making the capital  
39 addition may for purposes of satisfying the requirements of

40 this subsection join in a multiparty project with a person  
41 owning or operating a manufacturing facility that has a total  
42 original cost before the capital addition of at least \$100  
43 million if the capital addition creates additional production  
44 capacity of existing or related products or feedstock or  
45 derivative products respecting the manufacturing facility,  
46 consists of a facility used to store, handle, process or  
47 produce raw materials for the manufacturing facility,  
48 consists of a facility used to store, handle or process natural  
49 gas to produce fuel for the generation of steam or electricity  
50 for the manufacturing facility or consists of a facility that  
51 generates steam or electricity for the manufacturing facility,  
52 including but not limited to a facility that converts coal to a  
53 gas or liquid for the manufacturing facility's use in heating,  
54 manufacturing or generation of electricity. Beginning on  
55 and after July 1, 2011, when the new capital addition is a  
56 facility that is or will be classified under the North  
57 American Industry Classification System with a six digit  
58 code number 211112, or is a manufacturing facility that  
59 uses product produced at a facility with code number  
60 211112, then wherever the term "100 million" is used in this  
61 subsection, the term "20 million" shall be substituted and  
62 where the term "50 million" is used, the term "10 million"  
63 shall be substituted; or

64 (2) (A) All real property and personal property, the  
65 combined original cost of which exceeds \$2 billion to be  
66 constructed, located or installed at a facility, or a combination  
67 of facilities by a single entity or combination of entities  
68 engaged in a unitary business, that:

69 (i) Is or will be classified under the North American  
70 Industry Classification System with a six digit code number  
71 211112; or

72 (ii) Is a manufacturing facility that uses one or more  
73 products produced at a facility with code number 211112; or

74 (iii) Is a manufacturing facility that uses one or more  
75 products produced at a facility described in subparagraph (ii)  
76 of this subdivision.

77 (B) No preexisting investment made, or in place before  
78 the capital addition shall be required for property specified in  
79 this subdivision (2). The requirements set forth in subdivision  
80 (1) of this subsection shall not apply to property specified in  
81 this subdivision (2) relating to:

82 (i) Location or installation of investment at or within two  
83 miles of a manufacturing facility owned or operated by the  
84 person making the capital addition;

85 (ii) Total original cost of preexisting investment before  
86 the capital addition of at least \$100 million or \$20 million; or

87 (iii) Multiparty projects.

88 (f) "Real property" means all property specified in  
89 subdivision (p), section ten, article two, chapter two of this  
90 code and includes, but is not limited to, lands, buildings and  
91 improvements on the land such as sewers, fences, roads,  
92 paving and leasehold improvements: *Provided*, That for  
93 capital additions certified on or after July 1, 2011, the value  
94 of the land before any improvements shall be subtracted from  
95 the value of the capital addition and the unimproved land  
96 value shall not be given salvage value treatment.

#### **§11-6F-4. Application and certification.**

1 Any person seeking designation of property as certified  
2 capital addition property shall first make a sworn application to  
3 the State Tax Commissioner on forms prescribed by the State  
4 Tax Commissioner on or before the date the property is first  
5 required to be reported on an annual return for ad valorem  
6 property tax purposes. The State Tax Commissioner shall within  
7 ninety days of the application determine in writing whether the  
8 property is or will be part of a qualified capital addition to a

9 manufacturing facility as defined in section two of this article  
10 and shall provide a copy of the written determination to the  
11 applicant and the assessor or assessors in the county or counties  
12 in which the manufacturing facility is located. The applicant may  
13 file an appeal with the State Tax Commissioner to have a formal  
14 hearing for a review and redetermination on qualified capital  
15 additions to a manufacturing facility which have been  
16 disallowed by the State Tax Commissioner within thirty days of  
17 the official written notification from the State Tax  
18 Commissioner. After the State Tax Commissioner determines  
19 that property is or will be part of a qualified capital addition to  
20 a manufacturing facility, the property is and remains certified  
21 capital addition property for purposes of this article until the  
22 earlier of: (a) The disposition of the property to an unrelated  
23 third party other than a transferee who continues to operate the  
24 manufacturing facility; (b) the cessation of all business at the  
25 manufacturing facility; or (c) with regard to: (1) Property  
26 described in subdivision (1), subsection (e), section two of this  
27 article, the tenth year succeeding the year in which the qualified  
28 capital addition to a manufacturing facility to which the property  
29 relates is first placed in service; or (2) property described in  
30 subdivision (2), subsection (e), section two of this article, the  
31 twenty-fifth year succeeding the year in which the qualified  
32 capital addition to a manufacturing facility to which the property  
33 relates is first placed in service.

34 All applications and determinations under this section  
35 constitute return information and are subject to section twenty-  
36 three, article one-a of this chapter. The State Tax Commissioner  
37 shall report annually the number of applications filed, certified,  
38 denied and pending pursuant to this section for the preceding  
39 year along with recommendations regarding the structure,  
40 benefits and costs of the valuation method specified in this  
41 article to the Joint Committee on Government and Finance and  
42 to the Governor: *Provided*, That identifying characteristics and  
43 facts about applicants may not in any event be disclosed under  
44 this section.



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**CHAPTER 183**

**(Com. Sub. for H. B. 4088 - By Mr. Speaker,  
Mr. Thompson and Delegate Armstead)  
[By Request of the Executive]**

[Passed March 7, 2012; in effect from passage.]  
[Approved by the Governor on March 15, 2012.]

AN ACT to repeal §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; and to amend said code by adding thereto a new section, designated §11-10-5aa, all relating to repealing article creating the West Virginia Telecommunications Tax Act; and preserving provisions governing the confidentiality of and exemptions from disclosure of certain information received by tax commissioner during study of the business of telecommunications service and related businesses.

*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.**

1 (a) Section nineteen, article thirteen-b of this chapter was  
2 enacted in 2010, and required the Tax Commissioner to study  
3 the business of telecommunications service and related  
4 businesses. The Tax Commissioner completed the study and  
5 reported to the Legislature July 1, 2011. Notwithstanding the  
6 repeal of section nineteen, article thirteen-b of this chapter in  
7 2012, the provisions of that section under which information  
8 obtained by the Tax Commissioner during the study of the  
9 business of telecommunications service and related businesses  
10 conducted pursuant to that statute is confidential and exempt  
11 from disclosure shall remain in full force and effect, as if fully  
12 set forth herein and as more fully set forth herein:

13 (1) Financial information and other data disclosed to the  
14 Tax Commissioner under the provisions of that section shall  
15 be considered confidential and exempt from article one,  
16 chapter twenty-nine-b of this code.

17 (2) Any information disclosed to the Tax Commissioner  
18 pursuant to the requirements of that section shall have all of the  
19 confidentiality protections given to a “return” under section five-d  
20 of article ten of this chapter and any disclosure not authorized by  
21 that section, or this section, shall be subject to all of the penalties  
22 provided for unlawful disclosure of a “return”. It is unlawful for  
23 the Tax Commissioner or any person conducting the study,  
24 including any consultant under contract with the Tax  
25 Commissioner to assist in conducting the study, to disclose to  
26 any person not conducting the study any financial information or  
27 other data disclosed under that section. Such disclosure shall be a  
28 violation of the tax information confidentiality provisions of section  
29 five-d, article ten of this chapter.

30 (3) Nothing in this section may be construed as  
31 prohibiting the publication or release of statistics so classified  
32 as to prevent the identification of a particular person or entity.

33 (b) Any rules promulgated by the Tax Commissioner to  
34 implement the provisions of that section relating to  
35 confidentiality or exemptions under that section shall remain  
36 in full force and effect until amended or repealed pursuant to  
37 article three, chapter twenty-nine-a of this code.

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**CHAPTER 184**

**(H. B. 4087 - By Mr. Speaker, Mr. Thompson,  
and Delegate Armstead)  
[By Request of the Executive]**

[Passed February 24, 2012; in effect ninety days from passage.]  
[Approved by the Governor on March 1, 2012.]

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.**

1           (a) *Imposition of tax.* -- For the privilege of engaging or  
2 continuing within this state in the business of severing timber  
3 for sale, profit or commercial use, there is hereby levied and  
4 shall be collected from every person exercising such privilege  
5 an annual privilege tax.

6           (b) *Rate and measure of tax.* -- The tax imposed in  
7 subsection (a) of this section shall be three and twenty-two  
8 hundredths percent of the gross value of the timber produced,  
9 as shown by the gross proceeds derived from the sale thereof  
10 by the producer, except as otherwise provided in this article:  
11 *Provided,* That as to timber produced after December 31,

12 2006 the rate of the tax imposed in subsection (a) of this  
13 section shall be one and twenty-two hundredths percent of  
14 the gross value of the timber produced, as shown by the gross  
15 proceeds derived from the sale thereof by the producer,  
16 except as otherwise provided in this article.

17 (c) *Tax in addition to other taxes.* -- The tax imposed by this  
18 section shall apply to all persons severing timber in this state and  
19 shall be in addition to all other taxes imposed by law.

20 (d) *Elimination of tax.* -- Beginning in the tax year 2010  
21 and continuing until the imposition of the additional tax on  
22 the privilege of severing timber imposed by subsection (c),  
23 section four, article thirteen-v of this chapter expires under  
24 the authority of subsection (g), section four, article thirteen-v  
25 of this chapter, the tax imposed by this section is  
26 discontinued. On and after expiration of the additional tax on  
27 the privilege of severing timber imposed by subsection (c),  
28 section four, article thirteen-v of this chapter, the tax imposed  
29 by this section resumes, and shall apply to all persons  
30 severing timber in this state at the rate of one and twenty-two  
31 hundredths percent of the gross value of the timber produced,  
32 as shown by the gross proceeds derived from the sale thereof  
33 by the producer, except as otherwise provided in this article.

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## 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.]

AN ACT to amend and reenact §11-13A-20a of the Code of West Virginia, 1931, as amended, relating to the distribution of coalbed methane gas severance tax; establishing the Coalbed

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.**

1           (a) The amount of taxes collected under this article from  
2 providers of health care items or services, including any  
3 interest, additions to tax and penalties collected under article  
4 ten of this chapter, less the amount of allowable refunds and  
5 any interest payable with respect to such refunds, shall be  
6 deposited into the special revenue fund created in the State  
7 Treasurer's Office and known as the Medicaid State Share  
8 Fund. Said fund shall have separate accounting for those  
9 health care providers as set forth in articles four-b and four-c,  
10 chapter nine of this code.

11           (b) Notwithstanding the provisions of subsection (a) of  
12 this section, for the remainder of fiscal year 1993 and for  
13 each succeeding fiscal year, no expenditures from taxes  
14 collected from providers of health care items or services are  
15 authorized except in accordance with appropriations by the  
16 Legislature.

17           (c) The amount of taxes on the privilege of severing  
18 timber collected under section three-b of this article,  
19 including any interest, additions to tax and penalties collected  
20 under article ten of this chapter, less the amount of allowable  
21 refunds and any interest payable with respect to such refunds,  
22 shall be paid into a special revenue account in the State  
23 Treasury to be appropriated by the Legislature for purposes  
24 of the Division of Forestry.

25           (d) Notwithstanding any other provision of this code to  
26 the contrary, beginning January 1, 2009, there is hereby  
27 dedicated an annual amount not to exceed \$4 million from  
28 annual collections of the tax imposed by section three-d of  
29 this article to be deposited into the West Virginia  
30 Infrastructure Fund, created in section nine, article fifteen-a,  
31 chapter thirty-one of this code.

32           (e) Beginning with the fiscal year ending June 30, 2009,  
33 and each fiscal year thereafter, the Tax Commissioner shall  
34 pay from the taxes imposed in section three-d of this article,  
35 on October 1, of each year, to the county economic  
36 development entities, as this term is defined in this  
37 subsection, or county commissions as provided in  
38 subsections (f) through (h) of this section, an amount in the  
39 aggregate not to exceed \$4 million per fiscal year: *Provided*,  
40 That on July 1, 2012, the Tax Commissioner shall deposit the  
41 taxes imposed in section three-d of this article into a special  
42 revenue fund, which is hereby created in the State Treasurer's  
43 Office and known as the Coalbed Methane Gas Distribution  
44 Fund: *Provided, however*, That such deposit of taxes shall not

45 exceed in the aggregate \$4 million per fiscal year and moneys  
46 therein shall be distributed by the State Treasurer pursuant to  
47 this section. Prior to making any such payment the  
48 commissioner shall deduct the amount of refunds lawfully  
49 paid and administrative costs authorized by this code. All  
50 moneys distributed to the West Virginia Infrastructure Fund  
51 pursuant to this section prior to July 1, 2011, shall be  
52 returned to the Tax Commissioner and distributed to the  
53 county economic development entities, as this term is defined  
54 in this subsection, or county commissions as provided in this  
55 section. For purposes of this section, the term “county  
56 economic development entity” refers to a county economic  
57 development authority established pursuant to article twelve,  
58 chapter seven of this code or if a county does not have a  
59 county economic development authority established pursuant  
60 to article twelve, chapter seven of this code, an entity  
61 designated by resolution of the county commission of the  
62 county as the lead entity for economic development activities  
63 for the purpose of encouraging economic development in the  
64 county which entity may be, but is not limited to being,  
65 redevelopment authorities created pursuant to article  
66 eighteen, chapter sixteen of this code; county economic  
67 development corporations; regional economic development  
68 councils, corporations or partnerships.

69 (f) Notwithstanding any provision of this article to the  
70 contrary, prior to the deposit of the proceeds of the tax on  
71 coalbed methane with each, county economic development  
72 entity or county commission pursuant to subsection (e) of this  
73 section, the Tax Commissioner shall undertake the following  
74 calculations:

75 (1) Seventy-five percent of the moneys to be deposited  
76 shall be provisionally allocated for the various counties of  
77 this state in which the coalbed methane was produced; and

78 (2) The remaining twenty-five percent of the moneys to  
79 be deposited shall be provisionally allocated to the various

80 counties of this state in which no coalbed methane was  
81 produced for projects in accordance with subsection (h) of  
82 this section.

83 (3) Moneys shall be provisionally allocated to each  
84 coalbed methane producing county in direct proportion to the  
85 amount of tax revenues derived from coalbed methane  
86 production in the county.

87 (4) Moneys shall be provisionally allocated to each  
88 coalbed methane nonproducing county equally.

89 (5) Portional adjustments.

90 (A) If, for any year, a coalbed methane producing  
91 county's share of money provisionally allocated to that  
92 county is computed to be an amount that is less than the  
93 amount provisionally allocated to each of the coalbed  
94 methane nonproducing counties, then for purposes of the  
95 computations set forth in this subsection, that coalbed  
96 methane producing county shall be redesignated a coalbed  
97 methane nonproducing county. The money that has been  
98 provisionally allocated to that coalbed methane producing  
99 county out of the seventy-five percent portion specified in  
100 subdivision (1) of this subsection shall be subtracted out of  
101 the seventy-five percent portion specified in that subdivision  
102 and added to the twenty-five percent portion specified in  
103 subdivision (2) of this subsection.

104 (B) When the adjustment specified in paragraph (A), of  
105 this subdivision has been made for each coalbed methane  
106 producing county that has been redesignated as a coalbed  
107 methane nonproducing county, then the Tax Department shall  
108 finalize the calculations of the amounts to be made available  
109 for distribution to the respective county economic  
110 development entity or county commission of the coalbed  
111 methane producing counties that have not been redesignated  
112 as coalbed methane nonproducing counties under paragraph



113 (A) of this subdivision as follows: The amount remaining in  
114 the provisional seventy-five percent portion specified in  
115 subdivision (1) of this subsection, as adjusted in accordance  
116 with paragraph (A) of this subdivision, shall be allocated, in  
117 direct proportion to the amount that tax revenues derived  
118 from coalbed methane production in each such county not  
119 redesignated as a coalbed methane nonproducing county  
120 bears to the total amount of tax revenues derived from  
121 coalbed methane production in all coalbed methane  
122 producing counties that have not been redesignated as a  
123 coalbed methane nonproducing county.

124 (C) The Tax Commissioner shall then finalize the  
125 calculation of the total amount in the twenty-five percent  
126 portion specified in subdivision (2) of this subsection, as  
127 adjusted in accordance with paragraph (A) of this subdivision  
128 equally among the coalbed methane nonproducing counties.

129 (D) The Tax Commissioner, upon completing the  
130 calculation of the total amount of tax to be distributed to all  
131 coalbed methane producing counties and to all coalbed  
132 methane nonproducing counties, shall deposit an amount  
133 equal to the amount so calculated in the Coalbed Methane  
134 Gas Distribution Fund, subject to the limitations set forth in  
135 this section.

136 (g) In no case may the total amount distributed in any  
137 fiscal year to the aggregate of all coalbed methane producing  
138 counties and all coalbed methane nonproducing counties  
139 calculated by the Tax Commissioner exceed the total amount  
140 of tax on coalbed methane authorized to be remitted to the  
141 county economic development entities and county  
142 commissions pursuant to subsection (e) of this section.

143 (h) Distribution of coalbed methane severance tax to  
144 county economic development entities or county  
145 commissions is subject to the following:

146 (1) If the amount determined pursuant to subsections (f)  
147 and (g) of this section for a county is more than \$10,000, the  
148 State Treasurer shall distribute the amount determined for  
149 that county to the county economic development entity. The  
150 State Treasurer is hereby authorized to distribute  
151 accumulated but undistributed moneys from fiscal years  
152 2009, 2010, 2011 and 2012 to each county economic  
153 development entity.

154 (2) Each county economic development entity shall use  
155 such funds for economic development projects and  
156 infrastructure projects.

157 (3) For purposes of this section:

158 (A) "Economic development project" means a project in  
159 the state which is likely to foster economic growth and  
160 development in the area in which the project is developed for  
161 commercial, industrial, community improvement or  
162 preservation or other proper purposes.

163 (B) "Infrastructure project" means a project in the state  
164 which is likely to foster infrastructure improvements and  
165 covers post mining land use, water or wastewater facilities,  
166 stormwater systems, steam, gas, telephone and  
167 telecommunications, broadband development, electric lines  
168 and installations, roads, bridges, railroad spurs, drainage and  
169 flood control facilities, industrial park development, road or  
170 buildings that promote job creation and retention.

171 (4) Prior to expending any coalbed methane severance tax  
172 moneys, each county economic development entity must  
173 obtain the approval of its respective county commission, or  
174 the county commission or commissions representing the  
175 county or counties where the economic development or  
176 infrastructure project will be situate if the county economic  
177 development entity is regional and encompasses more than  
178 one county, in writing for the purpose of such expenditure.

179           (5) A county commission or county economic  
180 development entity may not use funds distributed to it  
181 pursuant to subsections (e), (f), (g) and (h) of this section for  
182 the purposes of paying wages to any employee of the county  
183 or any employee of a county economic development entity.

184           (6) If the amount determined pursuant to subsections (f)  
185 and (g) of this section for a county is \$10,000 or less, the  
186 State Treasurer shall distribute the amount determined for  
187 that county to the county commission. The county  
188 commission may then use the funds to offset its regional jail  
189 costs, costs of any community corrections programs in which  
190 it participates, expenses of a volunteer fire department that  
191 provides service within its county or expenses of any library  
192 that provides services within its county.

193           (i) On or before December 1, 2013, and December 1 of  
194 each year thereafter, the county economic development entity  
195 as defined in this section or county commission receiving a  
196 distribution of funds under this section shall deliver to the  
197 Joint Committee on Government and Finance a written report  
198 setting forth the specific projects for which those funds were  
199 expended during the next preceding fiscal year, a detailed  
200 account of those expenditures and a showing that the  
201 expenditures were made for the purposes required by this  
202 section.

203           (j) An audit of any funds distributed under this section  
204 may be authorized at any time by the Joint Committee on  
205 Government and Finance to be conducted by the Legislative  
206 Auditor at no cost to the county economic development entity  
207 or county commission audited.

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## CHAPTER 186

**(Com. Sub. for S. B. 153 - By Senators  
Klempa, Beach and Kessler, Mr. President)**

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

AN ACT to amend and reenact §11-13W-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.**

- 1 (a) *Credit allowed.* - For those tax years beginning on or
- 2 after January 1, 2008, there shall be allowed a credit for any
- 3 taxpayer against certain taxes imposed by this state as
- 4 described in subsection (d) of this section for wages paid to
- 5 apprentices in the construction trades who are registered with
- 6 the United States Department of Labor, Office of
- 7 Apprenticeship, West Virginia State Office, by the taxpayer
- 8 in the tax year that an apprentice and taxpayer participate in
- 9 a qualified apprenticeship training program, as described in

10 this section, which is: (1) Jointly administered by labor and  
11 management trustees; (2) administered pursuant to 29 U. S.  
12 C. Section 50; and (3) certified in accordance with  
13 regulations adopted by the United States Bureau of  
14 Apprenticeship and Training or the successor agency of that  
15 bureau.

16 (b) *Amount of credit.* -- The tax credit shall be in an  
17 amount equal to \$1 per hour multiplied by the total number  
18 of hours worked during the tax year by an apprentice working  
19 for the taxpayer participating in the qualified apprenticeship  
20 training program, provided the amount of credit allowed for  
21 any tax year with respect to each such apprentice may not  
22 exceed \$1000 or fifty percent of the actual wages paid in the  
23 tax year for the apprenticeship, whichever is less: *Provided,*  
24 That for tax years beginning on and after January 1, 2012, the  
25 tax credit shall be in an amount equal to \$2 per hour  
26 multiplied by the total number of hours worked during the tax  
27 year by an apprentice working for the participating taxpayer,  
28 and the amount of credit allowed for any tax year with  
29 respect to each apprentice may not exceed \$2,000, or fifty  
30 percent of actual wages paid in that tax year for the  
31 apprenticeship, whichever is less.

32 (c) *Qualified apprenticeship training program*  
33 *requirements.* -- In addition to the qualifications specified in  
34 subsection (a) of this section, a qualified apprenticeship  
35 training program shall consist of at least two thousand but not  
36 more than ten thousand hours of on the job apprenticeship  
37 training for certification of the apprenticeship by the United  
38 States Bureau of Apprenticeship and Training or the  
39 successor agency of the bureau.

40 (d) *Application of annual credit allowance.* -- The  
41 amount of credit as determined under subsection (b) of this  
42 section is allowed as a credit against the taxpayer's state tax  
43 liability applied as provided in subdivisions (1) through (3),  
44 inclusive, of this subsection, and in that order.

45           (1) *Business franchise tax.* -- The credit must first be  
46 applied to reduce the taxes imposed by article twenty-three of  
47 this chapter for the taxable year.

48           (2) *Corporation net income taxes.* -- After application of  
49 subdivision (1) of this subsection, any unused credit is next  
50 applied to reduce the taxes imposed by article twenty-four of  
51 this chapter for the taxable year.

52           (3) *Personal income taxes.* --

53           (A) If the person making the qualified investment is an  
54 electing small business corporation (as defined in Section  
55 1361 of the United States Internal Revenue Code of 1986, as  
56 amended), a partnership, a limited liability company that is  
57 treated as a partnership for federal income tax purposes, or a  
58 sole proprietorship, then any unused credit (after application  
59 of subdivisions (1) and (2) of this subsection) is allowed as  
60 a credit against the taxes imposed by article twenty-one of  
61 this chapter on the income from business or other activity  
62 subject to tax under article twenty-three of this chapter or on  
63 income of a sole proprietor attributable to the business.

64           (B) Electing small business corporations, limited liability  
65 companies, partnerships and other unincorporated  
66 organizations shall allocate the credit allowed by this article  
67 among its members in the same manner as profits and losses  
68 are allocated for the taxable year.

69           (4) A credit is not allowed under this section against any  
70 employer withholding taxes imposed by article twenty-one of  
71 this chapter.

72           (e) *Unused credit.* -- If any credit remains after  
73 application of subsection (d) of this section, that amount is  
74 forfeited. A carryback to a prior taxable year is not allowed  
75 for the amount of any unused portion of any annual credit  
76 allowance.

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## CHAPTER 187

**(Com. Sub. for S. B. 555 - By Senators  
Laird, Williams, Browning, Palumbo,  
Snyder, Miller, K. Facemyre, Wills,  
Green, Stollings, Plymale, Jenkins,  
Unger and Foster)**

[Passed March 8, 2012; in effect from passage.]  
[Approved by the Governor on March 21, 2012.]

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.**

- 1 (a) Persons who perform “contracting” as defined in
- 2 section two of this article or persons acting in an agency
- 3 capacity may not assert any exemption to which the
- 4 purchaser of such contracting services or the principal is
- 5 entitled. Any statutory exemption to which a taxpayer may
- 6 be entitled is invalid unless the tangible personal property or
- 7 taxable service is actually purchased by such taxpayer and is

8 directly invoiced to and paid by such taxpayer. This section  
9 does not apply to purchases by an employee for his or her  
10 employer, purchases by a partner for his or her partnership or  
11 purchases by a duly authorized officer of a corporation, or  
12 unincorporated organization, for his or her corporation or  
13 unincorporated organization so long as the purchase is  
14 invoiced to and paid by the employer, partnership,  
15 corporation or unincorporated organization.

16 (b) *Transition rule.* -- This section does not apply to  
17 purchases of tangible personal property or taxable services in  
18 fulfillment of a purchasing agent or procurement agent  
19 contract executed and legally binding on the parties thereto  
20 prior to September 15, 1999. This transition rule does not  
21 apply to any purchases of tangible personal property or  
22 taxable services made under such a contract after August 31,  
23 1991, and this transition rule does not apply if the primary  
24 purpose of the purchasing agent or procurement agent  
25 contract was to avoid payment of consumers sales and use  
26 taxes. Effective July 1, 2007, this section does not apply to  
27 purchases of services, machinery, supplies or materials,  
28 except gasoline and special fuel, to be directly used or  
29 consumed in the construction, alteration, repair or  
30 improvement of a new or existing building or structure by a  
31 person performing “contracting”, as defined in section two of  
32 this article, if the purchaser of the contracting services would  
33 be entitled to claim the refundable exemption under  
34 subdivision (2), subsection (b), section nine of this article had  
35 it purchased the services, machinery, supplies or materials.  
36 Effective July 1, 2009, this section does not apply to  
37 purchases of services, computers, servers, building materials  
38 and tangible personal property, except purchases of gasoline  
39 and special fuel, to be installed into a building or facility or  
40 directly used or consumed in the construction, alteration,  
41 repair or improvement of a new or existing building or  
42 structure by a person performing “contracting”, as defined in  
43 section two of this article, if the purchaser of the contracting  
44 services would be entitled to claim the exemption under



45 subdivision (7), subsection (a), section nine-h of this article.  
46 This section shall not apply to qualified purchases of  
47 computers and computer software, primary material handling  
48 equipment, racking and racking systems, and their  
49 components, or to qualified purchases of building materials  
50 and certain tangible personal property, as those terms are  
51 defined in section nine-n of this article, by a person  
52 performing “contracting”, as defined in section two of this  
53 article, if the purchaser of the contracting services would be  
54 entitled to claim the refundable exemption under section  
55 nine-n of this article. Purchases of gasoline and special fuel  
56 shall not be treated as exempt pursuant to this section.

57 (c) Effective July 1, 2011, notwithstanding any other  
58 provision of this code to the contrary, this section shall apply  
59 as to purchases of services, machinery, supplies or materials,  
60 except gasoline and special fuel, to be directly used or  
61 consumed in the construction, alteration, repair or  
62 improvement of a new or existing natural gas compressor  
63 station or gas transmission line having a diameter of twenty  
64 inches or more by a person performing “contracting”, as  
65 defined in section two of this article, even though the  
66 purchaser of the contracting services would be entitled to  
67 claim the refundable exemption under subdivision (2),  
68 subsection (b), section nine of this article had it purchased the  
69 services, machinery, supplies or materials, unless the person  
70 or entity performing contracting under this subsection, as the  
71 term “contracting” is defined in section two of this article,  
72 complies with subsection (e), section four, article thirteen-s  
73 of this chapter.

74 (d) (1) Effective July 1, 2012, this section does not apply  
75 to purchases of services, building materials and tangible  
76 personal property, except purchases of gasoline and special  
77 fuel, to be installed into a building or facility or directly used  
78 or consumed in the construction, alteration, repair or  
79 improvement of a new or existing building or structure by a  
80 person performing contracting, as defined in section two of

81 this article, if the purchaser of the contracting services is a  
82 nonprofit youth organization that would be entitled to claim  
83 the exemption under paragraph (E), subdivision (6),  
84 subsection (a), section nine of this article had it purchased the  
85 services, machinery, supplies or materials.

86 (2) For purposes of this subsection, the term “nonprofit  
87 youth organization” means any nonprofit organization,  
88 including any subsidiary, affiliated or other related entity  
89 within its corporate or business structure, that has been  
90 chartered by the United States Congress to help train young  
91 people to do things for themselves and others, and that has  
92 established an area of at least six thousand contiguous acres  
93 within West Virginia in which to provide adventure or  
94 recreational activities for these young people and others.

95 (3) The exception provided in this subsection shall  
96 terminate June 30, 2022.

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## 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.**

### **§11-15B-2. Definitions.**

1           (a) *General.* -- When used in this article and articles  
2 fifteen and fifteen-a of this chapter, words defined in  
3 subsection (b) of this section shall have the meanings  
4 ascribed to them in this section, except where a different  
5 meaning is distinctly expressed or the context in which the  
6 term is used clearly indicates that a different meaning is  
7 intended by the Legislature.

8           (b) *Terms defined.* --

9           (1) “Agent” means a person appointed by a seller to  
10 represent the seller before the member states.

11           (2) “Agreement” means the Streamlined Sales and Use  
12 Tax Agreement as defined in section two-a of this article.

13           (3) “Alcoholic beverages” means beverages that are  
14 suitable for human consumption and contain one half of one  
15 percent or more of alcohol by volume.

16           (4) “Bundled transaction” means the retail sale of two or  
17 more products, except real property and services to real  
18 property, where: (i) The products are otherwise distinct and  
19 identifiable; and (ii) the products are sold for one  
20 nonitemized price. A “bundled transaction” does not include  
21 the sale of any products in which the sales price varies, or is  
22 negotiable, based on the selection by the purchaser of the  
23 products included in the transaction.

24           (A) “Distinct and identifiable products” does not include:

25           (i) Packaging such as containers, boxes, sacks, bags and  
26 bottles or other materials such as wrapping, labels, tags and  
27 instruction guides that accompany the retail sale of the  
28 products and are incidental or immaterial to the retail sale  
29 thereof. Examples of packaging that are incidental or  
30 immaterial include grocery sacks, shoe boxes, dry cleaning  
31 garment bags and express delivery envelopes and boxes;

32           (ii) A product provided free of charge with the required  
33 purchase of another product. A product is “provided free of  
34 charge” if the sales price of the product purchased does not  
35 vary depending on the inclusion of the product provided free  
36 of charge; or

37           (iii) Items included in the member state’s definition of  
38 “sales price” as defined in this section.

39           (B) The term “one nonitemized price” does not include  
40 a price that is separately identified by product on binding  
41 sales or other supporting sales-related documentation made  
42 available to the customer in paper or electronic form  
43 including, but not limited to, an invoice, bill of sale, receipt,

44 contract, service agreement, lease agreement, periodic notice  
45 of rates and services, rate card or price list.

46 (C) A transaction that otherwise meets the definition of  
47 a “bundled transaction”, as defined in this subdivision, is not  
48 a “bundled transaction” if it is:

49 (i) The retail sale of tangible personal property and a  
50 service where the tangible personal property is essential to  
51 the use of the service and is provided exclusively in  
52 connection with the service and the true object of the  
53 transaction is the service; or

54 (ii) The retail sale of services where one service is  
55 provided that is essential to the use or receipt of a second  
56 service and the first service is provided exclusively in  
57 connection with the second service and the true object of the  
58 transaction is the second service; or

59 (iii) A transaction that includes taxable products and  
60 nontaxable products and the purchase price or sales price of  
61 the taxable products is de minimis;

62 (I) “De minimis” means the seller’s purchase price or  
63 sales price of the taxable products is ten percent or less of the  
64 total purchase price or sales price of the bundled products;

65 (II) Sellers shall use either the purchase price or the sales  
66 price of the products to determine if the taxable products are  
67 de minimis. Sellers may not use a combination of the  
68 purchase price and sales price of the products to determine if  
69 the taxable products are de minimis;

70 (III) Sellers shall use the full term of a service contract to  
71 determine if the taxable products are de minimis; or

72 (iv) A transaction that includes products taxable at the  
73 general rate of tax and food or food ingredients taxable at a  
74 lower rate of tax and the purchase price or sales price of the  
75 products taxable at the general sales tax rate is de minimis.  
76 For purposes of this subparagraph, the term “de minimis” has  
77 the same meaning as ascribed to it under subparagraph (iii)  
78 of this paragraph;

79 (v) The retail sale of exempt tangible personal property,  
80 or food and food ingredients taxable at a lower rate of tax,  
81 and tangible personal property taxable at the general rate of  
82 tax where:

83 (I) The transaction includes “food and food ingredients”,  
84 “drugs”, “durable medical equipment”, “mobility-enhancing  
85 equipment”, “over-the-counter drugs”, “prosthetic devices”  
86 or “medical supplies”, all as defined in this article; and

87 (II) Where the seller’s purchase price or sales price of the  
88 taxable tangible personal property taxable at the general rate  
89 of tax is fifty percent or less of the total purchase price or  
90 sales price of the bundled tangible personal property. Sellers  
91 may not use a combination of the purchase price and sales  
92 price of the tangible personal property when making the fifty  
93 percent determination for a transaction.

94 (5) “Candy” means a preparation of sugar, honey or other  
95 natural or artificial sweeteners in combination with chocolate,  
96 fruits, nuts or other ingredients or flavorings in the form of  
97 bars, drops or pieces. “Candy” shall not include any  
98 preparation containing flour and shall require no  
99 refrigeration.

100 (6) “Clothing” means all human wearing apparel suitable  
101 for general use. The following list contains examples and is  
102 not intended to be an all-inclusive list.

103 (A) “Clothing” shall include:

- 104 (i) Aprons, household and shop;
- 105 (ii) Athletic supporters;
- 106 (iii) Baby receiving blankets;
- 107 (iv) Bathing suits and caps;
- 108 (v) Beach capes and coats;
- 109 (vi) Belts and suspenders;
- 110 (vii) Boots;
- 111 (viii) Coats and jackets;
- 112 (ix) Costumes;
- 113 (x) Diapers, children and adult, including disposable  
114 diapers;
- 115 (xi) Ear muffs;
- 116 (xii) Footlets;
- 117 (xiii) Formal wear;
- 118 (xiv) Garters and garter belts;
- 119 (xv) Girdles;
- 120 (xvi) Gloves and mittens for general use;
- 121 (xvii) Hats and caps;
- 122 (xviii) Hosiery;
- 123 (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 (xxxii) Socks and stockings;
- 136 (xxxiii) Steel-toed shoes;
- 137 (xxxiv) Underwear;
- 138 (xxxv) Uniforms, athletic and nonathletic; and
- 139 (xxxvi) Wedding apparel.
- 140 (B) "Clothing" shall not include:
  - 141 (i) Belt buckles sold separately;
  - 142 (ii) Costume masks sold separately;



- 143           (iii) Patches and emblems sold separately;
- 144           (iv) Sewing equipment and supplies, including, but not  
145 limited to, knitting needles, patterns, pins, scissors, sewing  
146 machines, sewing needles, tape measures and thimbles; and
- 147           (v) Sewing materials that become part of clothing  
148 including, but not limited to, buttons, fabric, lace, thread,  
149 yarn and zippers.
- 150           (7) “Clothing accessories or equipment” means incidental  
151 items worn on the person or in conjunction with clothing.  
152 “Clothing accessories or equipment” are mutually exclusive  
153 of and may be taxed differently than apparel within the  
154 definition of “clothing”, “sport or recreational equipment”  
155 and “protective equipment”. The following list contains  
156 examples and is not intended to be an all-inclusive list.  
157 “Clothing accessories or equipment” shall include:
- 158           (A) Briefcases;
- 159           (B) Cosmetics;
- 160           (C) Hair notions, including, but not limited to, barrettes,  
161 hair bows and hair nets;
- 162           (D) Handbags;
- 163           (E) Handkerchiefs;
- 164           (F) Jewelry;
- 165           (G) Sunglasses, nonprescription;
- 166           (H) Umbrellas;
- 167           (I) Wallets;

168 (J) Watches; and

169 (K) Wigs and hair pieces.

170 (8) “Certified automated system” or “CAS” means  
171 software certified under the agreement to calculate the tax  
172 imposed by each jurisdiction on a transaction, determine the  
173 amount of tax to remit to the appropriate state and maintain  
174 a record of the transaction.

175 (9) “Certified service provider” or “CSP” means an agent  
176 certified under the agreement to perform all of the seller's  
177 sales and use tax functions other than the seller's obligation  
178 to remit tax on its own purchases.

179 (10) “Computer” means an electronic device that accepts  
180 information in digital or similar form and manipulates the  
181 information for a result based on a sequence of instructions.

182 (11) “Computer software” means a set of coded  
183 instructions designed to cause a computer or automatic data  
184 processing equipment to perform a task.

185 (12) “Computer software maintenance contract” means  
186 a contract that obligates a vendor of computer software, or  
187 other person, to provide a customer with future updates or  
188 upgrades to computer software, support services with respect  
189 to computer software or both. The term “computer software  
190 maintenance contract” includes contracts sold by a person  
191 other than the vendor of the computer software to which the  
192 contract relates.

193 (A) A “mandatory computer software maintenance  
194 contract” is a computer software maintenance contract that  
195 the customer is obligated by contract to purchase as a  
196 condition to the retail sale of computer software.

197           (B) An “optional computer maintenance contract” is a  
198 computer software maintenance contract that a customer is  
199 not obligated to purchase as a condition to the retail sale of  
200 computer software.

201           (13) “Delivered electronically” means delivered to the  
202 purchaser by means other than tangible storage media.

203           (14) “Delivery charges” means charges by the seller of  
204 personal property or services for preparation and delivery to  
205 a location designated by the purchaser of personal property  
206 or services including, but not limited to, transportation,  
207 shipping, postage, handling, crating and packing.

208           (15) “Dietary supplement” means any product, other than  
209 tobacco, intended to supplement the diet that:

210           (A) Contains one or more of the following dietary  
211 ingredients:

212           (i) A vitamin;

213           (ii) A mineral;

214           (iii) An herb or other botanical;

215           (iv) An amino acid;

216           (v) A dietary substance for use by humans to supplement  
217 the diet by increasing the total dietary intake; or

218           (vi) A concentrate, metabolite, constituent, extract or  
219 combination of any ingredient described in subparagraph (i)  
220 through (v), inclusive, of this paragraph;

221           (B) And is intended for ingestion in tablet, capsule,  
222 powder, softgel, gelcap or liquid form, or if not intended for  
223 ingestion in such a form, is not represented as conventional

224 food and is not represented for use as a sole item of a meal or  
225 of the diet; and

226 (C) Is required to be labeled as a dietary supplement,  
227 identifiable by the “Supplemental Facts” box found on the  
228 label as required pursuant to 21 CFR §101.36 or in any  
229 successor section of the Code of Federal Regulations.

230 (16) “Direct mail” means printed material delivered or  
231 distributed by United States mail or other delivery service to  
232 a mass audience or to addressees on a mailing list provided  
233 by the purchaser or at the direction of the purchaser when the  
234 cost of the items are not billed directly to the recipients.  
235 “Direct mail” includes tangible personal property supplied  
236 directly or indirectly by the purchaser to the direct mail seller  
237 for inclusion in the package containing the printed material.  
238 “Direct mail” does not include multiple items of printed  
239 material delivered to a single address.

240 (17) “Drug” means a compound, substance or  
241 preparation, and any component of a compound, substance or  
242 preparation, other than food and food ingredients, dietary  
243 supplements or alcoholic beverages:

244 (A) Recognized in the official United States  
245 Pharmacopoeia, official Homeopathic Pharmacopoeia of the  
246 United States or official National Formulary, and supplement  
247 to any of them;

248 (B) Intended for use in the diagnosis, cure, mitigation,  
249 treatment or prevention of disease; or

250 (C) Intended to affect the structure or any function of the  
251 body. The amendment to this subdivision enacted during the  
252 2009 regular legislative session shall apply to sales made  
253 after July 1, 2009.

254 (18) “Durable medical equipment” means equipment,  
255 including repair and replacement parts for the equipment, but  
256 does not include mobility-enhancing equipment, which:

257 (A) Can withstand repeated use;

258 (B) Is primarily and customarily used to serve a medical  
259 purpose;

260 (C) Generally is not useful to a person in the absence of  
261 illness or injury; and

262 (D) Is not worn in or on the body.

263 (19) “Electronic” means relating to technology having  
264 electrical, digital, magnetic, wireless, optical, electromagnetic  
265 or similar capabilities.

266 (20) “Eligible property” means an item of a type, such as  
267 clothing, that qualifies for a sales tax holiday exemption in  
268 this state.

269 (21) “Energy Star qualified product” means a product that  
270 meets the energy efficient guidelines set by the United States  
271 Environmental Protection Agency and the United States  
272 Department of Energy that are authorized to carry the Energy  
273 Star label. Covered products are those listed at  
274 [www.energystar.gov](http://www.energystar.gov) or successor address.

275 (22) “Entity-based exemption” means an exemption  
276 based on who purchases the product or service or who sells  
277 the product or service. An exemption that is available to all  
278 individuals shall not be considered an entity-based  
279 exemption.

280 (23) “Food and food ingredients” means substances,  
281 whether in liquid, concentrated, solid, frozen, dried or  
282 dehydrated form, that are sold for ingestion or chewing by

283 humans and are consumed for their taste or nutritional value.  
284 “Food and food ingredients” does not include alcoholic  
285 beverages, prepared food or tobacco.

286 (24) “Food sold through vending machines” means food  
287 dispensed from a machine or other mechanical device that  
288 accepts payment.

289 (25) “Fur clothing” means clothing that is required to be  
290 labeled as a fur product under the Federal Fur Products  
291 Labeling Act (15 U. S. C. §69) and the value of the fur  
292 components in the product is more than three times the value  
293 of the next most valuable tangible component. “Fur  
294 clothing” is human-wearing apparel suitable for general use  
295 but may be taxed differently from clothing. For the purposes  
296 of the definition of “fur clothing”, the term “fur” means any  
297 animal skin or part thereof with hair, fleece or fur fibers  
298 attached thereto, either in its raw or processed state, but shall  
299 not include such skins that have been converted into leather  
300 or suede, or which in processing the hair, fleece or fur fiber  
301 has been completely removed.

302 (26) “Governing board” means the governing board of  
303 the Streamlined Sales and Use Tax Agreement.

304 (27) “Grooming and hygiene products” are soaps and  
305 cleaning solutions, shampoo, toothpaste, mouthwash,  
306 antiperspirants and sun tan lotions and screens, regardless of  
307 whether the items meet the definition of “over-the-counter  
308 drugs”.

309 (28) “Includes” and “including” when used in a definition  
310 contained in this article is not considered to exclude other  
311 things otherwise within the meaning of the term being  
312 defined.

313 (29) “Layaway sale” means a transaction in which  
314 property is set aside for future delivery to a customer who

315 makes a deposit, agrees to pay the balance of the purchase  
316 price over a period of time and, at the end of the payment  
317 period, receives the property. An order is accepted for  
318 layaway by the seller when the seller removes the property  
319 from normal inventory or clearly identifies the property as  
320 sold to the purchaser.

321 (30) "Lease" includes rental, hire and license. "Lease"  
322 means any transfer of possession or control of tangible  
323 personal property for a fixed or indeterminate term for  
324 consideration. A lease or rental may include future options  
325 to purchase or extend.

326 (A) "Lease" does not include:

327 (i) A transfer of possession or control of property under  
328 a security agreement or deferred payment plan that requires  
329 the transfer of title upon completion of the required  
330 payments;

331 (ii) A transfer or possession or control of property under  
332 an agreement that requires the transfer of title upon  
333 completion of required payments and payment of an option  
334 price does not exceed the greater of \$100 or one percent of  
335 the total required payments; or

336 (iii) Providing tangible personal property along with an  
337 operator for a fixed or indeterminate period of time. A  
338 condition of this exclusion is that the operator is necessary  
339 for the equipment to perform as designed. For the purpose of  
340 this subparagraph, an operator must do more than maintain,  
341 inspect or set up the tangible personal property.

342 (iv) "Lease" or "rental" includes agreements covering  
343 motor vehicles and trailers where the amount of consideration  
344 may be increased or decreased by reference to the amount  
345 realized upon sale or disposition of the property as defined in  
346 26 U. S. C. §7701(h)(1).

347 (B) This definition shall be used for sales and use tax  
348 purposes regardless if a transaction is characterized as a lease  
349 or rental under generally accepted accounting principles, the  
350 Internal Revenue Code, the Uniform Commercial Code or  
351 other provisions of federal, state or local law.

352 (31) “Load and leave” means delivery to the purchaser by  
353 use of a tangible storage media where the tangible storage  
354 media is not physically transferred to the purchaser.

355 (32) “Mobility-enhancing equipment” means equipment,  
356 including repair and replacement parts to the equipment, but  
357 does not include “durable medical equipment”, which:

358 (A) Is primarily and customarily used to provide or  
359 increase the ability to move from one place to another and  
360 which is appropriate for use either in a home or a motor  
361 vehicle;

362 (B) Is not generally used by persons with normal  
363 mobility; and

364 (C) Does not include any motor vehicle or equipment on  
365 a motor vehicle normally provided by a motor vehicle  
366 manufacturer.

367 (33) “Model I seller” means a seller registered under the  
368 Streamlined Sales and Use Tax Agreement that has selected  
369 a certified service provider as its agent to perform all the  
370 seller's sales and use tax functions, other than the seller's  
371 obligation to remit tax on its own purchases.

372 (34) “Model II seller” means a seller registered under the  
373 Streamlined Sales and Use Tax Agreement that has selected  
374 a certified automated system to perform part of its sales and  
375 use tax functions, but retains responsibility for remitting the  
376 tax.



377 (35) “Model III seller” means a seller registered under the  
378 Streamlined Sales and Use Tax Agreement that has sales in  
379 at least five member states, has total annual sales revenue of  
380 at least \$500 million, has a proprietary system that calculates  
381 the amount of tax due each jurisdiction and has entered into  
382 a performance agreement with the member states that  
383 establishes a tax performance standard for the seller. As used  
384 in this definition, a seller includes an affiliated group of  
385 sellers using the same proprietary system.

386 (36) “Model IV seller” means a seller registered under  
387 the Streamlined Sales and Use Tax Agreement and is not a  
388 Model I seller, a Model II seller or a Model III seller.

389 (37) “Over-the-counter drug” means a drug that contains  
390 a label that identifies the product as a drug as required by 21  
391 CFR §201.66. The “over-the-counter drug” label includes:

392 (A) A drug facts panel; or

393 (B) A statement of the active ingredient(s) with a list of  
394 those ingredients contained in the compound, substance or  
395 preparation.

396 (38) “Person” means an individual, trust, estate,  
397 fiduciary, partnership, limited liability company, limited  
398 liability partnership, corporation or any other legal entity.

399 (39) “Personal service” includes those:

400 (A) Compensated by the payment of wages in the  
401 ordinary course of employment; and

402 (B) Rendered to the person of an individual without, at  
403 the same time, selling tangible personal property, such as  
404 nursing, barbering, manicuring and similar services.

405 (40) (A) “Prepared food” means:

- 406 (i) Food sold in a heated state or heated by the seller;
- 407 (ii) Two or more food ingredients mixed or combined by  
408 the seller for sale as a single item; or
- 409 (iii) Food sold with eating utensils provided by the seller,  
410 including plates, knives, forks, spoons, glasses, cups, napkins  
411 or straws. A plate does not include a container or packaging  
412 used to transport the food.
- 413 (B) “Prepared food” in subparagraph (ii), paragraph (A)  
414 of this subdivision does not include food that is only cut,  
415 repackaged or pasteurized by the seller, and eggs, fish, meat,  
416 poultry and foods containing these raw animal foods  
417 requiring cooking by the consumer as recommended by the  
418 Food and Drug Administration in Chapter 3, Part 401.11 of  
419 its Food Code of 2001 so as to prevent food-borne illnesses.
- 420 (C) Additionally, “prepared food” as defined in this  
421 subdivision does not include:
- 422 (i) Food sold by a seller whose proper primary NAICS  
423 classification is manufacturing in Sector 311, except  
424 Subsection 3118 (bakeries);
- 425 (ii) Food sold in an unheated state by weight or volume  
426 as a single item; or
- 427 (iii) Bakery items, including bread, rolls, buns, biscuits,  
428 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,  
429 tarts, muffins, bars, cookies, tortillas.
- 430 (41) “Prescription” means an order, formula or recipe  
431 issued in any form of oral, written, electronic or other means  
432 of transmission by a duly licensed practitioner authorized by  
433 the laws of this state to issue prescriptions.

434           (42) “Prewritten computer software” means computer  
435 software, including prewritten upgrades, which is not  
436 designed and developed by the author or other creator to the  
437 specifications of a specific purchaser.

438           (A) The combining of two or more prewritten computer  
439 software programs or prewritten portions thereof does not  
440 cause the combination to be other than prewritten computer  
441 software.

442           (B) “Prewritten computer software” includes software  
443 designed and developed by the author or other creator to the  
444 specifications of a specific purchaser when it is sold to a  
445 person other than the specific purchaser. Where a person  
446 modifies or enhances computer software of which the person  
447 is not the author or creator, the person is considered to be the  
448 author or creator only of the person's modifications or  
449 enhancements.

450           (C) “Prewritten computer software” or a prewritten  
451 portion thereof that is modified or enhanced to any degree,  
452 where the modification or enhancement is designed and  
453 developed to the specifications of a specific purchaser,  
454 remains prewritten computer software. However, where  
455 there is a reasonable, separately stated charge or an invoice  
456 or other statement of the price given to the purchaser for the  
457 modification or enhancement, the modification or  
458 enhancement does not constitute prewritten computer  
459 software.

460           (43) “Product-based exemption” means an exemption  
461 based on the description of the product or service and not  
462 based on who purchases the product or service or how the  
463 purchaser intends to use the product or service.

464           (44) “Prosthetic device” means a replacement, corrective  
465 or supportive device, including repair and replacement parts  
466 for the device worn on or in the body, to:

- 467           (A) Artificially replace a missing portion of the body;
- 468           (B) Prevent or correct physical deformity or malfunction  
469 of the body; or
- 470           (C) Support a weak or deformed portion of the body.
- 471           (45) “Protective equipment” means items for human wear  
472 and designed as protection of the wearer against injury or  
473 disease or as protections against damage or injury of other  
474 persons or property but not suitable for general use.
- 475           (46) “Purchase price” means the measure subject to the  
476 tax imposed by article fifteen or fifteen-a of this chapter and  
477 has the same meaning as sales price.
- 478           (47) “Purchaser” means a person to whom a sale of  
479 personal property is made or to whom a service is furnished.
- 480           (48) “Retail sale” or “sale at retail” means:
- 481           (A) Any sale, lease or rental for any purpose other than  
482 for resale as tangible personal property, sublease or subrent;  
483 and
- 484           (B) Any sale of a service other than a service purchased  
485 for resale.
- 486           (49) (A) “Sales price” means the measure subject to the  
487 tax levied under article fifteen or fifteen-a of this chapter and  
488 includes the total amount of consideration, including cash,  
489 credit, property and services, for which personal property or  
490 services are sold, leased or rented, valued in money, whether  
491 received in money or otherwise, without any deduction for  
492 the following:
- 493           (i) The seller’s cost of the property sold;

494           (ii) The cost of materials used, labor or service cost,  
495 interest, losses, all costs of transportation to the seller, all  
496 taxes imposed on the seller and any other expense of the  
497 seller;

498           (iii) Charges by the seller for any services necessary to  
499 complete the sale, other than delivery and installation  
500 charges;

501           (iv) Delivery charges; and

502           (v) Installation charges.

503           (B) "Sales price" does not include:

504           (i) Discounts, including cash, term or coupons that are  
505 not reimbursed by a third party that are allowed by a seller  
506 and taken by a purchaser on a sale;

507           (ii) Interest, financing and carrying charges from credit  
508 extended on the sale of personal property, goods or services,  
509 if the amount is separately stated on the invoice, bill of sale  
510 or similar document given to the purchaser; or

511           (iii) Any taxes legally imposed directly on the consumer  
512 that are separately stated on the invoice, bill of sale or similar  
513 document given to the purchaser.

514           (C) "Sales price" shall include consideration received by  
515 the seller from third parties if:

516           (i) The seller actually receives consideration from a party  
517 other than the purchaser and the consideration is directly  
518 related to a price reduction or discount on the sale;

519           (ii) The seller has an obligation to pass the price  
520 reduction or discount through to the purchaser;

521 (iii) The amount of the consideration attributable to the  
522 sale is fixed and determinable by the seller at the time of the  
523 sale of the item to the purchaser; and

524 (iv) One of the following criteria is met:

525 (I) The purchaser presents a coupon, certificate or other  
526 documentation to the seller to claim a price reduction or  
527 discount where the coupon, certificate or documentation is  
528 authorized, distributed or granted by a third party with the  
529 understanding that the third party will reimburse any seller to  
530 whom the coupon, certificate or documentation is presented;

531 (II) The purchaser identifies himself or herself to the  
532 seller as a member of a group or organization entitled to a  
533 price reduction or discount (a preferred customer card that is  
534 available to any patron does not constitute membership in  
535 such a group); or

536 (III) The price reduction or discount is identified as a  
537 third-party price reduction or discount on the invoice  
538 received by the purchaser or on a coupon, certificate or other  
539 documentation presented by the purchaser.

540 (50) “Sales tax” means the tax levied under article fifteen  
541 of this chapter.

542 (51) “School art supply” means an item commonly used  
543 by a student in a course of study for artwork. The term is  
544 mutually exclusive of the terms “school supply”, “school  
545 instructional material” and “school computer supply” and  
546 may be taxed differently. The following is an all-inclusive  
547 list:

548 (A) Clay and glazes;

549 (B) Paints; acrylic, tempora and oil;

550 (C) Paintbrushes for artwork;

551 (D) Sketch and drawing pads; and

552 (E) Watercolors.

553 (52) “School instructional material” means written  
554 material commonly used by a student in a course of study as  
555 a reference and to learn the subject being taught. The term is  
556 mutually exclusive of the terms “school supply”, “school art  
557 supply” and “school computer supply” and may be taxed  
558 differently. The following is an all-inclusive list:

559 (A) Reference books;

560 (B) Reference maps and globes;

561 (C) Textbooks; and

562 (D) Workbooks.

563 (53) “School computer supply” means an item commonly  
564 used by a student in a course of study in which a computer is  
565 used. The term is mutually exclusive of the terms “school  
566 supply”, “school art supply” and “school instructional  
567 material” and may be taxed differently. The following is an  
568 all-inclusive list:

569 (A) Computer storage media; diskettes, compact disks;

570 (B) Handheld electronic schedulers, except devices that  
571 are cellular phones;

572 (C) Personal digital assistants, except devices that are  
573 cellular phones;

574 (D) Computer printers; and

575 (E) Printer supplies for computers; printer paper, printer  
576 ink.

577 (54) “School supply” means an item commonly used by  
578 a student in a course of study. The term is mutually  
579 exclusive of the terms “school art supply”, “school  
580 instructional material” and “school computer supply” and  
581 may be taxed differently. The following is an all-inclusive  
582 list of school supplies:

583 (A) Binders;

584 (B) Book bags;

585 (C) Calculators;

586 (D) Cellophane tape;

587 (E) Blackboard chalk;

588 (F) Compasses;

589 (G) Composition books;

590 (H) Crayons;

591 (I) Erasers;

592 (J) Folders; expandable, pocket, plastic and manila;

593 (K) Glue, paste and paste sticks;

594 (L) Highlighters;

595 (M) Index cards;

596 (N) Index card boxes;



- 597 (O) Legal pads;
- 598 (P) Lunch boxes;
- 599 (Q) Markers;
- 600 (R) Notebooks;
- 601 (S) Paper; loose-leaf ruled notebook paper, copy paper,  
602 graph paper, tracing paper, manila paper, colored paper,  
603 poster board and construction paper;
- 604 (T) Pencil boxes and other school supply boxes;
- 605 (U) Pencil sharpeners;
- 606 (V) Pencils;
- 607 (W) Pens;
- 608 (X) Protractors;
- 609 (Y) Rulers;
- 610 (Z) Scissors; and
- 611 (AA) Writing tablets.
- 612 (55) "Seller" means any person making sales, leases or  
613 rentals of personal property or services.
- 614 (56) "Service" or "selected service" includes all  
615 nonprofessional activities engaged in for other persons for a  
616 consideration which involve the rendering of a service as  
617 distinguished from the sale of tangible personal property, but  
618 does not include contracting, personal services, services  
619 rendered by an employee to his or her employer, any service  
620 rendered for resale or any service furnished by a business that

621 is subject to the control of the Public Service Commission  
622 when the service or the manner in which it is delivered is  
623 subject to regulation by the Public Service Commission of  
624 this state. The term “service” or “selected service” does not  
625 include payments received by a vendor of tangible personal  
626 property as an incentive to sell a greater volume of such  
627 tangible personal property under a manufacturer's,  
628 distributor's or other third-party's marketing support program,  
629 sales incentive program, cooperative advertising agreement  
630 or similar type of program or agreement and these payments  
631 are not considered to be payments for a service or selected  
632 service rendered, even though the vendor may engage in  
633 attendant or ancillary activities associated with the sales of  
634 tangible personal property as required under the programs or  
635 agreements.

636 (57) “Soft drink” means nonalcoholic beverages that  
637 contain natural or artificial sweeteners. “Soft drinks” do not  
638 include beverages that contain milk or milk products, soy,  
639 rice or similar milk substitutes or greater than fifty percent of  
640 vegetable or fruit juice by volume.

641 (58) “Sport or recreational equipment” means items  
642 designed for human use and worn in conjunction with an  
643 athletic or recreational activity that are not suitable for  
644 general use. Sport or recreational equipment are mutually  
645 exclusive of and may be taxed differently than apparel within  
646 the definition of “clothing”, “clothing accessories or  
647 equipment” and “protective equipment”. The following list  
648 contains examples and is not intended to be an all-inclusive  
649 list. “Sport or recreational equipment” shall include:

650 (A) Ballet and tap shoes;

651 (B) Cleated or spiked athletic shoes;

652 (C) Gloves, including, but not limited to, baseball,  
653 bowling, boxing, hockey and golf;

- 654 (D) Goggles;
- 655 (E) Hand and elbow guards;
- 656 (F) Life preservers and vests;
- 657 (G) Mouth guards;
- 658 (H) Roller and ice skates;
- 659 (I) Shin guards;
- 660 (J) Shoulder pads;
- 661 (K) Ski boots;
- 662 (L) Waders; and
- 663 (M) Wetsuits and fins.
- 664 (59) “State” means any state of the United States, the  
665 District of Columbia and the Commonwealth of Puerto Rico.
- 666 (60) “Tangible personal property” means personal  
667 property that can be seen, weighed, measured, felt or touched  
668 or that is in any manner perceptible to the senses. “Tangible  
669 personal property” includes, but is not limited to, electricity,  
670 steam, water, gas and prewritten computer software.
- 671 (61) “Tax” includes all taxes levied under articles fifteen  
672 and fifteen-a of this chapter and additions to tax, interest and  
673 penalties levied under article ten of this chapter.
- 674 (62) “Tax Commissioner” means the State Tax  
675 Commissioner or his or her delegate. The term “delegate” in  
676 the phrase “or his or her delegate”, when used in reference to  
677 the Tax Commissioner, means any officer or employee of the  
678 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.

**§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.**

1           As used in this article and articles fifteen and fifteen-a of  
2 this chapter, the term “Streamlined Sales and Use Tax  
3 Agreement” or “agreement” means the agreement adopted  
4 November 12, 2002, by states that enacted authority to  
5 engage in multistate discussions similar to that provided in  
6 section four of this article, except when the context in which  
7 the term is used clearly indicates that a different meaning is  
8 intended by the Legislature. “Agreement” includes  
9 amendments to the agreement adopted by the implementing  
10 states in calendar years 2003, 2004, 2005, 2006, 2007, 2008,  
11 2009, 2010, 2011 and amendments adopted by the governing  
12 board on or before, January 31, 2012, but does not include  
13 any substantive changes in the agreement adopted after  
14 January 31, 2012.

**§11-15B-24. Administration of exemptions.**

1           (a) *General rules.--*

2           When a purchaser claims an exemption from paying tax  
3 under article fifteen or fifteen-a of this chapter:

4           (1) Sellers shall obtain identifying information of the  
5 purchaser and the reason for claiming a tax exemption at the  
6 time of the purchase, as determined by the governing board.

7           (2) A purchaser is not required to provide a signature to  
8 claim an exemption from tax unless a paper exemption  
9 certificate is used.

10           (3) The seller shall use the standard form for claiming an  
11 exemption electronically that is adopted by the governing  
12 board.

13           (4) The seller shall obtain the same information for proof  
14 of a claimed exemption regardless of the medium in which  
15 the transaction occurred.

16           (5) The Tax Commissioner may utilize a system wherein  
17 the purchaser exempt from the payment of the tax is issued  
18 an identification number that is presented to the seller at the  
19 time of the sale.

20           (6) The seller shall maintain proper records of exempt  
21 transactions and provide the records to the Tax  
22 Commissioner or the Tax Commissioner's designee.

23           (7) The Tax Commissioner shall administer use-based  
24 and entity-based exemptions when practicable through a  
25 direct pay permit, an exemption certificate or another means  
26 that does not burden sellers.

27           (8) In the case of drop shipments, a third-party vendor  
28 such as a drop shipper may claim a resale exemption based  
29 on an exemption certificate provided by its customer/reseller  
30 or any other acceptable information available to the third-  
31 party vendor evidencing qualification for a resale exemption,  
32 regardless of whether the customer/reseller is registered to  
33 collect and remit sales and use taxes in this state, when the  
34 sale is sourced to this state.

35           (b) The Tax Commissioner shall relieve sellers that  
36 follow the requirements of this section from the tax otherwise  
37 applicable if it is determined that the purchaser improperly  
38 claimed an exemption and shall hold the purchaser liable for  
39 the nonpayment of tax. This relief from liability does not  
40 apply:

41           (A) To a seller who fraudulently fails to collect the tax;

42           (B) To a seller who solicits purchasers to participate in  
43 the unlawful claim of an exemption;

44 (C) To a seller who accepts an exemption certificate  
45 when the purchaser claims an entity-based exemption when:  
46 (i) The subject of the transaction sought to be covered by the  
47 exemption certificate is actually received by the purchaser at  
48 a location operated by the seller; and (ii) the state in which  
49 that location resides provides an exemption certificate that  
50 clearly and affirmatively indicates (graying out exemption  
51 reason types on uniform form and posting it on a state's  
52 website is an indicator) that the claimed exemption is not  
53 available in that state.

54 (c) *Time within which seller must obtain exemption*  
55 *certificates.--*

56 A seller is relieved from paying tax otherwise applicable  
57 under article fifteen or fifteen-a of this chapter if the seller  
58 obtains a fully completed exemption certificate or captures  
59 the required data elements within ninety days subsequent to  
60 the date of sale.

61 (d) (1) If the seller has not obtained an exemption  
62 certificate or all required data elements, the seller shall,  
63 within one hundred twenty days subsequent to a request for  
64 substantiation by the Tax Commissioner, either obtain a fully  
65 completed exemption certificate from the purchaser, taken in  
66 good faith which means that the seller obtain a certificate that  
67 claims an exemption that: (i) Was statutorily available on the  
68 date of the transaction in the jurisdiction where the  
69 transaction is sourced; (ii) could be applicable to the item  
70 being purchased; and (iii) is reasonable for the purchaser's  
71 type of business; or obtain other information establishing that  
72 the transaction was not subject to the tax.

73 (2) If the seller obtains the information described in  
74 subdivision (1) of this subsection, the seller shall be relieved  
75 of any liability for the tax on the transaction unless it is  
76 discovered through the audit process that the seller had  
77 knowledge or had reason to know at the time such

78 information was provided that the information relating to the  
79 exemption claimed was materially false or the seller  
80 otherwise knowingly participated in activity intended to  
81 purposefully evade the tax that is properly due on the  
82 transaction.

83 (e) Nothing in this section shall affect the ability of the  
84 Tax Commissioner to require purchasers to update exemption  
85 certificate information or to reapply with the state to claim  
86 certain exemptions.

87 (f) A seller is relieved from paying the tax otherwise  
88 applicable if the seller obtains a blanket exemption certificate  
89 from a purchaser with which the seller has a recurring  
90 business relationship. Notwithstanding the provisions of  
91 subsection (e) of this section, the Tax Commissioner may not  
92 request from the seller renewal of blanket certificates or  
93 updates of exemption certificate information or data elements  
94 when there is a recurring business relationship between the  
95 buyer and seller. For purposes of this subdivision, a  
96 recurring business relationship exists when a period of no  
97 more than twelve months elapses between sales transactions.

98 (g) *Exception.--*

99 No exemption certificate or direct pay permit number is  
100 required when the sale is exempt per se from the taxes  
101 imposed by articles fifteen and fifteen-a of this chapter.

### **§11-15B-25. Uniform tax returns.**

1 (a) *General.--*

2 A seller who registers with this state is required to file a  
3 single sales and use tax return with the Tax Commissioner for  
4 each taxing period.

5 (b) *Due date of return.--*



6           (1) This return shall be due on the twentieth day of the  
7 month following the month in which the transaction subject  
8 to tax occurred.

9           (2) When the due date for a return falls on a Saturday or  
10 Sunday or legal holiday, the return shall be due on the next  
11 succeeding business day. If the return is filed in conjunction  
12 with a remittance and the remittance cannot be made  
13 pursuant to subdivision (e), section twenty-six of this article,  
14 the return shall be accepted as timely on the same day as the  
15 remittance under that subdivision.

16           (c) *Additional information returns.--*

17           The Tax Commissioner shall make available to all sellers,  
18 except sellers of products qualifying for exclusion from the  
19 provisions of the agreement, a simplified return that is filed  
20 electronically.

21           (d) The Tax Commissioner may not require a seller  
22 which has indicated at the time of registration that it  
23 anticipates making no sales which would be sourced to this  
24 state to file a return, except that the seller shall lose the  
25 exemption upon making any taxable sales into this state and  
26 shall file a return in the month following any sale.

27           (e) After January 1, 2010, the Tax Commissioner shall  
28 give notice to a seller, which has no legal requirement to  
29 register in this state, of a failure to file a required return and  
30 a minimum of thirty days to file thereafter prior to  
31 establishing a liability amount for taxes based solely on the  
32 seller's failure to timely file a return: *Provided*, That the Tax  
33 Commissioner may establish a liability amount of taxes based  
34 solely on the seller's failure to timely file a return if such  
35 seller has a history of nonfiling or late filing.

36           (f) Nothing in this section shall prohibit the Tax  
37 Commissioner from allowing additional return options or the  
38 filing of returns less frequently.

**§11-15B-26. Uniform rules for remittances of funds.**

1           (a) *General.--*

2           Only one remittance is required for each return except as  
3           provided in this section.

4           (b) *When electronic remittance required.--*

5           (1) All remittances from sellers under Models I, II and III  
6           shall be remitted electronically after December 31, 2003.

7           (2) All remittances in payment of taxes reported on the  
8           approved simplified return format shall be remitted  
9           electronically.

10          (c) *Method of remittance.--*

11          Electronic payments shall be made using either the ACH  
12          credit or ACH debit method.

13          (d) *Alternative method.--*

14          The Tax Commissioner shall provide by rule, which may  
15          be an existing rule, an alternative method for making same-  
16          day payments if an electronic funds transfer fails.

17          (e) *Due date of remittances.--*

18          (1) If a due date for a payment falls on a Saturday,  
19          Sunday or legal holiday, the payment, including any related  
20          payment voucher information, is due on the next succeeding  
21          business day.

22          (2) If the Federal Reserve Bank is closed on a due date  
23          that prohibits a person from being able to make a payment by  
24          ACH debit or credit, the payment shall be accepted as timely  
25          if made on the next day the Federal Reserve Bank is open.

26 (f) *Format of data accompanying remittance.--*

27 Any data that accompanies a remittance shall be  
28 formatted using uniform tax type and payment type codes  
29 approved by the governing board.

**§11-15B-30. Monetary allowances for new technological models  
for sales tax collection; delayed effective date.**

1 (a) *Monetary allowance under Model I.--*

2 (1) The Tax Commissioner shall provide a monetary  
3 allowance to a certified service provider in Model I. This  
4 allowance shall be in accordance with the terms of the  
5 contract between the governing board of the Streamlined  
6 Sales and Use Tax Agreement and the certified service  
7 provider. The details of this monetary allowance shall be  
8 developed and provided through the contract process. The  
9 contract shall provide that the allowance be funded entirely  
10 from money collected in Model I.

11 (2) The contract between the governing board and the  
12 certified service provider may base the monetary allowance  
13 to a certified service provider on one or more of the  
14 following:

15 (A) A base rate that applies to taxable transactions  
16 processed by the certified service provider; or

17 (B) For a period not to exceed twenty-four months  
18 following a voluntary seller's registration through the  
19 agreement's central registration process, a percentage of tax  
20 revenue generated for a member state by the voluntary seller  
21 for each member state for which the seller does not have a  
22 requirement to register to collect the tax.

23 (b) *Monetary allowance for Model II sellers.--*

24           The monetary allowance to sellers under Model II may be  
25 based on the following:

26           (1) All sellers shall receive a base rate for a period not to  
27 exceed twenty-four months following the commencement of  
28 participation by a seller. The base rate is set by the  
29 governing board of the Streamlined Sales and Use Tax  
30 Agreement after the base rate has been established for Model  
31 I certified service providers. This allowance is in addition to  
32 any vendor or seller discount afforded by each member state  
33 at the time.

34           (2) A voluntary Model II seller not otherwise required to  
35 register with this state to collect the consumers sales and  
36 service tax and use tax, that registers through the Streamlined  
37 Sales and Use Tax Agreement's central registration process,  
38 shall receive for a period not to exceed twenty-four months  
39 following the voluntary seller's registration, the base rate  
40 percentage of tax revenue generated for this state by the  
41 voluntary seller.

42           (3) Following the conclusion of the twenty-four-month  
43 period, a seller will only be entitled to a vendor discount  
44 afforded under each member state's law at the time the base  
45 rate expires.

46           (c) *Prohibition on allowance or payment of monetary*  
47 *allowances.--*

48           Notwithstanding subsections (a), (b) and (c) of this  
49 section, the Tax Commissioner may not allow any vendor,  
50 seller or certified service provider any monetary allowance,  
51 discount or other compensation for collecting and remitting  
52 the taxes levied by articles fifteen and fifteen-a of this  
53 chapter, or for making and filing the periodic reports required  
54 by this article, or articles fifteen and fifteen-a of this chapter,  
55 until the cost of collection study required by the agreement is  
56 completed and the monetary allowances are based on the

57 results of that study, or on requirements of federal law  
58 requiring remote sellers to collect sales and use taxes for  
59 states that have signed the agreement.

**§11-15B-32. Effective date.**

1 (a) The provisions of this article, as amended or added  
2 during the regular legislative session in the year 2003, shall  
3 take effect January 1, 2004, and apply to all sales made on or  
4 after that date and to all returns and payments due on or after  
5 that day, except as otherwise expressly provided in section  
6 five of this article.

7 (b) The provisions of this article, as amended or added  
8 during the second extraordinary legislative session in the year  
9 2003, shall take effect January 1, 2004, and apply to all sales  
10 made on or after that date.

11 (c) The provisions of this article, as amended or added by  
12 act of the Legislature in the year 2004 shall apply to all sales  
13 made on or after the date of passage in the year 2004.

14 (d) The provisions of this article, as amended or added  
15 during the regular legislative session in the year 2008, shall  
16 apply to all sales made on or after the date of passage and to  
17 all returns and payments due on or after that day, except as  
18 otherwise expressly provided in this article.

19 (e) The provisions of this article, as amended or added  
20 during the 2009 regular legislative session, shall apply to all  
21 sales made on or after the date of passage and to all returns  
22 and payments due on or after that day, except as otherwise  
23 expressly provided in this article.

24 (f) The provisions of this article, as amended or added  
25 during the 2010 regular legislative session, shall apply to all  
26 sales made on or after the date of passage and to all returns  
27 and payments due on or after that day, except as otherwise  
28 expressly provided in this article.

29 (g) The provisions of this article, as amended or added  
30 during the 2012 regular legislative session, shall apply to all  
31 sales made on or after the date of passage and to all returns  
32 and payments due on or after that day, except as otherwise  
33 expressly provided in this article.

**§11-15B-33. State administration of local sales and use taxes.**

1 The Tax Commissioner shall administer, or authorize  
2 others to conduct on his or her behalf, the sales and use tax  
3 laws of this state subject to the agreement. Sellers and  
4 purchasers are only required to register with, file returns with  
5 and remit funds to the Tax Commissioner. The Tax  
6 Commissioner shall collect any municipal sales and use taxes  
7 and distribute them to the appropriate taxing jurisdictions.  
8 The Tax Commissioner shall conduct, or others may be  
9 authorized to conduct on his or her behalf, all audits of sellers  
10 and purchasers for compliance with the sales and use tax laws  
11 of this state and the sales and use tax laws of its local  
12 jurisdictions. Except as provided herein, local jurisdictions  
13 may not conduct independent sales or use tax audits of sellers  
14 and purchasers.

**§11-15B-34. State and local sales and use tax bases.**

1 (a) *General.*— The tax base of a local jurisdiction that  
2 levies a local sales or use tax pursuant to authority granted by  
3 the Legislature shall be identical to the sales and use tax base  
4 of this state, unless otherwise prohibited by federal law,  
5 except as provided in subsection (b) of this section.

6 (b) *Exceptions.*--

7 This section does not apply to sales or use taxes levied  
8 on: (1) The wholesale sale of gasoline or special fuel to  
9 power motor vehicles, aircraft, locomotives, or watercraft or  
10 to electricity, piped natural or artificial gas or other fuels  
11 delivered by the seller, which local jurisdictions are

12 prohibited from taxing; or (2) the retail sale or transfer of  
13 motor vehicles, aircraft, watercraft, modular homes,  
14 manufactured homes or mobile homes.

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## 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.**

#### **§11-21-9. Meaning of terms.**

1 (a) Any term used in this article has the same meaning as  
2 when used in a comparable context in the laws of the United  
3 States relating to income taxes, unless a different meaning is  
4 clearly required. Any reference in this article to the laws of  
5 the United States means the provisions of the Internal

6 Revenue Code of 1986, as amended, and any other provisions  
7 of the laws of the United States that relate to the  
8 determination of income for federal income tax purposes. All  
9 amendments made to the laws of the United States after  
10 December 31, 2010, but prior to January 1, 2012, shall be  
11 given effect in determining the taxes imposed by this article  
12 to the same extent those changes are allowed for federal  
13 income tax purposes, whether the changes are retroactive or  
14 prospective, but no amendment to the laws of the United  
15 States made on or after January 1, 2012, shall be given any  
16 effect.

17 (b) *Medical savings accounts.* -- The term “taxable trust”  
18 does not include a medical savings account established  
19 pursuant to section twenty, article fifteen, chapter thirty-three  
20 of this code or section fifteen, article sixteen of said chapter.  
21 Employer contributions to a medical savings account  
22 established pursuant to said sections are not wages for  
23 purposes of withholding under section seventy-one of this  
24 article.

25 (c) *Surtax.* -- The term “surtax” means the twenty  
26 percent additional tax imposed on taxable withdrawals from  
27 a medical savings account under section twenty, article  
28 fifteen, chapter thirty-three of this code and the twenty  
29 percent additional tax imposed on taxable withdrawals from  
30 a medical savings account under section fifteen, article  
31 sixteen of said chapter which are collected by the Tax  
32 Commissioner as tax collected under this article.

33 (d) *Effective date.* -- The amendments to this section  
34 enacted in the year 2012 are retroactive to the extent  
35 allowable under federal income tax law. With respect to  
36 taxable years that began prior to January 1, 2013, the law in  
37 effect for each of those years shall be fully preserved as to  
38 that year, except as provided in this section.



39 (e) For purposes of the refundable credit allowed to a low  
40 income senior citizen for property tax paid on his or her  
41 homestead in this state, the term "laws of the United States"  
42 as used in subsection (a) of this section means and includes  
43 the term "low income" as defined in subsection (b), section  
44 twenty-one of this article and as reflected in the poverty  
45 guidelines updated periodically in the federal register by the  
46 U. S. Department of Health and Human Services under the  
47 authority of 42 U. S. C. §9902(2).

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## 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.**

1 (a) *Lottery winnings subject to withholding.* -- Proceeds  
2 of more than \$5,000 from any lottery prize awarded by the

3 West Virginia State Lottery Commission is subject to  
4 withholding. The commission in making any payment of a  
5 lottery prize subject to withholding shall deduct and withhold  
6 from the payment a tax in an amount equal to six and one-  
7 half percent of the payment.

8 (b) *Statement by recipient.* -- Every person who is to  
9 receive payment of winnings which are subject to  
10 withholding shall furnish the person making the payment a  
11 statement made under the penalties of perjury, containing the  
12 name, address and taxpayer identification number of the  
13 person receiving the payment and each person entitled to any  
14 portion of the payment.

15 (c) *Coordination with other sections.* -- For the purposes  
16 of determining liability for payment of taxes and filing of  
17 returns, payments of winnings which are subject to  
18 withholding shall be treated as if they were wages paid by an  
19 employer to an employee.

20 (d) *Backup withholding.* -- Beginning July 1, 2012, every  
21 person who is required to file Internal Revenue Service form  
22 W-2G, and who is subject to backup withholding under  
23 federal law, is subject to West Virginia backup withholding.  
24 The payor in making any payment of a gambling prize  
25 subject to backup withholding shall deduct and withhold  
26 from the payment a tax in an amount equal to six and one-  
27 half percent of the payment.



## CHAPTER 191

**(S. B. 210 - 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 §11-24-3 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.**

- 1 (a) Any term used in this article has the same meaning as
- 2 when used in a comparable context in the laws of the United
- 3 States relating to federal income taxes, unless a different
- 4 meaning is clearly required by the context or by definition in this
- 5 article. Any reference in this article to the laws of the United
- 6 States means the provisions of the Internal Revenue Code of
- 7 1986, as amended, and any other provisions of the laws of the
- 8 United States that relate to the determination of income for
- 9 federal income tax purposes. All amendments made to the laws

10 of the United States after December 31, 2010, but prior to  
11 January 1, 2012, shall be given effect in determining the taxes  
12 imposed by this article to the same extent those changes are  
13 allowed for federal income tax purposes, whether the changes  
14 are retroactive or prospective, but no amendment to the laws of  
15 the United States made on or after January 1, 2012, shall be  
16 given any effect.

17 (b) The term "Internal Revenue Code of 1986" means the  
18 Internal Revenue Code of the United States enacted by the  
19 federal Tax Reform Act of 1986 and includes the provisions of  
20 law formerly known as the Internal Revenue Code of 1954, as  
21 amended, and in effect when the federal Tax Reform Act of  
22 1986 was enacted that were not amended or repealed by the  
23 federal Tax Reform Act of 1986. Except when inappropriate,  
24 any reference in any law, executive order or other document:

25 (1) To the Internal Revenue Code of 1954 includes a  
26 reference to the Internal Revenue Code of 1986; and

27 (2) To the Internal Revenue Code of 1986 includes a  
28 reference to the provisions of law formerly known as the Internal  
29 Revenue Code of 1954.

30 (c) *Effective date.* -- The amendments to this section  
31 enacted in the year 2012 are retroactive to the extent allowable  
32 under federal income tax law. With respect to taxable years that  
33 began prior to January 1, 2013, the law in effect for each of  
34 those years shall be fully preserved as to that year, except as  
35 provided in this section.



## CHAPTER 192

**(S. B. 386 - By Senators Unger, Browning,  
Snyder, Kessler, Mr. President, and Palumbo)**

[Passed March 8, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

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.**

1 (a) *Water's-edge reporting.* --

2 Absent an election under subsection (b) of this section to  
3 report based upon a worldwide unitary combined reporting

4 basis, taxpayer members of a unitary group shall determine  
5 each of their apportioned shares of the net business income  
6 or loss of the combined group on a water's-edge unitary  
7 combined reporting basis. In determining tax under this  
8 article and article twenty-three of this chapter on a water's-  
9 edge unitary combined reporting basis, taxpayer members  
10 shall take into account all or a portion of the income and  
11 apportionment factors of only the following members  
12 otherwise included in the combined group pursuant to section  
13 thirteen-a of this article:

14 (1) The entire income and apportionment factors of any  
15 member incorporated in the United States or formed under  
16 the laws of any state, the District of Columbia or any territory  
17 or possession of the United States;

18 (2) The entire income and apportionment factors of any  
19 member, regardless of the place incorporated or formed, if  
20 the average of its property, payroll and sales factors within  
21 the United States is twenty percent or more;

22 (3) The entire income and apportionment factors of any  
23 member which is a domestic international sales corporation  
24 as described in Internal Revenue Code Sections 991 to 994,  
25 inclusive; a foreign sales corporation as described in Internal  
26 Revenue Code Sections 921 to 927, inclusive; or any member  
27 which is an export trade corporation, as described in Internal  
28 Revenue Code Sections 970 to 971, inclusive;

29 (4) Any member not described in subdivision (1), (2) or  
30 (3) of this subsection shall include its business income which  
31 is effectively connected, or treated as effectively connected  
32 under the provisions of the Internal Revenue Code, with the  
33 conduct of a trade or business within the United States and,  
34 for that reason, subject to federal income tax;

35 (5) Any member that is a "controlled foreign  
36 corporation", as defined in Internal Revenue Code Section  
37 957, to the extent of the income of that member that is

38 defined in Section 952 of Subpart F of the Internal Revenue  
39 Code (Subpart F income) not excluding lower-tier  
40 subsidiaries' distributions of such income which were  
41 previously taxed, determined without regard to federal  
42 treaties, and the apportionment factors related to that income;  
43 any item of income received by a controlled foreign  
44 corporation shall be excluded if such income was subject to  
45 an effective rate of income tax imposed by a foreign country  
46 greater than ninety percent of the maximum rate of tax  
47 specified in Internal Revenue Code Section 11;

48 (6) Any member that earns more than twenty percent of  
49 its income, directly or indirectly, from intangible property or  
50 service-related activities that are deductible against the  
51 business income of other members of the water's-edge group,  
52 to the extent of that income and the apportionment factors  
53 related thereto: *Provided*, That for purposes of this  
54 subdivision, if a corporation organized outside of the United  
55 States is included in a water's- edge combined group pursuant  
56 to this subdivision, and has an item of income that is exempt  
57 from United States federal income tax pursuant to the  
58 mandate of a comprehensive income tax treaty qualified  
59 under Internal Revenue Code Section 1(h)(11), that  
60 corporation shall be considered to be included in the  
61 combined group under this subdivision only with regard to  
62 any items of income described in this subdivision that are not  
63 so exempt, taking into account items of expense and  
64 apportionment factors associated with such items of  
65 nonexempt income. Nothing in this subdivision prevents the  
66 Tax Commissioner from adjusting, under any provision of  
67 this article, any deduction claimed by the payer for amounts  
68 that are excluded from the combined group's taxable income  
69 under this subdivision. The Tax Commissioner may require  
70 the reporting of the amounts of such excluded income and the  
71 documentation of any claimed treaty exemption as conditions  
72 to be met by a payer claiming a deduction of such payments.  
73 The Tax Commissioner may issue such legislative,  
74 procedural or emergency rules as the Tax Commissioner may  
75 deem necessary for the administration of this section; and

76 (7) The entire income and apportionment factors of any  
77 member that is doing business in a tax haven defined as being  
78 engaged in activity sufficient for that tax haven jurisdiction to  
79 impose a tax under United States Constitutional standards. If the  
80 member's business activity within a tax haven is entirely outside  
81 the scope of the laws, provisions and practices that cause the  
82 jurisdiction to meet the criteria set forth in the definition of a tax  
83 haven, the activity of the member shall be treated as not having  
84 been conducted in a tax haven.

85 (b) *Initiation and withdrawal of election to report based*  
86 *on worldwide unitary combined reporting. --*

87 (1) An election to report West Virginia tax based on  
88 worldwide unitary combined reporting is effective only if  
89 made on a timely filed, original return for a tax year by every  
90 member of the unitary business subject to tax under this  
91 article. The Tax Commissioner shall develop rules governing  
92 the impact, if any, on the scope or application of a worldwide  
93 unitary combined reporting election, including termination or  
94 deemed election, resulting from a change in the composition  
95 of the unitary group, the combined group, the taxpayer  
96 members and any other similar change.

97 (2) The election shall constitute consent to the reasonable  
98 production of documents and taking of depositions in  
99 accordance with the provisions of this code.

100 (3) In the discretion of the Tax Commissioner, a  
101 worldwide unitary combined reporting election may be  
102 disregarded, in part or in whole, and the income and  
103 apportionment factors of any member of the taxpayer's  
104 unitary group may be included in or excluded from the  
105 combined report without regard to the provisions of this  
106 section, if any member of the unitary group fails to comply  
107 with any provision of this article.

108 (4) In the discretion of the Tax Commissioner, the Tax  
109 Commissioner may mandate worldwide unitary combined



110 reporting, in part or in whole, and the income and  
111 apportionment factors of any member of the taxpayer's  
112 unitary group may be included in or excluded from the  
113 combined report without regard to the provisions of this  
114 section, if any member of the unitary group fails to comply  
115 with any provision of this article or if a person otherwise not  
116 included in the water's-edge combined group was availed of  
117 with a substantial objective of avoiding state income tax.

118 (5) A worldwide unitary combined reporting election is  
119 binding for and applicable to the tax year it is made and all  
120 tax years thereafter for a period of ten years. It may be  
121 withdrawn or reinstated after withdrawal, prior to the  
122 expiration of the ten-year period, only upon written request  
123 for reasonable cause based on extraordinary hardship due to  
124 unforeseen changes in state tax statutes, law or policy and  
125 only with the written permission of the Tax Commissioner.  
126 If the Tax Commissioner grants a withdrawal of election, he  
127 or she shall impose reasonable conditions necessary to  
128 prevent the evasion of tax or to clearly reflect income for the  
129 election period prior to or after the withdrawal. Upon the  
130 expiration of the ten-year period, a taxpayer may withdraw  
131 from the worldwide unitary combined reporting election.  
132 Withdrawal must be made in writing within one year of the  
133 expiration of the election and is binding for a period of ten  
134 years, subject to the same conditions as applied to the  
135 original election. If no withdrawal is properly made, the  
136 worldwide unitary combined reporting election shall be in  
137 place for an additional ten-year period, subject to the same  
138 conditions as applied to the original election.

139 (c) For purposes of determining the tax imposed by  
140 article twenty-three of this chapter, the term "income", as  
141 used in this section, shall be interpreted to mean the tax base  
142 or capital, as applicable, for purposes of the tax imposed  
143 under article twenty-three of this chapter.

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## CHAPTER 193

(Com. Sub. for S. B. 211 - By Senators  
Kessler, Mr. President, and Hall)  
[By Request of the Executive]

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

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.**

- 1 (a) Except as provided in subsection (c) of this section, a person
- 2 may not drive or operate a motor vehicle on a public street or
- 3 highway while:

4 (1) Texting; or

5 (2) Using a cell phone or other electronic  
6 communications device, unless the use is accomplished by  
7 hands-free equipment.

8 (b) For purposes of this section, the following terms shall  
9 mean:

10 (1) “Cell phone” shall mean a cellular, analog, wireless  
11 or digital telephone.

12 (2) “Driving” or “operating a motor vehicle” means  
13 operating a motor vehicle, with the motor running, including  
14 while temporarily stationary because of traffic, a traffic  
15 control device, or other momentary delays, but does not  
16 include operating a motor vehicle after the driver has moved  
17 the vehicle to the side of, or off, a highway and halted in a  
18 location where the vehicle can safely remain stationary.

19 (3) “Electronic communication device” means a cell  
20 telephone, personal digital assistant, electronic device with  
21 mobile data access, laptop computer, pager, broadband  
22 personal communication device, 2-way messaging device,  
23 electronic game, or portable computing device. For the  
24 purposes of this section, an “electronic communication  
25 device” does not include:

26 (A) Voice radios, mobile radios, land mobile radios,  
27 commercial mobile radios or two way radios with the  
28 capability to transmit and receive voice transmissions  
29 utilizing a push-to-talk or press-to-transmit function; or

30 (B) Other voice radios used by a law-enforcement officer,  
31 an emergency services provider, an employee or agent of  
32 public safety organizations, first responders, Amateur Radio  
33 Operators (HAM) licensed by the Federal Communications  
34 Commission and school bus operators.

35           (4) “Engaging in a call” means when a person talks into  
36 or listens on an electronic communication device, but shall  
37 not include when a person dials or enters a phone number on  
38 a pushpad or screen to initiate the call.

39           (5) “Hands-free electronic communication device” means  
40 an electronic communication device that has an internal  
41 feature or function, or that is equipped with an attachment or  
42 addition, whether or not permanently part of such electronic  
43 communication device, by which a user engages in a call  
44 without the use of either hand or both hands.

45           (6) “Hands-free equipment” means the internal feature or  
46 function of a hands-free electronic communication device or  
47 the attachment or addition to a hands-free electronic  
48 communication device by which a user may engage in a call  
49 or text without the use of either hand or both hands.

50           (7) “Texting” means manually entering alphanumeric text  
51 into, or reading text from, an electronic communication  
52 device, and includes, but is not limited to, short message  
53 service, e-mailing, instant messaging, a command or request  
54 to access a World Wide Web page or engaging in any other  
55 form of electronic text retrieval or entry, for present or future  
56 communication. For purposes of this section, “texting” does  
57 not include the following actions:

58           (A) Reading, selecting or entering a telephone number, an  
59 extension number, or voicemail retrieval codes and  
60 commands into an electronic device by the pressing the  
61 device in order to initiate or receive a phone call or using  
62 voice commands to initiate or receive a telephone call;

63           (B) Inputting, selecting or reading information on a  
64 global positioning system or navigation system; or

65           (C) Using a device capable of performing multiple  
66 functions, including fleet management systems, dispatching

67 devices, smart phones, citizens band radios or music players,  
68 for a purpose that is not otherwise prohibited in this section.

69 (8) "Using a cell phone or other electronic  
70 communication device" means holding in a person's hand or  
71 hands an electronic communication device while:

72 (A) Viewing or transmitting images or data;

73 (B) Playing games;

74 (C) Composing, sending, reading, viewing, accessing,  
75 browsing, transmitting, saving or retrieving e-mail, text  
76 messages or other electronic data; or

77 (D) Engaging in a call.

78 (c) Subsection (a) of this section shall not apply to:

79 (1) A law-enforcement officer, a firefighter, an  
80 emergency medical technician, a paramedic or the operator of  
81 an authorized emergency vehicle in the performance of their  
82 official duties;

83 (2) A person using an electronic communication device  
84 to report to appropriate authorities a fire, a traffic accident, a  
85 serious road hazard, or a medical or hazardous materials  
86 emergencies.

87 (3) The activation or deactivation of hands-free  
88 equipment or a function of hands-free equipment.

89 (d) This section does not supersede the provisions of  
90 section three-a, article two, chapter seventeen-b of this code  
91 or any more restrictive provisions for drivers of commercial  
92 motor vehicles prescribed by the provisions of chapter  
93 seventeen-e of this code or federal law or rule.

94 (e) Any person who violates the provisions of subsection  
95 (a) of this section is guilty of a traffic offense and, upon  
96 conviction thereof, shall for a first offense be fined \$100; for  
97 a second offense be fined \$200; and for a third or subsequent  
98 offense be fined \$300. No court costs or other fees shall be  
99 assessed for a violation of subsection (a) of this section.

100 (f) Notwithstanding any other provision of this code to  
101 the contrary, points may not be entered on any driver's record  
102 maintained by the Division of Motor Vehicles as a result of  
103 a violation of this section, except for the third and subsequent  
104 convictions of the offense, for which three points shall be  
105 entered on any driver's record maintained by the Division of  
106 Motor Vehicles.

107 (g) Driving or operating a motor vehicle on a public street  
108 or highway while texting shall be enforced as a primary  
109 offense as of July 1, 2012. Driving or operating a motor  
110 vehicle on a public street or highway while using a cell phone  
111 or other electronic communication device without hands-free  
112 equipment shall be enforced as a secondary offense as of July  
113 1, 2012, and as a primary offense as of July 1, 2013 for  
114 purposes of citation.

115 (h) Within ninety days of the effective date of this  
116 section, the Department of Transportation shall cause to be  
117 erected signs upon any highway entering the state of West  
118 Virginia on which a welcome to West Virginia sign is posted,  
119 and any other highway where the Division of Highways  
120 deems appropriate, posted at a distance of not more than one  
121 mile from each border crossing, each sign to bear an  
122 inscription clearly communicating to motorists entering the  
123 state that texting, or the use of a wireless communication  
124 device without hands-free equipment, is illegal within this  
125 state.

126 (i) Nothing contained in this section shall be construed to  
127 authorize seizure of a cell phone or electronic device by any  
128 law-enforcement agency.

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## 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.**

#### **§21A-5-7. Joint and separate accounts.**

1 (1) The commissioner shall maintain a separate account  
2 for each employer, and shall credit the employer's account  
3 with all contributions of the employer in excess of four tenths  
4 of one percent of taxable wages: *Provided*, That any  
5 adjustment made in any employer's account after the

6 computation date may not be used in the computation of the  
7 balance of an employer until the next following computation  
8 date: *Provided, however,* That nothing in this chapter grants  
9 an employer or individual in his, her or its service prior  
10 claims or rights to the amounts paid by him, her or its into the  
11 fund, either on his, her or its behalf or on behalf of the  
12 individuals. The account of any employer which has been  
13 inactive for a period of four consecutive calendar years shall  
14 be terminated for all purposes.

15 (2) Benefits paid to an eligible individual for regular and  
16 extended total or partial unemployment beginning after the  
17 effective date of this article shall be charged to the account of  
18 the last employer with whom he or she has been employed as  
19 much as thirty working days, whether or not the days are  
20 consecutive: *Provided,* That no employer's account may be  
21 charged with benefits paid to any individual who has been  
22 separated from a noncovered employing unit in which he or  
23 she was employed as much as thirty days, whether or not the  
24 days are consecutive: *Provided, however,* That no employer's  
25 account may be charged with more than fifty percent of the  
26 benefits paid to an eligible individual as extended benefits  
27 under the provisions of article six-a of this chapter: *Provided*  
28 *further,* That state and local government employers shall be  
29 charged with one hundred percent of the benefits paid to an  
30 eligible individual as extended benefits. Benefits paid to an  
31 individual are to be charged to the accounts of his or her  
32 employers in the base period, the amount of the charges,  
33 chargeable to the account of each employer, to be that portion  
34 of the total benefits paid the individual as the wages paid him  
35 or her by the employer in the base period are to the total  
36 wages paid him or her during his or her base period for  
37 insured work by all his or her employers in the base period.  
38 For the purposes of this section, no base period employer's  
39 account may be charged for benefits paid under this chapter  
40 to a former employee, if the base period employer furnishes  
41 separation information within fourteen days from the date the



42 notice was mailed or delivered, which results in a  
43 disqualification under the provision set forth in subsection  
44 one, section three, article six, or subsection two, section  
45 three, article six of this chapter or would have resulted in a  
46 disqualification under that subsection except for a subsequent  
47 period of covered employment by another employing unit.  
48 Further, no contributory base period employer's experience  
49 rating account may be charged for benefits paid under this  
50 chapter to an individual who has been continuously employed  
51 by that employer on a part-time basis, if the part-time  
52 employment continues while the individual is separated from  
53 other employment and is otherwise eligible for benefits. One  
54 half of extended benefits paid to an individual are to be  
55 charged to the accounts of his or her employers, except state  
56 and local government employers, in the base period in the  
57 same manner provided for the charging of regular benefits.  
58 The entire state share of extended benefits paid to an  
59 individual shall be charged to the accounts of his or her base  
60 period employers. The provisions of this section permitting  
61 the noncharging of contributory employers' accounts have no  
62 application to benefit charges imposed upon reimbursable  
63 employers.

64 (3) The commissioner shall classify employers in  
65 accordance with their actual experience in the payment of  
66 contributions on their own behalf and with respect to benefits  
67 charged against their accounts, with a view of fixing the  
68 contribution rates as will reflect such experiences. For the  
69 purpose of fixing the contribution rates for each calendar  
70 year, the books of the department shall be closed on July 31  
71 of the preceding calendar year, and any contributions paid  
72 after that, as well as benefits paid after that with respect to  
73 compensable weeks ending on or before June 30 of the  
74 preceding calendar year, may not be taken into account until  
75 the next annual date for fixing contribution rates: *Provided,*  
76 That if an employer has failed to furnish to the commissioner  
77 on or before July 31 of the preceding calendar year the wage

78 information for all past periods necessary for the computation  
79 of the contribution rate, the employer's rate shall be, if it is  
80 immediately prior to that July 31, less than three and three-  
81 tenths percent, increased to three and three-tenths percent:  
82 *Provided, however,* That any payment made or any  
83 information necessary for the computation of a reduced rate  
84 furnished on or before the termination of an extension of time  
85 for the payment or reporting of information granted pursuant  
86 to a rule of the commissioner authorizing an extension, shall  
87 be taken into account for the purposes of fixing contribution  
88 rates: *Provided further,* That when the time for filing any  
89 report or making any payment required hereunder falls on  
90 Saturday, Sunday, or a legal holiday, the due date is the next  
91 succeeding business day: *And provided further,* That  
92 whenever, through mistake or inadvertence, erroneous credits  
93 or charges are found to have been made to or against the  
94 reserved account of any employer, the rate shall be adjusted  
95 as of January 1 of the calendar year in which the mistake or  
96 inadvertence is discovered, but payments, made under any  
97 rate assigned prior to January 1 of that year, are not  
98 erroneously collected.

99 (4) The commissioner may prescribe rules for the  
100 establishment, maintenance and dissolution of joint accounts  
101 by two or more employers, and shall, in accordance with the  
102 rules and upon application by two or more employers to  
103 establish a joint account, or to merge their several individual  
104 accounts in a joint account, maintain a joint account as if it is  
105 a single employer's account.

106 (5) State and local government employers may enter into  
107 joint accounts and to maintain the joint account or accounts  
108 as if it or they are a single employer's account or accounts.

109 (6) Effective on and after July 1, 2012 if an employer has  
110 failed to furnish to the commissioner on or before August 31  
111 of each year the wage information for all past periods

112 necessary for the computation of the contribution rate, the  
113 employer's rate shall be, if it is immediately prior to July 1,  
114 less than seven and five-tenths percent, increased to seven  
115 and five-tenths percent.

116 (7) Effective July 1, 2012, a contributory employer's  
117 account shall not be relieved of charges relating to a payment  
118 from the Fund if the department determines that:

119 (A) The erroneous payment was made because the  
120 employer, or an agent of the employer, was at fault for failing  
121 to respond timely or adequately to the request of the agency  
122 for information relating to the claim for compensation; and

123 (B) The employer or agent has established a pattern of  
124 failing to respond timely or adequately to such requests.

125 (8) For purposes of this section:

126 (A) "Erroneous payment" means a payment that but for  
127 the failure by the employer or the employer's agent with  
128 respect to the claim for unemployment compensation would  
129 not have been made.

130 (B) "Pattern of failing" means repeated documented  
131 failure on the part of the employer or the agent of the  
132 employer to respond as requested in this section, taking into  
133 consideration the number of instances of failure in relation to  
134 the total volume of requests by the agency to the employer or  
135 the employer's agent as described in this section.

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## CHAPTER 195

**(H. B. 4007 - By Delegates Iaquinta, Longstretch, Fleischauer,  
Jones, Stephens, Walker and Azinger)**

[Passed March 9, 2012; in effect ninety days from passage.]

[Approved by the Governor on April 2, 2012.]

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,  
2        an individual is disqualified for benefits:

3        (1) For the week in which he or she left his or her most  
4        recent work voluntarily without good cause involving fault  
5        on the part of the employer and until the individual returns to

6 covered employment and has been employed in covered  
7 employment at least thirty working days.

8 For the purpose of this subdivision, an individual has not  
9 left his or her most recent work voluntarily without good  
10 cause involving fault on the part of the employer, if the  
11 individual leaves his or her most recent work with an  
12 employer and if he or she in fact, within a fourteen-day  
13 calendar period, does return to employment with the last  
14 preceding employer with whom he or she was previously  
15 employed within the past year prior to his or her return to  
16 workday, and which last preceding employer, after having  
17 previously employed the individual for thirty working days  
18 or more, laid off the individual because of lack of work,  
19 which layoff occasioned the payment of benefits under this  
20 chapter or could have occasioned the payment of benefits  
21 under this chapter had the individual applied for benefits. It  
22 is the intent of this paragraph to cause no disqualification for  
23 benefits for an individual who complies with the foregoing  
24 set of requirements and conditions. Further, for the purpose  
25 of this subdivision, an individual has not left his or her most  
26 recent work voluntarily without good cause involving fault  
27 on the part of the employer, if the individual was compelled  
28 to leave his or her work for his or her own health-related  
29 reasons and notifies the employer prior to leaving the job or  
30 within two business days after leaving the job or as soon as  
31 practicable and presents written certification from a licensed  
32 physician within thirty days of leaving the job that his or her  
33 work aggravated, worsened or will worsen the individual's  
34 health problem.

35 (2) For the week in which he or she was discharged from  
36 his or her most recent work for misconduct and the six weeks  
37 immediately following that week; or for the week in which he  
38 or she was discharged from his or her last thirty-day  
39 employing unit for misconduct and the six weeks  
40 immediately following that week. The disqualification

41 carries a reduction in the maximum benefit amount equal to  
42 six times the individual's weekly benefit. However, if the  
43 claimant returns to work in covered employment for thirty  
44 days during his or her benefit year, whether or not the days  
45 are consecutive, the maximum benefit amount is increased by  
46 the amount of the decrease imposed under the  
47 disqualification; except that:

48 If he or she were discharged from his or her most recent  
49 work for one of the following reasons, or if he or she were  
50 discharged from his or her last thirty days employing unit for  
51 one of the following reasons: Gross misconduct consisting  
52 of willful destruction of his or her employer's property;  
53 assault upon the person of his or her employer or any  
54 employee of his or her employer; if the assault is committed  
55 at the individual's place of employment or in the course of  
56 employment; reporting to work in an intoxicated condition,  
57 or being intoxicated while at work; reporting to work under  
58 the influence of any controlled substance, as defined in  
59 chapter sixty-a of this code without a valid prescription, or  
60 being under the influence of any controlled substance, as  
61 defined in said chapter without a valid prescription, while at  
62 work; adulterating or otherwise manipulating a sample or  
63 specimen in order to thwart a drug or alcohol test lawfully  
64 required of an employee; refusal to submit to random testing  
65 for alcohol or illegal controlled substances for employees in  
66 safety sensitive positions as defined in section two, article  
67 one-d, chapter twenty-one of this code; arson, theft, larceny,  
68 fraud or embezzlement in connection with his or her work; or  
69 any other gross misconduct, he or she is disqualified for  
70 benefits until he or she has thereafter worked for at least  
71 thirty days in covered employment: *Provided*, That for the  
72 purpose of this subdivision, the words "any other gross  
73 misconduct" includes, but is not limited to, any act or acts of  
74 misconduct where the individual has received prior written  
75 warning that termination of employment may result from the  
76 act or acts.

77           (3) For the week in which he or she failed without good  
78 cause to apply for available, suitable work, accept suitable  
79 work when offered, or return to his or her customary self-  
80 employment when directed to do so by the commissioner, and  
81 for the four weeks which immediately follow for such  
82 additional period as any offer of suitable work shall continue  
83 open for his or her acceptance. The disqualification carries  
84 a reduction in the maximum benefit amount equal to four  
85 times the individual's weekly benefit amount.

86           (4) For a week in which his or her total or partial  
87 unemployment is due to a stoppage of work which exists  
88 because of a labor dispute at the factory, establishment or  
89 other premises at which he or she was last employed, unless  
90 the commissioner is satisfied that he or she: (1) Was not  
91 participating, financing or directly interested in the dispute;  
92 and (2) did not belong to a grade or class of workers who  
93 were participating, financing or directly interested in the  
94 labor dispute which resulted in the stoppage of work. No  
95 disqualification under this subdivision is imposed if the  
96 employees are required to accept wages, hours or conditions  
97 of employment substantially less favorable than those  
98 prevailing for similar work in the locality, or if employees are  
99 denied the right of collective bargaining under generally  
100 prevailing conditions, or if an employer shuts down his or her  
101 plant or operation or dismisses his or her employees in order  
102 to force wage reduction, changes in hours or working  
103 conditions. For the purpose of this subdivision if any  
104 stoppage of work continues longer than four weeks after the  
105 termination of the labor dispute which caused stoppage of  
106 work, there is a rebuttable presumption that part of the  
107 stoppage of work which exists after a period of four weeks  
108 after the termination of the labor dispute did not exist because  
109 of the labor dispute; and in that event the burden is upon the  
110 employer or other interested party to show otherwise.

111           (5) For a week with respect to which he or she is  
112 receiving or has received:

113 (a) Wages in lieu of notice;

114 (b) Compensation for temporary total disability under the  
115 workers' compensation law of any state or under a similar  
116 law of the United States; or

117 (c) Unemployment compensation benefits under the laws  
118 of the United States or any other state.

119 (6) For the week in which an individual has voluntarily  
120 quit employment to marry or to perform any marital, parental  
121 or family duty, or to attend to his or her personal business or  
122 affairs and until the individual returns to covered employment  
123 and has been employed in covered employment at least thirty  
124 working days: *Provided*, That an individual who has  
125 voluntarily quit employment to accompany a spouse serving  
126 in active military service who has been reassigned from one  
127 military assignment to another is not disqualified for benefits  
128 pursuant to this subdivision: *Provided, however*, That the  
129 account of the employer of an individual who leaves the  
130 employment to accompany a spouse reassigned from one  
131 military assignment to another may not be charged.

132 (7) Benefits may not be paid to any individual on the  
133 basis of any services, substantially all of which consist of  
134 participating in sports or athletic events or training or  
135 preparing to so participate, for any week which commences  
136 during the period between two successive sport seasons (or  
137 similar periods) if the individual performed the services in the  
138 first of the seasons (or similar periods) and there is a  
139 reasonable assurance that the individual will perform the  
140 services in the later of the seasons (or similar periods).

141 (8) (a) Benefits may not be paid on the basis of services  
142 performed by an alien unless the alien is an individual who  
143 was lawfully admitted for permanent residence at the time the  
144 services were performed, was lawfully present for purposes



145 of performing the services or was permanently residing in the  
146 United States under color of law at the time the services were  
147 performed (including an alien who is lawfully present in the  
148 United States as a result of the application of the provisions  
149 of Section 203(a)(7) or Section 212(d)(5) of the Immigration  
150 and Nationality Act): *Provided*, That any modifications to  
151 the provisions of Section 3304(a)(14) of the federal  
152 Unemployment Tax Act as provided by Public Law 94-566  
153 which specify other conditions or other effective date than  
154 stated in this subdivision for the denial of benefits based on  
155 services performed by aliens and which modifications are  
156 required to be implemented under state law as a condition for  
157 full tax credit against the tax imposed by the federal  
158 Unemployment Tax Act are applicable under the provisions  
159 of this section.

160 (b) Any data or information required of individuals  
161 applying for benefits to determine whether benefits are not  
162 payable to them because of their alien status shall be  
163 uniformly required from all applicants for benefits.

164 (c) In the case of an individual whose application for  
165 benefits would otherwise be approved, no determination that  
166 benefits to the individual are not payable because of his or  
167 her alien status may be made except upon a preponderance of  
168 the evidence.

169 (9) For each week in which an individual is unemployed  
170 because, having voluntarily left employment to attend a  
171 school, college, university or other educational institution, he  
172 or she is attending that school, college, university or other  
173 educational institution, or is awaiting entrance thereto or is  
174 awaiting the starting of a new term or session thereof, and  
175 until the individual returns to covered employment.

176 (10) For each week in which he or she is unemployed  
177 because of his or her request, or that of his or her duly

178 authorized agent, for a vacation period at a specified time that  
179 would leave the employer no other alternative but to suspend  
180 operations.

181 (11) In the case of an individual who accepts an early  
182 retirement incentive package, unless he or she: (i)  
183 Establishes a well-grounded fear of imminent layoff  
184 supported by definitive objective facts involving fault on the  
185 part of the employer; and (ii) establishes that he or she would  
186 suffer a substantial loss by not accepting the early retirement  
187 incentive package.

188 (12) For each week with respect to which he or she is  
189 receiving or has received benefits under Title II of the Social  
190 Security Act or similar payments under any Act of Congress,  
191 or remuneration in the form of an annuity, pension or other  
192 retirement pay from a base period employer or chargeable  
193 employer or from any trust or fund contributed to by a base  
194 period employer or chargeable employer or any combination  
195 of the above, the weekly benefit amount payable to the  
196 individual for that week shall be reduced (but not below zero)  
197 by the prorated weekly amount of those benefits, payments or  
198 remuneration: *Provided*, That if the amount of benefits is not  
199 a multiple of \$1, it shall be computed to the next lowest  
200 multiple of \$1: *Provided, however*, That there is no  
201 disqualification if in the individual's base period there are no  
202 wages which were paid by the base period employer or  
203 chargeable employer paying the remuneration, or by a fund  
204 into which the employer has paid during the base period:  
205 *Provided further*, That notwithstanding any other provision  
206 of this subdivision to the contrary, the weekly benefit amount  
207 payable to the individual for that week may not be reduced by  
208 any retirement benefits he or she is receiving or has received  
209 under Title II of the Social Security Act or similar payments  
210 under any Act of Congress. A claimant may be required to  
211 certify as to whether or not he or she is receiving or has been  
212 receiving remuneration in the form of an annuity, pension or

213 other retirement pay from a base period employer or  
214 chargeable employer or from a trust fund contributed to by a  
215 base period employer or chargeable employer.

216 (13) For each week in which and for fifty-two weeks  
217 thereafter, beginning with the date of the decision, if the  
218 commissioner finds the individual who within twenty-four  
219 calendar months immediately preceding the decision, has  
220 made a false statement or representation knowing it to be  
221 false or knowingly fails to disclose a material fact, to obtain  
222 or increase any benefit or payment under this article:  
223 *Provided*, That disqualification under this subdivision does  
224 not preclude prosecution under section seven, article ten of  
225 this chapter.

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## CHAPTER 196

**(H. B. 4549 - 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-10-7 of the Code of West Virginia, 1931, as amended, relating to imposing a monetary penalty on unemployment compensation recipients for obtaining benefits through the use of fraudulent statements or actions; specifying disposition of the penalties collected; and providing that penalty amounts may not be used to offset future benefit payments to recipients.

*Be it enacted by the Legislature of West Virginia:*

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.**

1           (a) A person who makes a false statement or  
2 representation knowing it to be false or who knowingly fails  
3 to disclose a material fact in order to obtain or attempt to  
4 obtain or increase a benefit, either for himself, herself or  
5 another, under this chapter, or under an employment security  
6 law of any other state or of the federal government for either  
7 of which jurisdictions this state is acting as an agent, is guilty  
8 of a misdemeanor, and, upon conviction, shall be punished by  
9 a fine of not less than \$100 nor more than \$1,000, or by  
10 confinement in jail for not longer than thirty days, or both,  
11 and by full repayment of all benefits obtained fraudulently.  
12 Each false statement or representation, or failure to disclose  
13 a material fact, is a separate offense.

14           (b) After July 1, 2012, a penalty of twenty percent of the  
15 amount of the erroneous payment attaches to the amount of  
16 the liability to be repaid by the benefit recipient for any  
17 payment of benefits determined to be obtained by the  
18 recipient's fraudulent statements or actions. The first  
19 seventy-five percent of the penalty collected from the benefit  
20 recipient shall be deposited in the state's Unemployment  
21 Trust Fund with the remaining twenty-five percent of the  
22 penalty collected to be deposited in a special administrative  
23 account to be used for increased integrity activities to identify  
24 and recover erroneous payments of benefits created by  
25 fraudulent activities of benefit recipients. Penalty amounts  
26 established due to fraudulent activities of benefit recipients  
27 may not be used to offset future benefits payable to benefit  
28 recipients.

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## CHAPTER 197

(Com. Sub. for S. B. 661 - By Senators Plymale,  
Browning and Stollings)

[Passed March 10, 2012; in effect July 1, 2012.]

[Approved by the Governor on April 2, 2012.]

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.**

- 1 (a) Each employer, including labor organizations as
- 2 defined in subsection (i) of this section, shall, quarterly,
- 3 submit certified reports on or before the last day of the month
- 4 next following the calendar quarter, on forms to be prescribed
- 5 by the commissioner. The reports shall contain:

6 (1) The employer's assigned unemployment  
7 compensation registration number, the employer's name and  
8 the address at which the employer's payroll records are  
9 maintained;

10 (2) Each employee's Social Security account number,  
11 name and the gross wages paid to each employee, which shall  
12 include the first \$12,000 of remuneration and all amounts in  
13 excess of that amount, notwithstanding subdivision (1),  
14 subsection (b), section twenty-eight, article one-a of this  
15 chapter;

16 (3) The total gross wages paid within the quarter for  
17 employment, which includes money wages and the cash  
18 value of other remuneration, and shall include the first  
19 \$12,000 of remuneration paid to each employee and all  
20 amounts in excess of that amount, notwithstanding  
21 subdivision (1), subsection (b), section twenty-eight, article  
22 one-a of this chapter; and

23 (4) Other information that is reasonably connected with  
24 the administration of this chapter.

25 (b) Information obtained may not be published or be open  
26 to public inspection to reveal the identity of the employing  
27 unit or the individual.

28 (c) Notwithstanding the provisions of subsection (b) of  
29 this section, the commissioner may provide information  
30 obtained to the following governmental entities for purposes  
31 consistent with state and federal laws:

32 (1) The United States Department of Agriculture;

33 (2) The state agency responsible for enforcement of the  
34 Medicaid program under Title XIX of the Social Security  
35 Act;

36 (3) The United States Department of Health and Human  
37 Services or any state or federal program operating and  
38 approved under Title I, Title II, Title X, Title XIV or Title  
39 XVI of the Social Security Act;

40 (4) Those agencies of state government responsible for  
41 economic and community development; early childhood,  
42 primary, secondary, postsecondary and vocational education;  
43 the West Virginia P-20 longitudinal data system established  
44 pursuant to section ten, article one-d, chapter eighteen-b of  
45 this code; and vocational rehabilitation, employment and  
46 training, including, but not limited to, the administration of  
47 the Perkins Act and the Workforce Investment Act;

48 (5) The Tax Division, but only for the purposes of  
49 collection and enforcement;

50 (6) The Division of Labor for purposes of enforcing the  
51 wage bond and the contractor licensing provisions of chapter  
52 twenty-one of this code;

53 (7) Any agency of this or any other state, or any federal  
54 agency, charged with the administration of an unemployment  
55 compensation law or the maintenance of a system of public  
56 employment offices;

57 (8) Any claimant for benefits or any other interested party  
58 to the extent necessary for the proper presentation or defense  
59 of a claim; and

60 (9) The Insurance Commissioner for purposes of its  
61 workers compensation regulatory duties.

62 (d) The agencies or organizations which receive  
63 information under subsection (c) of this section shall agree  
64 that the information shall remain confidential as not to reveal  
65 the identity of the employing unit or the individual consistent  
66 with the provisions of this chapter.

67 (e) The commissioner may, before furnishing any  
68 information permitted under this section, require that those  
69 who request the information shall reimburse the Bureau of  
70 Employment Programs for any cost associated for furnishing  
71 the information.

72 (f) The commissioner may refuse to provide any  
73 information requested under this section if the agency or  
74 organization making the request does not certify that it will  
75 comply with the state and federal law protecting the  
76 confidentiality of the information.

77 (g) A person who violates the confidentiality provisions  
78 of this section is guilty of a misdemeanor and, upon  
79 conviction thereof, shall be fined not less than \$20 nor more  
80 than \$200 or confined in a county or regional jail not longer  
81 than ninety days, or both.

82 (h) An action for slander or libel, either criminal or civil,  
83 may not be predicated upon information furnished by any  
84 employer or any employee to the commissioner in connection  
85 with the administration of any of the provisions of this  
86 chapter.

87 (i) For purposes of subsection (a) of this section, the term  
88 "labor organization" means any organization of any kind, or  
89 any agency or employee representation committee or plan, in  
90 which employees participate and which exists for the  
91 purpose, in whole or in part, of dealing with employers  
92 concerning grievances, labor disputes, wages, rates of pay,  
93 hours of employment or conditions of work. It includes any  
94 entity, also known as a hiring hall, which is used by the  
95 organization and an employer to carry out requirements  
96 described in 29 U. S. C. §158(f)(3) of an agreement between  
97 the organization and the employer.



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## 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.]

AN ACT to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-2A-103 of said code; to amend and reenact §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to amend said code by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all relating generally to amendments to the uniform commercial code; amending and adding definitions; amending what constitutes control of electronic chattel paper; providing for effect on filed financing statements of change in governing law; amending priority of security interests created by new debtor; amending effectiveness of terms restricting assignment; improving the system for filing financing statements; providing greater protection for existing secured party having a security interest in after-acquired property upon relocation of debtor; reforming the correction statement process; technical changes; and providing transitional rules regarding perfection of security interests, effectiveness of financing statements, persons entitled to file financing statements and priority of financing statements.

*Be it enacted by the Legislature of West Virginia:*

That §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended, be repealed; that §46-2A-103 of said code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all to read as follows:

## **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  
3           person who in good faith and without knowledge that the sale  
4           to him or her is in violation of the ownership rights or  
5           security interest or leasehold interest of a third party in the  
6           goods, buys in ordinary course from a person in the business  
7           of selling goods of that kind but does not include a  
8           pawnbroker. “Buying” may be for cash or by exchange of  
9           other property or on secured or unsecured credit and includes  
10          acquiring goods or documents of title under a preexisting  
11          contract for sale, but does not include, a transfer in bulk or as  
12          security for or in total or partial satisfaction of a money debt.
  - 13          (b) “Cancellation” occurs when either party puts an end  
14          to the lease contract for default by the other party.
  - 15          (c) “Commercial unit” means such a unit of goods as by  
16          commercial usage is a single whole for purposes of lease and

17 division of which materially impairs its character or value on  
18 the market or in use. A commercial unit may be a single  
19 article, as a machine, or a set of articles, as a suite of furniture  
20 or a line of machinery, or a quantity, as a gross or carload, or  
21 any other unit treated in use or in the relevant market as a  
22 single whole.

23 (d) “Conforming” goods or performance under a lease  
24 contract means goods or performance that are in accordance  
25 with the obligations under the lease contract.

26 (e) “Consumer lease” shall have the same meaning as that  
27 ascribed to it in section one hundred two, article one, chapter  
28 forty-six-a of this code.

29 (f) “Fault” means wrongful act, omission, breach or  
30 default.

31 (g) “Finance lease” means a lease with respect to which:

32 (i) The lessor does not select, manufacture or supply the  
33 goods;

34 (ii) The lessor acquires the goods or the right to  
35 possession and use of the goods in connection with the lease;  
36 and

37 (iii) One of the following occurs:

38 (A) The lessee receives a copy of the contract by which  
39 the lessor acquired the goods or the right to possession and  
40 use of the goods before signing the lease contract;

41 (B) The lessee’s approval of the contract by which the lessor  
42 acquired the goods or the right to possession and use of the  
43 goods is a condition to effectiveness of the lease contract;

44 (C) The lessee, before signing the lease contract, receives  
45 an accurate and complete statement designating the promises  
46 and warranties, and any disclaimers of warranties, limitations  
47 or modifications of remedies, or liquidated damages,  
48 including those of a third party, such as the manufacturer of  
49 the goods, provided to the lessor by the person supplying the  
50 goods in connection with or as part of the contract by which  
51 the lessor acquired the goods or the right to possession and  
52 use of the goods; or

53 (D) If the lease is not a consumer lease, the lessor, before  
54 the lessee signs the lease contract, informs the lessee in  
55 writing: (a) Of the identity of the person supplying the goods  
56 to the lessor, unless the lessee has selected that person and  
57 directed the lessor to acquire the goods or the right to  
58 possession and use of the goods from that person; (b) that the  
59 lessee is entitled under this article to the promises and  
60 warranties, including those of any third party, provided to the  
61 lessor by the person supplying the goods in connection with  
62 or as part of the contract by which the lessor acquired the  
63 goods or the right to possession and use of the goods; and (c)  
64 that the lessee may communicate with the person supplying  
65 the goods to the lessor and receive an accurate and complete  
66 statement of those promises and warranties, including any  
67 disclaimers and limitations of them or of remedies.

68 (h) “Goods” means all things that are movable at the time  
69 of identification to the lease contract, or are fixtures (section  
70 2A-309), but the term does not include money, documents,  
71 instruments, accounts, chattel paper, general intangibles or  
72 minerals or the like, including oil and gas, before extraction.  
73 The term also includes the unborn young of animals.

74 (i) “Installment lease contract” means a lease contract that  
75 authorizes or requires the delivery of goods in separate lots  
76 to be separately accepted, even though the lease contract  
77 contains a clause “each delivery is a separate lease” or its  
78 equivalent.

79           (j) “Lease” means a transfer of the right to possession and  
80 use of goods for a term in return for consideration, but a sale,  
81 including a sale on approval or a sale or return, or retention  
82 or creation of a security interest is not a lease. Unless the  
83 context clearly indicates otherwise, the term includes a  
84 sublease.

85           (k) “Lease agreement” means the bargain, with respect to  
86 the lease, of the lessor and the lessee in fact as found in their  
87 language or by implication from other circumstances  
88 including course of dealing or usage of trade or course of  
89 performance as provided in this article. Unless the context  
90 clearly indicates otherwise, the term includes a sublease  
91 agreement.

92           (l) “Lease contract” means the total legal obligation that  
93 results from the lease agreement as affected by this article  
94 and any other applicable rules of law. Unless the context  
95 clearly indicates otherwise, the term includes a sublease  
96 contract.

97           (m) “Leasehold interest” means the interest of the lessor  
98 or the lessee under a lease contract.

99           (n) “Lessee” means a person who acquires the right to  
100 possession and use of goods under a lease. Unless the  
101 context clearly indicates otherwise, the term includes a  
102 sublessee.

103           (o) “Lessee in ordinary course of business” means a  
104 person who in good faith and without knowledge that the  
105 lease to him or her is in violation of the ownership rights or  
106 security interest or leasehold interest of a third party in the  
107 goods leases in ordinary course from a person in the business  
108 of selling or leasing goods of that kind but does not include  
109 a pawnbroker. “Leasing” may be for cash or by exchange of

110 other property or on secured or unsecured credit and includes  
111 acquiring goods or documents of title under a preexisting  
112 lease contract but does not include a transfer in bulk or as  
113 security for or in total or partial satisfaction of a money debt.

114 (p) “Lessor” means a person who transfers the right to  
115 possession and use of goods under a lease. Unless the context  
116 clearly indicates otherwise, the term includes a sublessor.

117 (q) “Lessor’s residual interest” means the lessor’s interest  
118 in the goods after expiration, termination or cancellation of  
119 the lease contract.

120 (r) “Lien” means a charge against or interest in goods to  
121 secure payment of a debt or performance of an obligation, but  
122 the term does not include a security interest.

123 (s) “Lot” means a parcel or a single article that is the  
124 subject matter of a separate lease or delivery, whether or not  
125 it is sufficient to perform the lease contract.

126 (t) “Merchant lessee” means a lessee that is a merchant  
127 with respect to goods of the kind subject to the lease.

128 (u) “Present value” means the amount as of a date certain  
129 of one or more sums payable in the future, discounted to the  
130 date certain. The discount is determined by the interest rate  
131 specified by the parties if the rate was not manifestly  
132 unreasonable at the time the transaction was entered into;  
133 otherwise, the discount is determined by a commercially  
134 reasonable rate that takes into account the facts and  
135 circumstances of each case at the time the transaction was  
136 entered into.

137 (v) “Purchase” includes taking by sale, lease, mortgage,  
138 security interest, pledge, gift or any other voluntary  
139 transaction creating an interest in goods.

140 (w) "Sublease" means a lease of goods the right to  
141 possession and use of which was acquired by the lessor as a  
142 lessee under an existing lease.

143 (x) "Supplier" means a person from whom a lessor buys  
144 or leases goods to be leased under a finance lease.

145 (y) "Supply contract" means a contract under which a  
146 lessor buys or leases goods to be leased.

147 (z) "Termination" occurs when either party pursuant to a  
148 power created by agreement or law puts an end to the lease  
149 contract otherwise than for default.

150 (2) Other definitions applying to this article and the  
151 sections in which they appear are:

152 "Accessions". Section 2A-310(1).

153 "Construction mortgage". Section 2A-309(1)(d).

154 "Encumbrance". Section 2A-309(1)(e).

155 "Fixtures". Section 2A-309(1)(a).

156 "Fixture filing". Section 2A-309(1)(b).

157 "Purchase money lease". Section 2A-309(1)(c).

158 (3) The following definitions in other articles apply to  
159 this article:

160 "Account". Section 9-102(a)(2).

161 "Between merchants". Section 2-104(3).

162 "Buyer". Section 2-103(1)(a).

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163	“Chattel paper”.	Section 9–102(a)(11).
164	“Consumer goods”.	Section 9–102(a)(23).
165	“Document”.	Section 9–102(a)(30).
166	“Entrusting”.	Section 2–403(3).
167	“General intangible”.	Section 9–102(a)(42).
168	“Instrument”.	Section 9–102(a)(47).
169	“Merchant”.	Section 2–104(1).
170	“Mortgage”.	Section 9–102(a)(55).
171	“Pursuant to commitment”.	9-102(a)(69).
172	“Receipt”.	Section 2–103(1)(c).
173	“Sale”.	Section 2–106(1).
174	“Sale on approval”.	Section 2–326.
175	“Sale or return”.	Section 2–326.
176	“Seller”.	Section 2–103(1)(d).
177	(4) In addition, article one contains general definitions	
178	and principles of construction and interpretation applicable	
179	throughout this article.	

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.**

**§46-9-102. Definitions and index of definitions.**

1 (a) *Article 9 definitions.* -- In this article:



2           (1) “Accession” means goods that are physically united  
3 with other goods in such a manner that the identity of the  
4 original goods is not lost.

5           (2) “Account”, except as used in “account for”, means a  
6 right to payment of a monetary obligation, whether or not  
7 earned by performance: (i) For property that has been or is  
8 to be sold, leased, licensed, assigned or otherwise disposed  
9 of; (ii) for services rendered or to be rendered; (iii) for a  
10 policy of insurance issued or to be issued; (iv) for a  
11 secondary obligation incurred or to be incurred; (v) for  
12 energy provided or to be provided; (vi) for the use or hire of  
13 a vessel under a charter or other contract; (vii) arising out of  
14 the use of a credit or charge card or information contained on  
15 or for use with the card; or (viii) as winnings in a lottery or  
16 other game of chance operated or sponsored by a state,  
17 governmental unit of a state or person licensed or authorized  
18 to operate the game by a state or governmental unit of a state.  
19 The term includes health-care-insurance receivables. The  
20 term does not include: (i) Rights to payment evidenced by  
21 chattel paper or an instrument; (ii) commercial tort claims;  
22 (iii) deposit accounts; (iv) investment property; (v) letter-of-  
23 credit rights or letters of credit; or (vi) rights to payment for  
24 money or funds advanced or sold, other than rights arising  
25 out of the use of a credit or charge card or information  
26 contained on or for use with the card.

27           (3) “Account debtor” means a person obligated on an  
28 account, chattel paper or general intangible. The term does  
29 not include persons obligated to pay a negotiable instrument,  
30 even if the instrument constitutes part of chattel paper.

31           (4) “Accounting”, except as used in “accounting for”,  
32 means a record:

33           (A) Authenticated by a secured party;

34 (B) Indicating the aggregate unpaid secured obligations  
35 as of a date not more than thirty-five days earlier or thirty-  
36 five days later than the date of the record; and

37 (C) Identifying the components of the obligations in  
38 reasonable detail.

39 (5) “Agricultural lien” means an interest, in farm  
40 products:

41 (A) Which secures payment or performance of an  
42 obligation for:

43 (i) Goods or services furnished in connection with a  
44 debtor’s farming operation; or

45 (ii) Rent on real property leased by a debtor in connection  
46 with its farming operation;

47 (B) Which is created by statute in favor of a person that:

48 (i) In the ordinary course of its business furnished goods  
49 or services to a debtor in connection with a debtor’s farming  
50 operation; or

51 (ii) Leased real property to a debtor in connection with  
52 the debtor’s farming operation; and

53 (C) Whose effectiveness does not depend on the person’s  
54 possession of the personal property.

55 (6) “As-extracted collateral” means:

56 (A) Oil, gas or other minerals that are subject to a  
57 security interest that:

58 (i) Is created by a debtor having an interest in the  
59 minerals before extraction; and

60 (ii) Attaches to the minerals as extracted; or

61 (B) Accounts arising out of the sale at the wellhead or  
62 minehead of oil, gas or other minerals in which the debtor  
63 had an interest before extraction.

64 (7) “Authenticate” means:

65 (A) To sign; or

66 (B) To attach to or logically associate with the record an  
67 electronic sound, symbol or process, with present intent to  
68 adopt or accept a record.

69 (8) “Bank” means an organization that is engaged in the  
70 business of banking. The term includes savings banks,  
71 savings and loan associations, credit unions and trust  
72 companies.

73 (9) “Cash proceeds” means proceeds that are money,  
74 checks, deposit accounts or the like.

75 (10) “Certificate of title” means a certificate of title with  
76 respect to which a statute provides for the security interest in  
77 question to be indicated on the certificate as a condition or  
78 result of the security interest’s obtaining priority over the  
79 rights of a lien creditor with respect to the collateral. The  
80 term includes another record maintained as an alternative to  
81 a certificate of title by the governmental unit that issues  
82 certificates of title if a statute permits the security interest in  
83 question to be indicated on the record as a condition or result  
84 of the security interest’s obtaining priority over the rights of  
85 a lien creditor with respect to the collateral.

86           (11) “Chattel paper” means a record or records that  
87 evidence both a monetary obligation and a security interest in  
88 specific goods, a security interest in specific goods and  
89 software used in the goods, a security interest in specific  
90 goods and license of software used in the goods, a lease of  
91 specific goods or a lease of specific goods and license of  
92 software used in the goods. In this paragraph, “monetary  
93 obligation” means a monetary obligation secured by the  
94 goods or owed under a lease of the goods and includes a  
95 monetary obligation with respect to software used in the  
96 goods. The term does not include: (i) Charters or other  
97 contracts involving the use or hire of a vessel; or (ii) records  
98 that evidence a right to payment arising out of the use of a  
99 credit or charge card or information contained on or for use  
100 with the card. If a transaction is evidenced by records that  
101 include an instrument or series of instruments, the group of  
102 records taken together constitutes chattel paper.

103           (12) “Collateral” means the property subject to a security  
104 interest or agricultural lien. The term includes:

105           (A) Proceeds to which a security interest attaches;

106           (B) Accounts, chattel paper, payment intangibles and  
107 promissory notes that have been sold; and

108           (C) Goods that are the subject of a consignment.

109           (13) “Commercial tort claim” means a claim arising in  
110 tort with respect to which:

111           (A) The claimant is an organization; or

112           (B) The claimant is an individual and the claim:

113           (i) Arose in the course of the claimant’s business or  
114 profession; and

115           (ii) Does not include damages arising out of personal  
116       injury to or the death of an individual.

117           (14) “Commodity account” means an account maintained  
118       by a commodity intermediary in which a commodity contract  
119       is carried for a commodity customer.

120           (15) “Commodity contract” means a commodity futures  
121       contract, an option on a commodity futures contract, a  
122       commodity option or another contract if the contract or  
123       option is:

124           (A) Traded on or subject to the rules of a board of trade  
125       that has been designated as a contract market for such a  
126       contract pursuant to federal commodities laws; or

127           (B) Traded on a foreign commodity board of trade,  
128       exchange or market and is carried on the books of a  
129       commodity intermediary for a commodity customer.

130           (16) “Commodity customer” means a person for which a  
131       commodity intermediary carries a commodity contract on its  
132       books.

133           (17) “Commodity intermediary” means a person that:

134           (A) Is registered as a futures commission merchant under  
135       federal commodities law; or

136           (B) In the ordinary course of its business provides  
137       clearance or settlement services for a board of trade that has  
138       been designated as a contract market pursuant to federal  
139       commodities law.

140           (18) “Communicate” means:

- 141           (A) To send a written or other tangible record;
- 142           (B) To transmit a record by any means agreed upon by  
143 the persons sending and receiving the record; or
- 144           (C) In the case of transmission of a record to or by a  
145 filing office, to transmit a record by any means prescribed by  
146 filing-office rule.
- 147           (19) “Consignee” means a merchant to which goods are  
148 delivered in a consignment.
- 149           (20) “Consignment” means a transaction, regardless of its  
150 form, in which a person delivers goods to a merchant for the  
151 purpose of sale and:
- 152           (A) The merchant:
- 153               (i) Deals in goods of that kind under a name other than  
154 the name of the person making delivery;
- 155               (ii) Is not an auctioneer; and
- 156               (iii) Is not generally known by its creditors to be  
157 substantially engaged in selling the goods of others;
- 158           (B) With respect to each delivery, the aggregate value of  
159 the goods is \$1,000 or more at the time of delivery;
- 160           (C) The goods are not consumer goods immediately  
161 before delivery; and
- 162           (D) The transaction does not create a security interest that  
163 secures an obligation.
- 164           (21) “Consignor” means a person that delivers goods to  
165 a consignee in a consignment.

166           (22) “Consumer debtor” means a debtor in a consumer  
167           transaction.

168           (23) “Consumer goods” means goods that are used or  
169           bought for use primarily for personal, family or household  
170           purposes.

171           (24) “Consumer-goods transaction” means a consumer  
172           transaction in which:

173           (A) An individual incurs an obligation primarily for  
174           personal, family or household purposes; and

175           (B) A security interest in consumer goods secures the  
176           obligation.

177           (25) “Consumer obligor” means an obligor who is an  
178           individual and who incurred the obligation as part of a  
179           transaction entered into primarily for personal, family or  
180           household purposes.

181           (26) “Consumer transaction” means a transaction in  
182           which: (i) An individual incurs an obligation primarily for  
183           personal, family or household purposes; (ii) a security interest  
184           secures the obligation; and (iii) the collateral is held or  
185           acquired primarily for personal, family or household  
186           purposes. The term includes consumer-goods transactions.

187           (27) “Continuation statement” means an amendment of a  
188           financing statement which:

189           (A) Identifies, by its file number, the initial financing  
190           statement to which it relates; and

191           (B) Indicates that it is a continuation statement for, or that  
192           it is filed to continue the effectiveness of, the identified  
193           financing statement.

194 (28) “Debtor” means:

195 (A) A person having an interest, other than a security  
196 interest or other lien, in the collateral, whether or not the  
197 person is an obligor;

198 (B) A seller of accounts, chattel paper, payment  
199 intangibles or promissory notes; or

200 (C) A consignee.

201 (29) “Deposit account” means a demand, time, savings,  
202 passbook or similar account maintained with a bank. The  
203 term does not include investment property or accounts  
204 evidenced by an instrument.

205 (30) “Document” means a document of title or a receipt  
206 of the type described in section 7-201(b).

207 (31) “Electronic chattel paper” means chattel paper  
208 evidenced by a record or records consisting of information  
209 stored in an electronic medium.

210 (32) “Encumbrance” means a right, other than an  
211 ownership interest, in real property. The term includes  
212 mortgages and other liens on real property.

213 (33) “Equipment” means goods other than inventory,  
214 farm products or consumer goods.

215 (34) “Farm products” means goods, other than standing  
216 timber, with respect to which the debtor is engaged in a  
217 farming operation and which are:

218 (A) Crops grown, growing or to be grown, including:

219 (i) Crops produced on trees, vines and bushes; and



- 220           (ii) Aquatic goods produced in aquacultural operations;
- 221           (B) Livestock, born or unborn, including aquatic goods  
222 produced in aquacultural operations;
- 223           (C) Supplies used or produced in a farming operation; or
- 224           (D) Products of crops or livestock in their  
225 unmanufactured states.
- 226           (35) “Farming operation” means raising, cultivating,  
227 propagating, fattening, grazing or any other farming,  
228 livestock or aquacultural operation.
- 229           (36) “File number” means the number assigned to an  
230 initial financing statement pursuant to section 9-519(a).
- 231           (37) “Filing office” means an office designated in section  
232 9-501 as the place to file a financing statement.
- 233           (38) “Filing-office rule” means a rule adopted pursuant to  
234 section 9-526.
- 235           (39) “Financing statement” means a record or records  
236 composed of an initial financing statement and any filed  
237 record relating to the initial financing statement.
- 238           (40) “Fixture filing” means the filing of a financing  
239 statement covering goods that are or are to become fixtures  
240 and satisfying section 9-502(a) and (b). The term includes  
241 the filing of a financing statement covering goods of a  
242 transmitting utility which are or are to become fixtures.
- 243           (41) “Fixtures” means goods that have become so related  
244 to particular real property that an interest in them arises under  
245 real property law.

246           (42) “General intangible” means any personal property,  
247 including things in action, other than accounts, chattel paper,  
248 commercial tort claims, deposit accounts, documents, goods,  
249 instruments, investment property, letter-of-credit rights,  
250 letters of credit, money and oil, gas or other minerals before  
251 extraction. The term includes payment intangibles and  
252 software.

253           (43) [reserved].

254           (44) “Goods” means all things that are movable when a  
255 security interest attaches. The term includes: (i) Fixtures; (ii)  
256 standing timber that is to be cut and removed under a  
257 conveyance or contract for sale; (iii) the unborn young of  
258 animals; (iv) crops grown, growing or to be grown, even if  
259 the crops are produced on trees, vines or bushes; and (v)  
260 manufactured homes. The term also includes a computer  
261 program embedded in goods and any supporting information  
262 provided in connection with a transaction relating to the  
263 program if: (i) The program is associated with the goods in  
264 such a manner that it customarily is considered part of the  
265 goods; or (ii) by becoming the owner of the goods, a person  
266 acquires a right to use the program in connection with the  
267 goods. The term does not include a computer program  
268 embedded in goods that consist solely of the medium in  
269 which the program is embedded. The term also does not  
270 include accounts, chattel paper, commercial tort claims,  
271 deposit accounts, documents, general intangibles,  
272 instruments, investment property, letter-of-credit rights,  
273 letters of credit, money or oil, gas, or other minerals before  
274 extraction.

275           (45) “Governmental unit” means a subdivision, agency,  
276 department, county, parish, municipality or other unit of the  
277 government of the United States, a state or a foreign country.  
278 The term includes an organization having a separate  
279 corporate existence if the organization is eligible to issue debt

280 on which interest is exempt from income taxation under the  
281 laws of the United States.

282 (46) “Health-care-insurance receivable” means an interest  
283 in or claim under a policy of insurance which is a right to  
284 payment of a monetary obligation for health-care goods or  
285 services provided.

286 (47) “Instrument” means a negotiable instrument or any  
287 other writing that evidences a right to the payment of a  
288 monetary obligation, is not itself a security agreement or  
289 lease, and is of a type that in ordinary course of business is  
290 transferred by delivery with any necessary indorsement or  
291 assignment. The term does not include: (i) Investment  
292 property; (ii) letters of credit; or (iii) writings that evidence  
293 a right to payment arising out of the use of a credit or charge  
294 card or information contained on or for use with the card.

295 (48) “Inventory” means goods, other than farm products,  
296 which:

297 (A) Are leased by a person as lessor;

298 (B) Are held by a person for sale or lease or to be  
299 furnished under a contract of service;

300 (C) Are furnished by a person under a contract of service;  
301 or

302 (D) Consist of raw materials, work in process or materials  
303 used or consumed in a business.

304 (49) “Investment property” means a security, whether  
305 certificated or uncertificated, security entitlement, securities  
306 account, commodity contract or commodity account.

307 (50) “Jurisdiction of organization”, with respect to a  
308 registered organization, means the jurisdiction under whose  
309 law the organization is formed or organized.

310           (51) “Letter-of-credit right” means a right to payment or  
311 performance under a letter of credit, whether or not the  
312 beneficiary has demanded or is at the time entitled to demand  
313 payment or performance. The term does not include the right  
314 of a beneficiary to demand payment or performance under a  
315 letter of credit.

316           (52) “Lien creditor” means:

317           (A) A creditor that has acquired a lien on the property  
318 involved by attachment, levy or the like;

319           (B) An assignee for benefit of creditors from the time of  
320 assignment;

321           (C) A trustee in bankruptcy from the date of the filing of  
322 the petition; or

323           (D) A receiver in equity from the time of appointment.

324           (53) “Manufactured home” means a structure,  
325 transportable in one or more sections, which, in the traveling  
326 mode, is eight body feet or more in width or forty body feet  
327 or more in length, or, when erected on site, is three hundred  
328 twenty or more square feet, and which is built on a permanent  
329 chassis and designed to be used as a dwelling with or without  
330 a permanent foundation when connected to the required  
331 utilities, and includes the plumbing, heating, air-conditioning  
332 and electrical systems contained therein. The term includes  
333 any structure that meets all of the requirements of this  
334 paragraph except the size requirements and with respect to  
335 which the manufacturer voluntarily files a certification  
336 required by the United States secretary of housing and urban  
337 development and complies with the standards established  
338 under Title 42 of the United States Code.

339           (54) “Manufactured-home transaction” means a secured  
340 transaction:

341           (A) That creates a purchase-money security interest in a  
342 manufactured home, other than a manufactured home held as  
343 inventory; or

344           (B) In which a manufactured home, other than a  
345 manufactured home held as inventory, is the primary  
346 collateral.

347           (55) “Mortgage” means a consensual interest in real  
348 property, including fixtures, which secures payment or  
349 performance of an obligation.

350           (56) “New debtor” means a person that becomes bound  
351 as debtor under section 9-203(d) by a security agreement  
352 previously entered into by another person.

353           (57) “New value” means: (i) Money; (ii) money’s worth  
354 in property, services or new credit; or (iii) release by a  
355 transferee of an interest in property previously transferred to  
356 the transferee. The term does not include an obligation  
357 substituted for another obligation.

358           (58) “Noncash proceeds” means proceeds other than cash  
359 proceeds.

360           (59) “Obligor” means a person that, with respect to an  
361 obligation secured by a security interest in or an agricultural  
362 lien on the collateral: (i) Owes payment or other performance  
363 of the obligation; (ii) has provided property other than the  
364 collateral to secure payment or other performance of the  
365 obligation; or (iii) is otherwise accountable, in whole or in  
366 part, for payment or other performance of the obligation. The  
367 term does not include issuers or nominated persons under a  
368 letter of credit.

369 (60) “Original debtor” except as used in section 9-310(c),  
370 means a person that, as debtor, entered into a security  
371 agreement to which a new debtor has become bound under  
372 section 9-203(d).

373 (61) “Payment intangible” means a general intangible  
374 under which the account debtor’s principal obligation is a  
375 monetary obligation.

376 (62) “Person related to”, with respect to an individual,  
377 means:

378 (A) The spouse of the individual;

379 (B) A brother, brother-in-law, sister or sister-in-law of the  
380 individual;

381 (C) An ancestor or lineal descendant of the individual or  
382 the individual’s spouse; or

383 (D) Any other relative, by blood or marriage, of the  
384 individual or the individual’s spouse who shares the same  
385 home with the individual.

386 (63) “Person related to”, with respect to an organization,  
387 means:

388 (A) A person directly or indirectly controlling, controlled  
389 by or under common control with the organization;

390 (B) An officer or director of, or a person performing  
391 similar functions with respect to, the organization;

392 (C) An officer or director of, or a person performing  
393 similar functions with respect to, a person described in  
394 subparagraph (A);

395 (D) The spouse of an individual described in  
396 subparagraph (A), (B) or (C); or

397 (E) An individual who is related by blood or marriage to  
398 an individual described in subparagraph (A), (B), (C) or (D)  
399 and shares the same home with the individual.

400 (64) "Proceeds", except as used in section 9-609(b),  
401 means the following property:

402 (A) Whatever is acquired upon the sale, lease, license,  
403 exchange or other disposition of collateral;

404 (B) Whatever is collected on, or distributed on account  
405 of, collateral;

406 (C) Rights arising out of collateral;

407 (D) To the extent of the value of collateral, claims arising  
408 out of the loss, nonconformity, or interference with the use  
409 of, defects or infringement of rights in, or damage to, the  
410 collateral; or

411 (E) To the extent of the value of collateral and to the  
412 extent payable to the debtor or the secured party, insurance  
413 payable by reason of the loss or nonconformity of, defects or  
414 infringement of rights in, or damage to, the collateral.

415 (65) "Production-money crops" means crops that secure  
416 a production-money obligation incurred with respect to the  
417 production of those crops.

418 (66) "Production-money obligation" means an obligation  
419 of an obligor incurred for new value given to enable the  
420 debtor to produce crops if the value is in fact used for the  
421 production of the crops.

422           (67) “Production of crops” includes tilling and otherwise  
423 preparing land for growing, planting, cultivating, fertilizing,  
424 irrigating, harvesting and gathering crops and protecting them  
425 from damage or disease.

426           (68) “Promissory note” means an instrument that  
427 evidences a promise to pay a monetary obligation, does not  
428 evidence an order to pay, and does not contain an  
429 acknowledgment by a bank that the bank has received for  
430 deposit a sum of money or funds.

431           (69) “Proposal” means a record authenticated by a  
432 secured party which includes the terms on which the secured  
433 party is willing to accept collateral in full or partial  
434 satisfaction of the obligation it secures pursuant to sections 9-  
435 620, 9-621 and 9-622.

436           (70) “Public-finance transaction” means a secured  
437 transaction in connection with which:

438           (A) Debt securities are issued;

439           (B) All or a portion of the securities issued have an initial  
440 stated maturity of at least twenty years; and

441           (C) The debtor, obligor, secured party, account debtor or  
442 other person obligated on collateral, assignor or assignee of  
443 a secured obligation, or assignor or assignee of a security  
444 interest is a state or a governmental unit of a state.

445           (71) “Public organic record” means a record that is  
446 available to the public for inspection and is:

447           (A) A record consisting of the record initially filed with  
448 or issued by a state or the United States to form or organize  
449 an organization and any record filed with or issued by the  
450 state or the United States which amends or restates the initial  
451 record;



452 (B) An organic record of a business trust consisting of the  
453 record initially filed with a state and any record filed with the  
454 state which amends or restates the initial record, if a statute  
455 of the state governing business trusts requires that the record  
456 be filed with the state; or

457 (C) A record consisting of legislation enacted by the  
458 Legislature of a state or the Congress of the United States  
459 which forms or organizes an organization, any record  
460 amending the legislation, and any record filed with or issued  
461 by the state or the United States which amends or restates the  
462 name of the organization.

463 (72) “Pursuant to commitment”, with respect to an  
464 advance made or other value given by a secured party, means  
465 pursuant to the secured party’s obligation, whether or not a  
466 subsequent event of default or other event not within the  
467 secured party’s control has relieved or may relieve the  
468 secured party from its obligation.

469 (73) “Record”, except as used in “for record”, “of  
470 record”, “record or legal title” and “record owner”, means  
471 information that is inscribed on a tangible medium or which  
472 is stored in an electronic or other medium and is retrievable  
473 in perceivable form.

474 (74) “Registered organization” means an organization  
475 formed or organized solely under the law of a single state or  
476 the United States by the filing of a public organic record  
477 with, the issuance of a public organic record by, or the  
478 enactment of legislation by the state or the United States.  
479 The term includes a business trust that is formed or organized  
480 under the law of a single state if a statute of the state  
481 governing business trusts requires that the business trust’s  
482 organic record be filed with the state.

483 (75) “Secondary obligor” means an obligor to the extent  
484 that:

- 485 (A) The obligor's obligation is secondary; or
- 486 (B) The obligor has a right of recourse with respect to an  
487 obligation secured by collateral against the debtor, another  
488 obligor or property of either.
- 489 (76) "Secured party" means:
- 490 (A) A person in whose favor a security interest is created  
491 or provided under a security agreement, whether or not any  
492 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  
496 intangibles or promissory notes have been sold;
- 497 (E) A trustee, indenture trustee, agent, collateral agent or  
498 other representative in whose favor a security interest or  
499 agricultural lien is created or provided for; or
- 500 (F) A person that holds a security interest arising under  
501 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.
- 502 (77) "Security agreement" means an agreement that  
503 creates or provides for a security interest.
- 504 (78) "Send," in connection with a record or notification,  
505 means:
- 506 (A) To deposit in the mail, deliver for transmission, or  
507 transmit by any other usual means of communication, with  
508 postage or cost of transmission provided for, addressed to any  
509 address reasonable under the circumstances; or

510 (B) To cause the record or notification to be received  
511 within the time that it would have been received if properly  
512 sent under paragraph (A).

513 (79) “Software” means a computer program and any  
514 supporting information provided in connection with a  
515 transaction relating to the program. The term does not  
516 include a computer program that is included in the definition  
517 of goods.

518 (80) “State” means a state of the United States, the  
519 District of Columbia, Puerto Rico, the United States Virgin  
520 Islands or any territory or insular possession subject to the  
521 jurisdiction of the United States.

522 (81) “Supporting obligation” means a letter-of-credit  
523 right or secondary obligation that supports the payment or  
524 performance of an account, chattel paper, a document, a  
525 general intangible, an instrument or investment property.

526 (82) “Tangible chattel paper” means chattel paper  
527 evidenced by a record or records consisting of information  
528 that is inscribed on a tangible medium.

529 (83) “Termination statement” means an amendment of a  
530 financing statement which:

531 (A) Identifies, by its file number, the initial financing  
532 statement to which it relates; and

533 (B) Indicates either that it is a termination statement or  
534 that the identified financing statement is no longer effective.

535 (84) “Transmitting utility” means a person primarily  
536 engaged in the business of:

537 (A) Operating a railroad, subway, street railway or trolley  
538 bus;

539            (B) Transmitting communications electrically,  
540            electromagnetically or by light;

541            (C) Transmitting goods by pipeline or sewer; or

542            (D) Transmitting or producing and transmitting  
543            electricity, steam, gas or water.

544            (b) Definitions in other articles. "Control" as provided in  
545            section 7-106 and the following definitions in other articles  
546            apply to this article:

547            "Applicant"                                      Section 5-102.

548            "Beneficiary"                                      Section 5-102.

549            "Broker"    Section 8-102.

550            "Certificated security"                                      Section 8-102.

551            "Check"    Section 3-104.

552            "Clearing corporation"                                      Section 8-102.

553            "Contract for sale"                                      Section 2-106.

554            "Customer"    Section 4-104.

555            "Entitlement holder"                                      Section 8-102.

556            "Financial asset"                                      Section 8-102.

557            "Holder in due course"                                      Section 3-302.

558            "Issuer" (with respect to a letter of  
559            credit or letter-of-credit right)                                      Section 5-102.

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560	“Issuer” (with respect to a security)	Section 8-201.
561	“Issuer” (with respect to	
562	a document of title)	Section 7-102.
563	“Lease”	Section 2A-103.
564	“Lease agreement”	Section 2A-103.
565	“Lease contract”	Section 2A-103.
566	“Leasehold interest”	Section 2A-103.
567	“Lessee”	Section 2A-103.
568	“Lessee in ordinary course	
569	of business”	Section 2A-103.
570	“Lessor”	Section 2A-103.
571	“Lessor’s residual interest”	Section 2A-103.
572	“Letter of credit”	Section 5-102.
573	“Merchant”	Section 2-104.
574	“Negotiable instrument”	Section 3-104.
575	“Nominated person”	Section 5-102.
576	“Note”	Section 3-104.
577	“Proceeds of a letter of credit”	Section 5-114.
578	“Prove”	Section 3-103.
579	“Sale”	Section 2-106.

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580	“Securities account”	Section 8-501.
581	“Securities intermediary”	Section 8-102.
582	“Security”	Section 8-102.
583	“Security certificate”	Section 8-102.
584	“Security entitlement”	Section 8-102.
585	“Uncertificated security”	Section 8-102.
586	(c) Article 1 definitions and principles. Article 1 contains	
587	general definitions and principles of construction and	
588	interpretation applicable throughout this article.	

**§46-9-105. Control of electronic chattel paper.**

1 (a) General rule: control of electronic chattel paper. A  
2 secured party has control of electronic chattel paper if a  
3 system employed for evidencing the transfer of interests in  
4 the chattel paper reliably establishes the secured party as the  
5 person to which the chattel paper was assigned.

6 (b) Specific facts giving control: a system satisfies  
7 subsection (a) of this section if the record or records  
8 comprising the chattel paper are created, stored, and assigned  
9 in such a manner that:

10 (1) A single authoritative copy of the record or records  
11 exists which is unique, identifiable and, except as otherwise  
12 provided in subdivisions (4), (5) and (6) of this section,  
13 unalterable;

14 (2) The authoritative copy identifies the secured party as  
15 the assignee of the record or records;

16           (3) The authoritative copy is communicated to and  
17 maintained by the secured party or its designated custodian;

18           (4) Copies or amendments that add or change an  
19 identified assignee of the authoritative copy can be made only  
20 with the consent of the secured party;

21           (5) Each copy of the authoritative copy and any copy of  
22 a copy is readily identifiable as a copy that is not the  
23 authoritative copy; and

24           (6) Any amendment of the authoritative copy is readily  
25 identifiable as an authorized or unauthorized revision.

**§46-9-307. Location of debtor.**

1           (a) “*Place of business.*” -- In this section, “place of  
2 business” means a place where a debtor conducts its affairs.

3           (b) *Debtor’s location: general rules.* -- Except as  
4 otherwise provided in this section, the following rules  
5 determine a debtor’s location:

6           (1) A debtor who is an individual is located at the  
7 individual’s principal residence.

8           (2) A debtor that is an organization and has only one  
9 place of business is located at its place of business.

10           (3) A debtor that is an organization and has more than  
11 one place of business is located at its chief executive office.

12           (c) *Limitation of applicability of subsection (b).* --  
13 Subsection (b) of this section applies only if a debtor’s  
14 residence, place of business or chief executive office, as  
15 applicable, is located in a jurisdiction whose law generally

16 requires information concerning the existence of a  
17 nonpossessory security interest to be made generally  
18 available in a filing, recording or registration system as a  
19 condition or result of the security interest's obtaining priority  
20 over the rights of a lien creditor with respect to the collateral.  
21 If subsection (b) does not apply, the debtor is located in the  
22 District of Columbia.

23       (d) *Continuation of location: cessation of existence, etc.--*  
24 A person that ceases to exist, have a residence or have a place  
25 of business continues to be located in the jurisdiction  
26 specified by subsections (b) and (c) of this section.

27       (e) *Location of registered organization organized under*  
28 *state law.* -- A registered organization that is organized under  
29 the law of a state is located in that state.

30       (f) *Location of registered organization organized under*  
31 *federal law; bank branches and agencies.* -- Except as  
32 otherwise provided in subsection (i) of this section, a  
33 registered organization that is organized under the law of the  
34 United States and a branch or agency of a bank that is not  
35 organized under the law of the United States or a state are  
36 located:

37       (1) In the state that the law of the United States  
38 designates, if the law designates a state of location;

39       (2) In the state that the registered organization, branch or  
40 agency designates, if the law of the United States authorizes  
41 the registered organization, branch, or agency to designate its  
42 state of location, including by designating its main office,  
43 home office or other comparable office; or

44       (3) In the District of Columbia, if neither subdivision(1)  
45 nor subdivision(2) of this subsection applies.



46 (g) *Continuation of location: changed in status of*  
47 *registered organization.* -- A registered organization  
48 continues to be located in the jurisdiction specified by  
49 subsection (e) or (f) notwithstanding:

50 (1) The suspension, revocation, forfeiture or lapse of the  
51 registered organization's status as such in its jurisdiction of  
52 organization; or

53 (2) The dissolution, winding up or cancellation of the  
54 existence of the registered organization.

55 (h) *Location of United States.* -- The United States is  
56 located in the District of Columbia.

57 (i) *Location of foreign bank branch or agency if licensed*  
58 *in only one state.* -- A branch or agency of a bank that is not  
59 organized under the law of the United States or a state is  
60 located in the state in which the branch or agency is licensed,  
61 if all branches and agencies of the bank are licensed in only  
62 one state.

63 (j) *Location of foreign air carrier.* -- A foreign air carrier  
64 under the Federal Aviation Act of 1958, as amended, is  
65 located at the designated office of the agent upon which  
66 service of process may be made on behalf of the carrier.

67 (k) *Section applies only to this part.* -- This section  
68 applies only for purposes of this part.

**§46-9-311. Perfection of security interests in property subject to  
certain statutes, regulations and treaties.**

1 (a) *Security interest subject to other law.* -- Except as  
2 otherwise provided in subsection (d) of this section, the filing  
3 of a financing statement is not necessary or effective to  
4 perfect a security interest in property subject to:

5 (1) A statute, regulation or treaty of the United States  
6 whose requirements for a security interest's obtaining priority  
7 over the rights of a lien creditor with respect to the property  
8 preempt section 9-310(a);

9 (2) The following statute of this state: Chapter seventeen-  
10 a of this code: *Provided*, That during any period in which  
11 collateral is inventory: (i) Held for sale by a person who is in  
12 the business of selling goods of that kind; or (ii) held for  
13 lease by a vehicle rental agency or similar person engaged  
14 solely in the business of leasing vehicles, the filing provision  
15 of this article apply to a security interest in that collateral  
16 created by such person as a debtor or obligor, as appropriate;  
17 or

18 (3) A statute of another jurisdiction which provides for a  
19 security interest to be indicated on a certificate of title as a  
20 condition or result of the security interest's obtaining priority  
21 over the rights of a lien creditor with respect to the property.

22 (b) *Compliance with other law.* -- Compliance with the  
23 requirements of a statute, regulation or treaty described in  
24 subsection (a) of this section for obtaining priority over the  
25 rights of a lien creditor is equivalent to the filing of a  
26 financing statement under this article. Except as otherwise  
27 provided in subsection (d) of this section and sections 9-313  
28 and 9-316(d) and (e) for goods covered by a certificate of  
29 title, a security interest in property subject to a statute,  
30 regulation or treaty described in subsection (a) may be  
31 perfected only by compliance with those requirements, and  
32 a security interest so perfected remains perfected  
33 notwithstanding a change in the use or transfer of possession  
34 of the collateral.

35 (c) *Duration and renewal of perfection.* -- Except as  
36 otherwise provided in subsection (d) of this section and  
37 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*  
2 *governing law.* -- A security interest perfected pursuant to the  
3 law of the jurisdiction designated in section 9-301(1) or 9-  
4 305(c) remains perfected until the earliest of:

5 (1) The time perfection would have ceased under the law  
6 of that jurisdiction;

7 (2) The expiration of four months after a change of the  
8 debtor's location to another jurisdiction; or

9 (3) The expiration of one year after a transfer of collateral  
10 to a person that thereby becomes a debtor and is located in  
11 another jurisdiction.

12 (b) *Security interest perfected or unperfected under law*  
13 *of new jurisdiction.* -- If a security interest described in  
14 subsection (a) of this section becomes perfected under the  
15 law of the other jurisdiction before the earliest time or event  
16 described in said subsection, it remains perfected thereafter.  
17 If the security interest does not become perfected under the

18 law of the other jurisdiction before the earliest time or event,  
19 it becomes unperfected and is deemed never to have been  
20 perfected as against a purchaser of the collateral for value.

21 (c) *Possessory security interest in collateral moved to*  
22 *new jurisdiction.* -- A possessory security interest in  
23 collateral, other than goods covered by a certificate of title  
24 and as-extracted collateral consisting of goods, remains  
25 continuously perfected if:

26 (1) The collateral is located in one jurisdiction and  
27 subject to a security interest perfected under the law of that  
28 jurisdiction;

29 (2) Thereafter the collateral is brought into another  
30 jurisdiction; and

31 (3) Upon entry into the other jurisdiction, the security  
32 interest is perfected under the law of the other jurisdiction.

33 (d) *Goods covered by certificate of title from this state.*--  
34 Except as otherwise provided in subsection (e) of this section,  
35 a security interest in goods covered by a certificate of title  
36 which is perfected by any method under the law of another  
37 jurisdiction when the goods become covered by a certificate  
38 of title from this state remains perfected until the security  
39 interest would have become unperfected under the law of the  
40 other jurisdiction had the goods not become so covered.

41 (e) *When subsection (d) security interest becomes*  
42 *unperfected against purchasers.* -- A security interest  
43 described in subsection (d) of this section becomes  
44 unperfected as against a purchaser of the goods for value and  
45 is deemed never to have been perfected as against a purchaser  
46 of the goods for value if the applicable requirements for  
47 perfection under section 9-311(b) or 9-313 are not satisfied  
48 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           (2) The expiration of four months after the goods had  
54           become so covered.

55           (f) *Change in jurisdiction of bank, issuer, nominated*  
56           *person, securities intermediary or commodity intermediary.*--  
57           A security interest in deposit accounts, letter-of-credit rights,  
58           or investment property which is perfected under the law of  
59           the bank's jurisdiction, the issuer's jurisdiction, a nominated  
60           person's jurisdiction, the securities intermediary's jurisdiction  
61           or the commodity intermediary's jurisdiction, as applicable,  
62           remains perfected until the earlier of:

63           (1) The time the security interest would have become  
64           unperfected under the law of that jurisdiction; or

65           (2) The expiration of four months after a change of the  
66           applicable jurisdiction to another jurisdiction.

67           (g) *Subsection (f) security interest perfected or*  
68           *unperfected under law of new jurisdiction.* -- If a security  
69           interest described in subsection (f) of this section becomes  
70           perfected under the law of the other jurisdiction before the  
71           earlier of the time or the end of the period described in that  
72           subsection, it remains perfected thereafter. If the security  
73           interest does not become perfected under the law of the other  
74           jurisdiction before the earlier of that time or the end of that  
75           period, it becomes unperfected and is deemed never to have  
76           been perfected as against a purchaser of the collateral for  
77           value.

78           (h) *Effect on filed financing statement of change in*  
79           *governing law.* -- The following rules apply to collateral to

80 which a security interest attaches within four months after the  
81 debtor changes its location to another jurisdiction:

82 (1) A financing statement filed before the change  
83 pursuant to the law of the jurisdiction designated in section  
84 9-301(1) or 9-305(c) is effective to perfect a security interest  
85 in the collateral if the financing statement would have been  
86 effective to perfect a security interest in the collateral had the  
87 debtor not changed its location.

88 (2) If a security interest perfected by a financing  
89 statement that is effective under paragraph (1) becomes  
90 perfected under the law of the other jurisdiction before the  
91 earlier of the time the financing statement would have  
92 become ineffective under the law of the jurisdiction  
93 designated in section 9-301(1) or 9-305(c) or the expiration  
94 of the four-month period, it remains perfected thereafter. If  
95 the security interest does not become perfected under the law  
96 of the other jurisdiction before the earlier time or event, it  
97 becomes unperfected and is deemed never to have been  
98 perfected as against a purchaser of the collateral for value.

99 (i) Effect of change in governing law on financing  
100 statement filed against original debtor. If a financing  
101 statement naming an original debtor is filed pursuant to the  
102 law of the jurisdiction designated in Section 9-301(1) or  
103 9-305(c) and the new debtor is located in another jurisdiction,  
104 the following rules apply:

105 (1) The financing statement is effective to perfect a  
106 security interest in collateral acquired by the new debtor  
107 before, and within four months after, the new debtor becomes  
108 bound under Section 9-203(d), if the financing statement  
109 would have been effective to perfect a security interest in the  
110 collateral had the collateral been acquired by the original  
111 debtor.

112 (2) A security interest perfected by the financing  
113 statement and which becomes perfected under the law of the  
114 other jurisdiction before the earlier of the time the financing  
115 statement would have become ineffective under the law of  
116 the jurisdiction designated in Section 9-301(1) or 9-305(c) or  
117 the expiration of the four-month period remains perfected  
118 thereafter. A security interest that is perfected by the  
119 financing statement but which does not become perfected  
120 under the law of the other jurisdiction before the earlier time  
121 or event becomes unperfected and is deemed never to have  
122 been perfected as against a purchaser of the collateral for  
123 value.

**§46-9-317. Interests that take priority over or take free of  
security interest or agricultural lien.**

1 (a) *Conflicting security interests and rights of lien*  
2 *creditors.* -- A security interest or agricultural lien is  
3 subordinate to the rights of:

4 (1) A person entitled to priority under section 9-322; and

5 (2) Except as otherwise provided in subsection (e) of this  
6 section, a person that becomes a lien creditor before the  
7 earlier of the time: (A) The security interest or agricultural  
8 lien is perfected; or (B) one of the conditions specified in  
9 section 9-203(b)(3) is met and a financing statement covering  
10 the collateral is filed.

11 (b) *Buyers that receive delivery.* -- Except as otherwise  
12 provided in subsection (e) of this section, a buyer, other than a  
13 secured party, of tangible chattel paper, tangible documents,  
14 goods, instruments or a certificated security takes free of a  
15 security interest or agricultural lien if the buyer gives value and  
16 receives delivery of the collateral without knowledge of the  
17 security interest or agricultural lien and before it is perfected.

18           (c) *Lessees that receive delivery.* -- Except as otherwise  
19 provided in subsection (e) of this section, a lessee of goods  
20 takes free of a security interest or agricultural lien if the  
21 lessee gives value and receives delivery of the collateral  
22 without knowledge of the security interest or agricultural lien  
23 and before it is perfected.

24           (d) *Licensees and buyers of certain collateral.* -- A  
25 licensee of a general intangible or a buyer, other than a  
26 secured party, of collateral other than tangible chattel paper,  
27 tangible documents, goods, instruments, or a certificated  
28 security takes free of a security interest if the licensee or  
29 buyer gives value without knowledge of the security interest  
30 and before it is perfected.

31           (e) *Purchase-money security interest.* -- Except as  
32 otherwise provided in sections 9-320 and 9-321, if a person  
33 files a financing statement with respect to a purchase-money  
34 security interest before or within twenty days after the debtor  
35 receives delivery of the collateral, the security interest takes  
36 priority over the rights of a buyer, lessee or lien creditor  
37 which arise between the time the security interest attaches  
38 and the time of filing.

**§46-9-326. Priority of security interests created by new debtor.**

1           (a) *Subordination of security interest created by new*  
2 *debtor.* -- Subject to subsection (b) of this section, a security  
3 interest that is created by a new debtor in collateral in which  
4 the new debtor has or acquires rights and is perfected solely  
5 by a filed financing statement that would be ineffective to  
6 perfect the security interest but for the application of Section  
7 9-316(i)(1) or 9-508 is subordinate to a security interest in the  
8 same collateral which is perfected other than by such a filed  
9 financing statement.



10       (b) *Priority under other provisions; multiple original*  
11 *debtors.* -- The other provisions of this part determine the  
12 priority among conflicting security interests in the same  
13 collateral perfected by filed financing statements described in  
14 subsection (a) of this section. However, if the security  
15 agreements to which a new debtor became bound as debtor  
16 were not entered into by the same original debtor, the  
17 conflicting security interests rank according to priority in  
18 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.**

1       (a) *Discharge of account debtor; effect of notification.*--  
2 Subject to subsections (b) through (i), an account debtor on  
3 an account, chattel paper or a payment intangible may  
4 discharge its obligation by paying the assignor until, but not  
5 after, the account debtor receives a notification, authenticated  
6 by the assignor or the assignee, that the amount due or to  
7 become due has been assigned and that payment is to be  
8 made to the assignee. After receipt of the notification, the  
9 account debtor may discharge its obligation by paying the  
10 assignee and may not discharge the obligation by paying the  
11 assignor.

12       (b) *When notification ineffective.* -- Subject to subsection  
13 (h) of this section, notification is ineffective under subsection  
14 (a) of this section:

15       (1) If it does not reasonably identify the rights assigned;

16       (2) To the extent that an agreement between an account  
17 debtor and a seller of a payment intangible limits the account

18 debtor's duty to pay a person other than the seller and the  
19 limitation is effective under law other than this article; or

20 (3) At the option of an account debtor, if the notification  
21 notifies the account debtor to make less than the full amount  
22 of any installment or other periodic payment to the assignee,  
23 even if:

24 (A) Only a portion of the account, chattel paper or  
25 payment intangible has been assigned to that assignee;

26 (B) A portion has been assigned to another assignee; or

27 (C) The account debtor knows that the assignment to that  
28 assignee is limited.

29 (c) *Proof of assignment.* -- Subject to subsection (h) of  
30 this section, if requested by the account debtor, an assignee  
31 shall seasonably furnish reasonable proof that the assignment  
32 has been made. Unless the assignee complies, the account  
33 debtor may discharge its obligation by paying the assignor,  
34 even if the account debtor has received a notification under  
35 subsection (a) of this section.

36 (d) *Term restricting assignment generally ineffective.* --  
37 Except as otherwise provided in subsection (e) of this section  
38 and sections 2A-303 and 9-407, and subject to subsection (h)  
39 of this section, a term in an agreement between an account  
40 debtor and an assignor or in a promissory note is ineffective  
41 to the extent that it:

42 (1) Prohibits, restricts or requires the consent of the  
43 account debtor or person obligated on the promissory note to  
44 the assignment or transfer of, or the creation, attachment,  
45 perfection or enforcement of a security interest in, the  
46 account, chattel paper, payment intangible or promissory  
47 note; or

48           (2) Provides that the assignment or transfer or the  
49 creation, attachment, perfection or enforcement of the  
50 security interest may give rise to a default, breach, right of  
51 recoupment, claim, defense, termination, right of termination  
52 or remedy under the account, chattel paper, payment  
53 intangible or promissory note.

54           (e) *Inapplicability of subsection (d) to certain sales.*--  
55 Subsection (d) of this section does not apply to the sale of a  
56 payment intangible or promissory note other than a sale  
57 pursuant to a disposition under section 9-610 or an  
58 acceptance of collateral under section 9-620.

59           (f) *Legal restrictions on assignment generally ineffective.* --  
60 Except as otherwise provided in sections 2A-303 and 9-407  
61 and subject to subsections (h) and (i) of this section, a rule of  
62 law, statute or regulation that prohibits, restricts or requires  
63 the consent of a government, governmental body or official,  
64 or account debtor to the assignment or transfer of, or creation  
65 of a security interest in, an account or chattel paper is  
66 ineffective to the extent that the rule of law, statute or  
67 regulation:

68           (1) Prohibits, restricts or requires the consent of the  
69 government, governmental body or official, or account debtor  
70 to the assignment or transfer of, or the creation, attachment,  
71 perfection or enforcement of a security interest in the account  
72 or chattel paper; or

73           (2) Provides that the assignment or transfer or the  
74 creation, attachment, perfection or enforcement of the  
75 security interest may give rise to a default, breach, right of  
76 recoupment, claim, defense, termination, right of termination  
77 or remedy under the account or chattel paper.

78           (g) *Subsection (b)(3) not waivable.* -- Subject to  
79 subsection (h) of this section, an account debtor may not

80 waive or vary its option under subsection (b)(3) of this  
81 section.

82 (h) *Rule for individual under other law.* -- This section is  
83 subject to law other than this article which establishes a  
84 different rule for an account debtor who is an individual and  
85 who incurred the obligation primarily for personal, family or  
86 household purposes.

87 (i) *Inapplicability.* -- This section does not apply to an  
88 assignment of a health-care-insurance receivable. Subsection  
89 (f) does not apply to an assignment or transfer of, or the  
90 creation, attachment, perfection or enforcement of a security  
91 interest in, a right the transfer of which is prohibited or  
92 restricted by any of the following statutes to the extent that  
93 the statute is inconsistent with subsection (f): Chapter twenty-  
94 three, article four, section eighteen, chapter forty-six-a, article  
95 six-h, and a claim or right to receive benefits under a special  
96 needs trust as described in 42 U.S.C. §1396p(d)(4).

97 (j) *Section prevails over specified inconsistent law.* --  
98 This section prevails over any inconsistent provision of an  
99 existing or future statute, rule or regulation of this state unless  
100 the provision is contained in a statute of this state, refers  
101 expressly to this section and states that the provision prevails  
102 over this section.

**§46-9-408. Restrictions on assignment of promissory notes,  
health-care-insurance receivables and certain  
general intangibles ineffective.**

1 (a) *Term restricting assignment generally ineffective.*--  
2 Except as otherwise provided in subsection (b) of this  
3 section, a term in a promissory note or in an agreement  
4 between an account debtor and a debtor which relates to a  
5 health-care-insurance receivable or a general intangible,  
6 including a contract, permit, license or franchise, and which

7 term prohibits, restricts or requires the consent of the person  
8 obligated on the promissory note or the account debtor to, the  
9 assignment or transfer of or creation, attachment or perfection  
10 of a security interest in, the promissory note, health-care-  
11 insurance receivable or general intangible, is ineffective to  
12 the extent that the term:

13 (1) Would impair the creation, attachment or perfection  
14 of a security interest; or

15 (2) Provides that the assignment or transfer or the  
16 creation, attachment or perfection of the security interest may  
17 give rise to a default, breach, right of recoupment, claim,  
18 defense, termination, right of termination or remedy under the  
19 promissory note, health-care-insurance receivable or general  
20 intangible.

21 (b) Applicability of subsection (a) to sales of certain  
22 rights to payment. Subsection (a) of this section applies to a  
23 security interest in a payment intangible or promissory note  
24 only if the security interest arises out of a sale of the payment  
25 intangible or promissory note other than a sale pursuant to a  
26 disposition under section 9-610 or an acceptance of collateral  
27 under section 9-620.

28 (c) *Legal restrictions on assignment generally ineffective.* --  
29 A rule of law, statute or regulation that prohibits, restricts or  
30 requires the consent of a government, governmental body or  
31 official, person obligated on a promissory note, or account  
32 debtor to the assignment or transfer of, or creation of a  
33 security interest in, a promissory note, health-care-insurance  
34 receivable or general intangible, including a contract, permit,  
35 license or franchise between an account debtor and a debtor,  
36 is ineffective to the extent that the rule of law, statute or  
37 regulation:

38 (1) Would impair the creation, attachment or perfection  
39 of a security interest; or

40           (2) Provides that the assignment or transfer or the  
41 creation, attachment or perfection of the security interest may  
42 give rise to a default, breach, right of recoupment, claim,  
43 defense, termination, right of termination or remedy under the  
44 promissory note, health-care-insurance receivable or general  
45 intangible.

46           (d) *Limitation on ineffectiveness under subsections (a)*  
47 *and (c).* -- To the extent that a term in a promissory note or  
48 in an agreement between an account debtor and a debtor  
49 which relates to a health-care-insurance receivable or general  
50 intangible or a rule of law, statute or regulation described in  
51 subsection (c) of this section would be effective under law  
52 other than this article but is ineffective under subsection (a)  
53 or (c) of this section, the creation, attachment or perfection of  
54 a security interest in the promissory note, health-care-  
55 insurance receivable or general intangible:

56           (1) Is not enforceable against the person obligated on the  
57 promissory note or the account debtor;

58           (2) Does not impose a duty or obligation on the person  
59 obligated on the promissory note or the account debtor;

60           (3) Does not require the person obligated on the  
61 promissory note or the account debtor to recognize the  
62 security interest, pay or render performance to the secured  
63 party, or accept payment or performance from the secured  
64 party;

65           (4) Does not entitle the secured party to use or assign the  
66 debtor's rights under the promissory note, health-care-  
67 insurance receivable or general intangible, including any  
68 related information or materials furnished to the debtor in the  
69 transaction giving rise to the promissory note, health-care-  
70 insurance receivable or general intangible;

71 (5) Does not entitle the secured party to use, assign,  
72 possess or have access to any trade secrets or confidential  
73 information of the person obligated on the promissory note or  
74 the account debtor; and

75 (6) Does not entitle the secured party to enforce the  
76 security interest in the promissory note, health-care-insurance  
77 receivable or general intangible.

78 (e) *Section prevails over specified inconsistent law.* --  
79 This section prevails over any inconsistent provisions of an  
80 existing or future statute, rule or regulation of this state unless  
81 the provision is contained in a statute of this state, refers  
82 expressly to this section and states that the provision prevails  
83 over this section.

84 (f) *Inapplicability.* -- Subsection (c) of this section does  
85 not apply to an assignment or transfer of or the creation,  
86 attachment, perfection, or enforcement of a security interest  
87 in, a right the transfer of which is prohibited or restricted by  
88 any of the following statutes, to the extent that the statute is  
89 inconsistent with said subsection: Chapter twenty-three,  
90 article four, section eighteen; chapter forty-six-a, article six-  
91 h; and a claim or right to receive benefits under a special  
92 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.**

1 (a) *Sufficiency of financing statement.* -- Subject to  
2 subsection (b), a financing statement is sufficient only if it:

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a  
5 representative of the secured party; and

6           (3) Indicates the collateral covered by the financing  
7 statement.

8           (b) *Real-property-related financing statements.* -- Except  
9 as otherwise provided in section 9-501(b), to be sufficient, a  
10 financing statement that covers as-extracted collateral or  
11 timber to be cut, or which is filed as a fixture filing and  
12 covers goods that are or are to become fixtures, must satisfy  
13 subsection (a) of this section and also:

14           (1) Indicate that it covers this type of collateral;

15           (2) Indicate that it is to be filed for record in the real  
16 property records;

17           (3) Provide a description of the real property to which the  
18 collateral is related sufficient to give constructive notice of a  
19 mortgage under the law of this state if the description were  
20 contained in a record of the mortgage of the real property;  
21 and

22           (4) If the debtor does not have an interest of record in the  
23 real property, provide the name of a record owner.

24           (c) *Record of mortgage as financing statement.* -- A  
25 record of a mortgage is effective, from the date of recording,  
26 as a financing statement filed as a fixture filing or as a  
27 financing statement covering as-extracted collateral or timber  
28 to be cut only if:

29           (1) The record indicates the goods or accounts that it  
30 covers;

31           (2) The goods are or are to become fixtures relate to the  
32 real property described in the record or the collateral is  
33 related to the real property described in the record and is as-  
34 extracted collateral or timber to be cut;



35           (3) The record satisfies the requirements for a financing  
36 statement in this section: *Provided*, That

37           (A) The record need not indicate that it is to be filed in  
38 the real property records; and

39           (B) The record sufficiently provides the name of a debtor  
40 who is an individual if it provides the individual name of the  
41 debtor or the surname and first personal name of the debtor,  
42 even if the debtor is an individual to whom section 9-  
43 503(a)(4) applies; and

44           (4) The record is duly recorded.

45           (d) *Filing before security agreement or attachment.* -- A  
46 financing statement may be filed before a security agreement  
47 is made or a security interest otherwise attaches.

**§46-9-503. Name of debtor and secured party.**

1           (a) *Sufficiency of debtor's name.* -- A financing statement  
2 sufficiently provides the name of the debtor:

3           (1) Except as otherwise provided in paragraph (3) of this  
4 section, if the debtor is a registered organization or the  
5 collateral is held in a trust that is a registered organization,  
6 only if the financing statement provides the name that is  
7 stated to be the registered organization's name on the public  
8 organic record most recently filed with or issued or enacted  
9 by the debtor's jurisdiction of organization which purports to  
10 state, amend or restate the registered organization's name;

11           (2) Subject to subsection (f) of this section, if the  
12 collateral is being administered by the personal representative  
13 of a decedent, only if the financing statement provides, as the  
14 name of the debtor, the name of the decedent and indicates  
15 that collateral is being administered by a personal  
16 representative;

17           (3) If the collateral is held in a trust that is not a registered  
18 organization, only if the financing statement:

19           (A) Provides, as the name of the debtor:

20           (i) If the organic record of the trust specifies a name for  
21 the trust, the name specified; or

22           (ii) If the organic record of the trust does not specify a  
23 name for the trust, the name of the settlor or testator; and

24           (B) In a separate part of the financing statement:

25           (i) If the name is provided in accordance with  
26 subparagraph (A)(i), indicates that the collateral is held in a  
27 trust; or

28           (ii) If the name is provided in accordance with  
29 subparagraph (A)(ii), provides additional information  
30 sufficient to distinguish the trust from other trusts having one  
31 or more of the same settlors or the same testator and indicates  
32 that the collateral is held in a trust, unless the additional  
33 information so indicates;

34           (4) Subject to subsection (g), if the debtor is an individual  
35 to whom this state has issued a driver's license that has not  
36 expired, only if the financing statement provides the name of  
37 the individual which is indicated on the driver's license;

38           (5) If the debtor is an individual to whom subdivision (4)  
39 does not apply, only if the financing statement provides the  
40 individual name of the debtor or the surname and first  
41 personal name of the debtor; and

42           (6) In other cases:

43           (A) If the debtor has a name, only if the financing  
44 statement provides the organizational name of the debtor; and

45 (B) If the debtor does not have a name, only if it provides  
46 the names of the partners, members, associates or other  
47 persons comprising the debtor, in a manner that each name  
48 provided would be sufficient if the person named were the  
49 debtor.

50 (b) *Additional debtor-related information.* -- A financing  
51 statement that provides the name of the debtor in accordance  
52 with subsection (a) of this section is not rendered ineffective  
53 by the absence of:

54 (1) A trade name or other name of the debtor; or

55 (2) Unless required under subsection (a)(6)(B) of this  
56 section, names of partners, members, associates or other  
57 persons comprising the debtor.

58 (c) *Debtor's trade name insufficient.* -- A financing  
59 statement that provides only the debtor's trade name does not  
60 sufficiently provide the name of the debtor.

61 (d) *Representative capacity.*-- Failure to indicate the  
62 representative capacity of a secured party or representative of  
63 a secured party does not affect the sufficiency of a financing  
64 statement.

65 (e) *Multiple debtors and secured parties.* -- A financing  
66 statement may provide the name of more than one debtor and  
67 the name of more than one secured party.

68 (f) *Name of decedent.* -- The name of the decedent  
69 indicated on the order appointing the personal representative  
70 of the decedent issued by the court having jurisdiction over  
71 the collateral is sufficient as the "name of the decedent"  
72 under subdivision (a)(2) of this section.

73 (g) *Multiple driver's licenses.* -- If this state has issued to  
74 an individual more than one driver's license of a kind

75 described in subdivision (a)(4) of this section, the one that  
76 was issued most recently is the one to which subdivision  
77 (a)(4) refers.

78 (h) *Definition.* -- In this section, the “name of the settlor  
79 or testator” means:

80 (1) If the settlor is a registered organization, the name that  
81 is stated to be the settlor’s name on the public organic record  
82 most recently filed with or issued or enacted by the settlor’s  
83 jurisdiction of organization which purports to state, amend,  
84 or restate the settlor’s name; or

85 (2) In other cases, the name of the settlor or testator  
86 indicated in the trust’s organic record.

**§46-9-507. Effect of certain events on effectiveness of financing statement.**

1 (a) *Disposition.* -- A filed financing statement remains  
2 effective with respect to collateral that is sold, exchanged,  
3 leased, licensed or otherwise disposed of and in which a  
4 security interest or agricultural lien continues, even if the  
5 secured party knows of or consents to the disposition.

6 (b) *Information becoming seriously misleading.* --  
7 Except as otherwise provided in subsection (c) of this section  
8 and section 9-508, a financing statement is not rendered  
9 ineffective if, after the financing statement is filed, the  
10 information provided in the financing statement becomes  
11 seriously misleading under section 9-506.

12 (c) *Change in debtor’s name.* -- If the name that a filed  
13 financing statement provides for a debtor becomes  
14 insufficient as the name of the debtor under section 9-503(a)  
15 so that the financing statement becomes seriously misleading  
16 under section 9-506:

17       (1) The financing statement is effective to perfect a  
18 security interest in collateral acquired by the debtor before,  
19 or within four months after, the filed financing statement  
20 becomes seriously misleading; and

21       (2) The financing statement is not effective to perfect a  
22 security interest in collateral acquired by the debtor more  
23 than four months after the filed financing statement becomes  
24 seriously misleading, unless an amendment to the financing  
25 statement which renders the financing statement not seriously  
26 misleading is filed within four months after the financing  
27 statement became seriously misleading.

**§46-9-515. Duration and effectiveness of financing statement;  
effect of lapsed financing statement.**

1       (a) *Five-year effectiveness.* -- Except as otherwise  
2 provided in subsections (b), (e), (f) and (g) of this section, a  
3 filed financing statement is effective for a period of five years  
4 after the date of filing.

5       (b) *Public-finance or manufactured-home transaction.* --  
6 Except as otherwise provided in subsections (e), (f) and (g)  
7 of this section, an initial financing statement filed in  
8 connection with a public-finance transaction or  
9 manufactured-home transaction is effective for a period of  
10 forty years after the date of filing if it indicates that it is filed  
11 in connection with a public-finance transaction or  
12 manufactured-home transaction.

13       (c) *Lapse and continuation of financing statement.* -- The  
14 effectiveness of a filed financing statement lapses on the  
15 expiration of the period of its effectiveness unless before the  
16 lapse a continuation statement is filed pursuant to subsection  
17 (d) of this section. Upon lapse, a financing statement ceases  
18 to be effective and any security interest or agricultural lien  
19 that was perfected by the financing statement becomes

20 unperfected, unless the security interest is perfected  
21 otherwise. If the security interest or agricultural lien becomes  
22 unperfected upon lapse, it is deemed never to have been  
23 perfected as against a purchaser of the collateral for value.

24 (d) *When continuation statement may be filed.* -- A  
25 continuation statement may be filed only within six months  
26 before the expiration of the five-year period specified in  
27 subsection (a) of this section or the thirty-year period  
28 specified in subsection (b) of this section, whichever is  
29 applicable.

30 (e) *Effect of filing continuation statement.* -- Except as  
31 otherwise provided in section 9-510, upon timely filing of a  
32 continuation statement, the effectiveness of the initial  
33 financing statement continues for a period of five years  
34 commencing on the day on which the financing statement  
35 would have become ineffective in the absence of the filing.  
36 Upon the expiration of the five-year period, the financing  
37 statement lapses in the same manner as provided in  
38 subsection (c) of this section, unless, before the lapse, another  
39 continuation statement is filed pursuant to subsection (d) of  
40 this section. Succeeding continuation statements may be  
41 filed in the same manner to continue the effectiveness of the  
42 initial financing statement.

43 (f) *Transmitting utility financing statement.* -- If a debtor  
44 is a transmitting utility and a filed initial financing statement  
45 so indicates, the financing statement is effective until a  
46 termination statement is filed.

47 (g) *Record of mortgage as financing statement.* -- A  
48 record of a mortgage that is effective as a financing statement  
49 filed as a fixture filing under section 9-502(c) remains  
50 effective as a financing statement filed as a fixture filing until  
51 the mortgage is released or satisfied of record or its  
52 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  
2 provided in subsection (b) of this section, communication of  
3 a record to a filing office and tender of the filing fee or  
4 acceptance of the record by the filing office constitutes filing.

5           (b) *Refusal to accept record; filing does not occur.* --  
6 Filing does not occur with respect to a record that a filing  
7 office refuses to accept because:

8           (1) The record is not communicated by a method or  
9 medium of communication authorized by the filing office;

10          (2) An amount equal to or greater than the applicable  
11 filing fee is not tendered;

12          (3) The filing office is unable to index the record  
13 because:

14           (A) In the case of an initial financing statement, the  
15 record does not provide a name for the debtor;

16           (B) In the case of an amendment or information  
17 statement, the record:

18           (i) Does not identify the initial financing statement as  
19 required by section 9-512 or 9-518, as applicable; or

20           (ii) Identifies an initial financing statement whose  
21 effectiveness has lapsed under section 9-515;

22           (C) In the case of an initial financing statement that  
23 provides the name of a debtor identified as an individual or  
24 an amendment that provides a name of a debtor identified as  
25 an individual which was not previously provided in the  
26 financing statement to which the record relates, the record  
27 does not identify the debtor's surname; or

28       (D) In the case of a record filed or recorded in the filing  
29 office described in section 9-501(a)(1), the record does not  
30 provide a sufficient description of the real property to which  
31 it relates;

32       (4) In the case of an initial financing statement or an  
33 amendment that adds a secured party of record, the record  
34 does not provide a name and mailing address for the secured  
35 party of record;

36       (5) In the case of an initial financing statement or an  
37 amendment that provides a name of a debtor which was not  
38 previously provided in the financing statement to which the  
39 amendment relates, the record does not:

40       (A) Provide a mailing address for the debtor;

41       (B) Indicate whether the name provided as the name of  
42 the debtor is the name of an individual or an organization;

43       (6) In the case of an assignment reflected in an initial  
44 financing statement under section 9-514(a) or an amendment  
45 filed under section 9-514(b), the record does not provide a  
46 name and mailing address for the assignee; or

47       (7) In the case of a continuation statement, the record is  
48 not filed within the six-month period prescribed by section 9-  
49 515(d).

50       (c) *Rules applicable to subsection (b).* -- For purposes of  
51 subsection (b):

52       (1) A record does not provide information if the filing  
53 office is unable to read or decipher the information; and

54       (2) A record that does not indicate that it is an  
55 amendment or identify an initial financing statement to which



56 it relates, as required by section 9-512, 9-514 or 9-518, is an  
57 initial financing statement.

58 (d) *Refusal to accept record; record effective as filed*  
59 *record.* -- A record that is communicated to the filing office  
60 with tender of the filing fee, but which the filing office  
61 refuses to accept for a reason other than one set forth in  
62 subsection (b) of this section, is effective as a filed record  
63 except as against a purchaser of the collateral which gives  
64 value in reasonable reliance upon the absence of the record  
65 from the files.

66 (e) *Administrative review.* – If the Secretary of State  
67 determines that a financing statement which identifies a  
68 public official or employee as a debtor is fraudulent or that an  
69 individual debtor and an individual secured party would  
70 appear to be the same individual on the financing statement  
71 or that the individual debtor claims to be a transmitting  
72 utility, without supporting documents, the Secretary may  
73 commence administrative proceedings to remove the  
74 statement from its records in accordance with the provisions  
75 of article five, chapter twenty-nine-a of this code.

76 (1) Upon the commencement of proceedings pursuant to  
77 this subsection, the Secretary of State shall identify the  
78 financing statement in its records as subject to administrative  
79 review and publish a notice in the *West Virginia Register*  
80 regarding the proceedings.

81 (2) A financing statement may be found to be fraudulent  
82 only if, based upon clear and convincing evidence, no good  
83 faith basis exists upon which to conclude that the secured  
84 party was authorized to file the statement and the statement  
85 was submitted for the purpose of harassment or intimidation  
86 or fraudulent intent of the alleged debtor.

87           (3) If upon the completion of administrative review, it is  
88 determined that the filing of a financing statement was  
89 fraudulent, the filing party shall be assessed all costs incurred  
90 by the Secretary in reaching a final determination, including  
91 reimbursement for all costs of the hearing. The filing party  
92 may also be subject to a civil penalty not exceeding \$500 per  
93 fraudulent filing. If upon completion of administrative  
94 review or any subsequent appeal of a decision of the  
95 Secretary of State, it is determined that a filing subject to  
96 appeal is not fraudulent, the secretary or court may award the  
97 prevailing party reasonable costs and expenses, including  
98 attorney fees.

99           (4) The Secretary of State shall annually submit a report  
100 to the Legislature regarding actions taken against fraudulent  
101 filings pursuant to this section which identifies the number  
102 and characteristics of such proceedings, identifies any  
103 creditors found to have made fraudulent filings, describes  
104 proceedings initiated by the secretary in which it is ultimately  
105 determined that fraudulent filings did not occur, describes the  
106 number and type of complaints received by the secretary in  
107 which it is alleged that fraudulent filings have occurred, and  
108 describes the actions taken by the secretary to investigate  
109 complaints concerning allegedly fraudulent filings and the  
110 results of the investigations.

111           (5) A decision by the secretary to remove a financing  
112 statement determined to have been fraudulently filed subject  
113 to appeal *de novo* to the circuit court of Kanawha County.  
114 Pending the outcome of an appeal, the financing statement  
115 may not be removed from the records of the Secretary, but  
116 shall be identified in the records as having been adjudicated  
117 to be fraudulent, subject to a pending appeal by the putative  
118 creditor.

119           (6) A financing statement filed by a regulated financial  
120 institution is not subject to the provisions of this section. For

121 the purposes of this section, a regulated financial institution  
122 is a bank, bank and trust company, trust company, savings  
123 bank, savings association, building and loan association,  
124 credit union, consumer finance company, insurance company,  
125 investment company, mortgage lender or broker, securities  
126 broker, dealer or underwriter, or other institution chartered,  
127 licensed, registered or otherwise authorized under federal  
128 law, the law of this state or any other state, to engage in  
129 secured lending.

**§46-9-518. Claim concerning inaccurate or wrongfully filed record.**

1 (a) *Statement with respect to record indexed under*  
2 *person's name.* -- A person may file in the filing office an  
3 information statement with respect to a record indexed there  
4 under the person's name if the person believes that the record  
5 is inaccurate or was wrongfully filed.

6 (b) *Contents of statement under subsection (a).* -- An  
7 information statement under subsection (a) of this section  
8 must:

9 (1) Identify the record to which it relates by:

10 (A) The file number assigned to the initial financing  
11 statement to which the record relates; and

12 (B) If the information statement relates to a record filed  
13 or recorded in a filing office described in section 9-501(a)(1),  
14 the date and time that the initial financing statement was filed  
15 or recorded and the information specified in section 9-502(b);

16 (2) Indicate that it is an information statement; and

17 (3) Provide the basis for the person's belief that the  
18 record is inaccurate and indicate the manner in which the

19 person believes the record should be amended to cure any  
20 inaccuracy or provide the basis for the person's belief that the  
21 record was wrongfully filed.

22 (c) *Statement by secured party of record.* -- A person  
23 may file in the filing office an information statement with  
24 respect to a record filed there if the person is a secured party  
25 of record with respect to the financing statement to which the  
26 record relates and believes that the person that filed the  
27 record was not entitled to do so under section 9-509(d).

28 (d) *Contents of statement under subsection (c).* -- An  
29 information statement under subsection (c) of this section  
30 must:

31 (1) Identify the record to which it relates by:

32 (A) The file number assigned to the initial financing  
33 statement to which the record relates; and

34 (B) If the information statement relates to a record filed  
35 or recorded in a filing office described in section 9-501(a)(1),  
36 the date and time that the initial financing statement was filed  
37 or recorded and the information specified in section 9-502(b);

38 (2) Indicate that it is an information statement; and

39 (3) Provide the basis for the person's belief that the  
40 person that filed the record was not entitled to do so under  
41 Section 9-509(d).

42 (e) *Record not affected by information statement.*-- The  
43 filing of an information statement does not affect the  
44 effectiveness of an initial financing statement or other filed  
45 record.

**§46-9-607. Collection and enforcement by secured party.**

1           (a) *Collection and enforcement generally.* -- If so agreed,  
2    and in any event after default, a secured party:

3           (1) May notify an account debtor or other person  
4    obligated on collateral to make payment or otherwise render  
5    performance to or for the benefit of the secured party;

6           (2) May take any proceeds to which the secured party is  
7    entitled under section 9-315;

8           (3) May enforce the obligations of an account debtor or  
9    other person obligated on collateral and exercise the rights of  
10   the debtor with respect to the obligation of the account debtor  
11   or other person obligated on collateral to make payment or  
12   otherwise render performance to the debtor, and with respect  
13   to any property that secures the obligations of the account  
14   debtor or other person obligated on the collateral;

15          (4) If it holds a security interest in a deposit account  
16   perfected by control under section 9-104(a)(1), may apply the  
17   balance of the deposit account to the obligation secured by  
18   the deposit account; and

19          (5) If it holds a security interest in a deposit account  
20   perfected by control under section 9-104(a)(2) or (3), may  
21   instruct the bank to pay the balance of the deposit account to  
22   or for the benefit of the secured party.

23          (b) *Nonjudicial enforcement of mortgage.* -- If necessary  
24   to enable a secured party to exercise under subsection (a)(3)  
25   of this section the right of a debtor to enforce a mortgage  
26   nonjudicially, the secured party may record in the office in  
27   which a record of the mortgage is recorded:

28       (1) A copy of the security agreement that creates or  
29 provides for a security interest in the obligation secured by  
30 the mortgage; and

31       (2) The secured party's sworn affidavit in recordable  
32 form stating that:

33       (A) A default has occurred with respect to the obligation  
34 secured by the mortgage; and

35       (B) The secured party is entitled to enforce the mortgage  
36 nonjudicially.

37       (c) *Commercially reasonable collection and enforcement.*  
38 -- A secured party shall proceed in a commercially reasonable  
39 manner if the secured party:

40       (1) Undertakes to collect from or enforce an obligation of  
41 an account debtor or other person obligated on collateral; and

42       (2) Is entitled to charge back uncollected collateral or  
43 otherwise to full or limited recourse against the debtor or a  
44 secondary obligor.

45       (d) *Expenses of collection and enforcement.* -- A secured  
46 party may deduct from the collections made pursuant to  
47 subsection (c) of this section reasonable expenses of  
48 collection and enforcement, including reasonable attorney's  
49 fees and legal expenses incurred by the secured party.

50       (e) *Duties to secured party not affected.* -- This section  
51 does not determine whether an account debtor, bank or other  
52 person obligated on collateral owes a duty to a secured party.

## SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

**§46-9-625. Remedies for secured party's failure to comply with article.**

1           (a) *Judicial orders concerning noncompliance.*-- If it is  
2 established that a secured party is not proceeding in  
3 accordance with this article, a court may order or restrain  
4 collection, enforcement, or disposition of collateral on  
5 appropriate terms and conditions.

6           (b) *Damages for noncompliance.* -- Subject to  
7 subsections (c), (d) and (f) of this section, a person is liable  
8 for damages in the amount of any loss caused by a failure to  
9 comply with this article. Loss caused by a failure to comply  
10 may include loss resulting from the debtor's inability to  
11 obtain, or increased costs of, alternative financing.

12           (c) *Persons entitled to recover damages; statutory*  
13 *damages if collateral is consumer goods.* -- Except as  
14 otherwise provided in section 9-628:

15           (1) A person that, at the time of the failure, was a debtor,  
16 was an obligor, or held a security interest in or other lien on  
17 the collateral may recover damages under subsection (b) of  
18 this section for its loss; and

19           (2) If the collateral is consumer goods, a person that was  
20 a debtor or a secondary obligor at the time a secured party  
21 failed to comply with this part may recover for that failure in  
22 any event an amount not less than the credit service charge  
23 plus ten percent of the principal amount of the obligation or  
24 the time-price differential plus ten percent of the cash price.

25           (d) *Recovery when deficiency eliminated or reduced.* -- A  
26 debtor whose deficiency is eliminated under section 9-626  
27 may recover damages for the loss of any surplus. However,

28 a debtor or secondary obligor whose deficiency is eliminated  
29 or reduced under section 9-626 may not otherwise recover  
30 under subsection (b) of this section for noncompliance with  
31 the provisions of this part relating to collection, enforcement,  
32 disposition or acceptance.

33 (e) *Statutory damages: noncompliance with specified*  
34 *provisions.* -- In addition to any damages recoverable under  
35 subsection (b) of this section, the debtor, consumer obligor or  
36 person named as a debtor in a filed record, as applicable, may  
37 recover \$500 in each case from a person that:

38 (1) Fails to comply with section 9-208;

39 (2) Fails to comply with section 9-209;

40 (3) Files a record that the person is not entitled to file  
41 under section 9-509(a);

42 (4) Fails to cause the secured party of record to file or  
43 send a termination statement as required by section 9-513(a)  
44 or (c);

45 (5) Fails to comply with section 9-616(b)(1) and whose  
46 failure is part of a pattern, or consistent with a practice, of  
47 noncompliance; or

48 (6) Fails to comply with section 9-616(b)(2).

49 (f) *Statutory damages: noncompliance with section 9-*  
50 *210.* -- A debtor or consumer obligor may recover damages  
51 under subsection (b) of this section and, in addition, \$500 in  
52 each case from a person that, without reasonable cause, fails  
53 to comply with a request under section 9-210. A recipient of  
54 a request under section 9-210 which never claimed an interest  
55 in the collateral or obligations that are the subject of a request  
56 under that section has a reasonable excuse for failure to



57 comply with the request within the meaning of this  
58 subsection.

59 (g) *Limitation of security interest: noncompliance with*  
60 *section 9-210.* -- If a secured party fails to comply with a  
61 request regarding a list of collateral or a statement of account  
62 under section 9-210, the secured party may claim a security  
63 interest only as shown in the list or statement included in the  
64 request as against a person that is reasonably misled by the  
65 failure.

## PART 8. TRANSITION PROVISIONS

### FOR 2012 AMENDMENTS.

#### **§46-9-801. Effective date.**

1 The amendments to this article enacted by the Legislature  
2 during the 2012 Regular Legislative Session take effect on  
3 July 1, 2013.

#### **§46-9-802. Savings clause.**

1 (a) *Preeffective-date transactions or liens.* -- Except as  
2 otherwise provided in this part, this article applies to a  
3 transaction or lien within its scope, even if the transaction or  
4 lien was entered into or created before the amendments to this  
5 article during the 2012 Regular Legislative Session take  
6 effect as provided in section 9-801.

7 (b) *Preeffective-date proceedings.* -- This article does not  
8 affect an action, case, or proceeding commenced before the  
9 amendments to this article during the 2012 Regular  
10 Legislative Session take effect as provided in section 9-801.

**§46-9-803. Security interest perfected before effective date.**

1           (a) *Continuing perfection: perfection requirements*  
2 *satisfied.* -- A security interest that is a perfected security  
3 interest immediately before the amendments to this article  
4 take effect is a perfected security interest under this article if,  
5 when this article takes effect, the applicable requirements for  
6 attachment and perfection under this article as amended by  
7 the Legislature during the 2012 Regular Legislative Session  
8 are satisfied without further action.

9           (b) *Continuing perfection: perfection requirements not*  
10 *satisfied.* -- Except as otherwise provided in section 9-805,  
11 if, immediately before amendments to this article take effect,  
12 a security interest is a perfected security interest, but the  
13 applicable requirements for perfection under this article as  
14 amended by the Legislature during the 2012 Regular  
15 Legislative Session are not satisfied when the amendments to  
16 this article take effect, the security interest remains perfected  
17 thereafter only if the applicable requirements for perfection  
18 under this article as amended by the Legislature during the  
19 2012 Regular Legislative Session are satisfied within one  
20 year after the amendments take effect.

**§46-9-804. Security interest unperfected before effective date.**

1           A security interest that is an unperfected security interest  
2 immediately before the amendments to this article during the  
3 2012 Regular Legislative Session take effect becomes a  
4 perfected security interest:

5           (1) Without further action, when the amendments to this  
6 article during the 2012 Regular Legislative Session take  
7 effect if the applicable requirements for perfection under this  
8 article as amended during the 2012 Regular Legislative  
9 Session are satisfied before or at that time; or

- 10           (2) When the applicable requirements for perfection are  
11           satisfied if the requirements are satisfied after that time.

**§46-9-805. Effectiveness of action taken before effective date.**

1           (a) *Preeffective-date filing effective.* -- The filing of a  
2           financing statement before the amendments to this article  
3           during the 2012 Regular Legislative Session take effect is  
4           effective to perfect a security interest to the extent the filing  
5           would satisfy the applicable requirements for perfection  
6           under this article as amended during the 2012 Regular  
7           Legislative Session.

8           (b) *When preeffective-date filing becomes ineffective.* --  
9           This article does not render ineffective an effective financing  
10          statement that, before the amendments to this article during  
11          the 2011 Regular Legislative Session take effect, is filed and  
12          satisfies the applicable requirements for perfection under the  
13          law of the jurisdiction governing perfection as provided in  
14          this article as it existed before its amendment during the  
15          2012 Regular Legislative Session. However, except as  
16          otherwise provided in subsections (c) and (d) and Section 9-  
17          806, the financing statement ceases to be effective:

18           (1) If the financing statement is filed in this state, at the  
19           time the financing statement would have ceased to be  
20           effective had the amendments to this article during the 2012  
21           Regular Legislative Session not taken effect; or

22           (2) If the financing statement is filed in another  
23           jurisdiction, at the earlier of:

24           (A) The time the financing statement would have ceased  
25           to be effective under the law of that jurisdiction; or

26           (B) June 30, 2018.

27           (c) *Continuation statement.* -- The filing of a continuation  
28 statement after the amendments to this article during the 2012  
29 Regular Legislative Session take effect does not continue the  
30 effectiveness of a financing statement filed before those  
31 amendments to the article take effect. However, upon the timely  
32 filing of a continuation statement after the amendments to this  
33 article during the 2012 Regular Legislative session take effect  
34 and in accordance with the law of the jurisdiction governing  
35 perfection as provided in this article as amended during the 2012  
36 Regular Legislative Session, the effectiveness of a financing  
37 statement filed in the same office in that jurisdiction before the  
38 amendments to this article during the 2012 Regular Legislative  
39 Session takes effect continues for the period provided by the law  
40 of that jurisdiction.

41           (d) *Application of subsection (b)(2)(B) to transmitting*  
42 *utility financing statement.* -- Subsection (b)(2)(B) applies to  
43 a financing statement that, before the amendments to this  
44 article during the 2012 Regular Legislative Session take  
45 effect, is filed against a transmitting utility and satisfies the  
46 applicable requirements for perfection under the law of the  
47 jurisdiction governing perfection as provided in this article  
48 as it existed before amendment, only to the extent that this  
49 article as amended by during the 2012 Regular Legislative  
50 Session provides that the law of a jurisdiction other than the  
51 jurisdiction in which the financing statement is filed governs  
52 perfection of a security interest in collateral covered by the  
53 financing statement.

54           (e) *Application of Part 5.* -- A financing statement that  
55 includes a financing statement filed before the amendments  
56 to this article during 2012 Regular Session take effect and a  
57 continuation statement filed after the amendments to this  
58 article during the 2012 Regular Legislative Session take  
59 effect is effective only to the extent that it satisfies the  
60 requirements of Part 5 as amended during the 2012 Regular  
61 Legislative Session for an initial financing statement. A

62 financing statement that indicates that the debtor is a  
63 decedent's estate indicates that the collateral is being  
64 administered by a personal representative within the meaning  
65 of section 9-503(a)(2) as amended during the 2012 Regular  
66 Legislative Session. A financing statement that indicates that  
67 the debtor is a trust or is a trustee acting with respect to  
68 property held in trust indicates that the collateral is held in a  
69 trust within the meaning of section 9-503(a)(3) as amended  
70 during the 2012 Regular Legislative Session.

**§46-9-806. When initial financing statement suffices to continue effectiveness of financing statement.**

1 (a) *Initial financing statement in lieu of continuation*  
2 *statement.* -- The filing of an initial financing statement in  
3 the office specified in section 9-501 continues the  
4 effectiveness of a financing statement filed before the  
5 amendments to this article during the 2012 Regular  
6 Legislative Session take effect if:

7 (1) The filing of an initial financing statement in that  
8 office would be effective to perfect a security interest under  
9 this article as amended during the 2012 Regular Legislative  
10 Session;

11 (2) The preeffective-date financing statement was filed in  
12 an office in another state; and

13 (3) The initial financing statement satisfies subsection (c).

14 (b) *Period of continued effectiveness.* -- The filing of an  
15 initial financing statement under subsection (a) continues the  
16 effectiveness of the preeffective-date financing statement:

17 (1) If the initial financing statement is filed before the  
18 amendments to this article during the 2012 Regular

19 Legislative Session take effect, for the period provided in  
20 section 9-515 as it existed prior to the 2012 amendments,  
21 with respect to an initial financing statement; and

22 (2) If the initial financing statement is filed after the  
23 amendments to this article during the 2012 Regular  
24 Legislative Session take effect, for the period provided in  
25 section 9-515 as amended by the Legislature during the 2012  
26 Regular Legislative Session, with respect to an initial  
27 financing statement.

28 (c) *Requirements for initial financing statement under*  
29 *subsection (a).* -- To be effective for purposes of subsection  
30 (a), an initial financing statement must:

31 (1) Satisfy the requirements of Part 5 as amended by the  
32 Legislature during the 2012 Regular Legislative Session for  
33 an initial financing statement;

34 (2) Identify the preeffective-date financing statement by  
35 indicating the office in which the financing statement was  
36 filed and providing the dates of filing and file numbers, if  
37 any, of the financing statement and of the most recent  
38 continuation statement filed with respect to the financing  
39 statement; and

40 (3) Indicate that the preeffective-date financing statement  
41 remains effective.

**§46-9-807. Amendment of preeffective-date financing statement.**

1 (a) *“Preeffective-date financing statement”*. -- In this  
2 section, “preeffective-date financing statement” means a  
3 financing statement filed before the amendments to this  
4 article during the 2012 Regular Legislative Session take  
5 effect.

6           (b) *Applicable law.* -- After the amendments to this  
7 article during the 2012 Regular Legislative Session take  
8 effect, a person may add or delete collateral covered by,  
9 continue or terminate the effectiveness of, or otherwise  
10 amend the information provided in, a preeffective-date  
11 financing statement only in accordance with the law of the  
12 jurisdiction governing perfection as provided in this article as  
13 amended during the 2012 Regular Legislative Session.  
14 However, the effectiveness of a preeffective-date financing  
15 statement also may be terminated in accordance with the law  
16 of the jurisdiction in which the financing statement is filed.

17           (c) *Method of amending: general rule.* -- Except as  
18 otherwise provided in subsection (d), if the law of this state  
19 governs perfection of a security interest, the information in a  
20 preeffective-date financing statement may be amended after  
21 the amendments to this article during the 2012 Regular  
22 Legislative Session take effect only if:

23           (1) The preeffective-date financing statement and an  
24 amendment are filed in the office specified in section 9-501;

25           (2) An amendment is filed in the office specified in  
26 section 9-501 concurrently with, or after the filing in that  
27 office of, an initial financing statement that satisfies section  
28 9-806(c); or

29           (3) An initial financing statement that provides the  
30 information as amended and satisfies section 9-806(c) is filed  
31 in the office specified in section 9-501.

32           (d) *Method of amending: continuation.* -- If the law of  
33 this state governs perfection of a security interest, the  
34 effectiveness of a preeffective-date financing statement may  
35 be continued only under section 9-805(c) and (e) or 9-806.

36 (e) *Method of amending: additional termination rule.* --  
37 Whether or not the law of this state governs perfection of a  
38 security interest, the effectiveness of a preeffective-date  
39 financing statement filed in this state may be terminated after  
40 the amendments to this article during the 2012 Regular  
41 Legislative Session take effect by filing a termination  
42 statement in the office in which the preeffective-date  
43 financing statement is filed, unless an initial financing  
44 statement that satisfies section 9-806(c) has been filed in the  
45 office specified by the law of the jurisdiction governing  
46 perfection as provided in this article as amended during the  
47 2012 Regular Legislative Session as the office in which to  
48 file a financing statement.

**§46-9-808. Person entitled to file initial financing statement or continuation statement.**

1 A person may file an initial financing statement or a  
2 continuation statement under this part if:

3 (1) The secured party of record authorizes the filing; and

4 (2) The filing is necessary under this part:

5 (A) To continue the effectiveness of a financing statement  
6 filed before the amendments to this article during the 2012  
7 Regular Legislative Session take effect; or

8 (B) To perfect or continue the perfection of a security  
9 interest.

**§46-9-809. Priority.**

1 This article determines the priority of conflicting claims  
2 to collateral. However, if the relative priorities of the claims  
3 were established before the amendments to this article during  
4 the 2012 Regular Legislative Session take effect, this article,  
5 as it existed before the 2012 amendments determines priority.



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## CHAPTER 199

**(Com. Sub. for H. B. 4390 - By Delegates Doyle, Rodighiero,  
Ferro, Frazier, Reynolds, Storch and Walters)**

[Passed March 10, 2012; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2012.]

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

repealed; that said code be amended 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 that §44A-3-3 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.**

### **ARTICLE 1. GENERAL PROVISIONS.**

#### **§39B-1-101. Short title.**

1           This chapter may be cited as the Uniform Power of  
2   Attorney Act, and is cited in this chapter as “this act”.

#### **§39B-1-102. Definitions.**

1           In this act:

2           (1) “Agent” means a person granted authority to act for  
3   a principal under a power of attorney, whether denominated  
4   an agent, attorney-in-fact or otherwise. The term includes an  
5   original agent, coagent, successor agent and a person to  
6   which an agent’s authority is delegated.

7           (2) “Durable,” with respect to a power of attorney means  
8   not terminated by the principal’s incapacity.

9           (3) “Electronic” means relating to technology having  
10   electrical, digital, magnetic, wireless, optical, electromagnetic  
11   or similar capabilities.

12 (4) “Good faith” means honesty in fact.

13 (5) “Incapacity” means inability of an individual to  
14 manage property or business affairs because the individual:

15 (A) Has an impairment in the ability to receive and  
16 evaluate information or make or communicate decisions even  
17 with the use of technological assistance; or

18 (B) Is:

19 (i) Detained, including incarcerated in a penal system;  
20 or

21 (ii) Outside the United States and unable to return.

22 (6) “Person” means an individual, corporation, business  
23 trust, estate, trust, partnership, limited liability company,  
24 association, joint venture, public corporation, government or  
25 governmental subdivision, agency, or instrumentality or any  
26 other legal or commercial entity.

27 (7) “Power of attorney” means a writing or other record  
28 that grants authority to an agent to act in the place of the  
29 principal, whether or not the term power of attorney is used.

30 (8) “Presently exercisable general power of  
31 appointment,” with respect to property or a property interest  
32 subject to a power of appointment, means power exercisable  
33 at the time in question to vest absolute ownership in the  
34 principal individually, the principal’s estate, the principal’s  
35 creditors or the creditors of the principal’s estate. The term  
36 includes a power of appointment not exercisable until the  
37 occurrence of a specified event, the satisfaction of an  
38 ascertainable standard, or the passage of a specified period  
39 only after the occurrence of the specified event, the  
40 satisfaction of the ascertainable standard or the passage of the

41 specified period. The term does not include a power  
42 exercisable in a fiduciary capacity or only by will.

43 (9) “Principal” means an individual who grants authority  
44 to an agent in a power of attorney.

45 (10) “Property” means anything that may be the subject  
46 of ownership, whether real or personal, or legal or equitable  
47 or any interest or right therein.

48 (11) “Record” means information that is inscribed on a  
49 tangible medium or that is stored in an electronic or other  
50 medium and is retrievable in perceivable form.

51 (12) “Sign” means, with present intent to authenticate or  
52 adopt a record:

53 (A) To execute or adopt a tangible symbol; or

54 (B) To attach to or logically associate with the record an  
55 electronic sound, symbol or process.

56 (13) “State” means a state of the United States, the  
57 District of Columbia, Puerto Rico, the United States Virgin  
58 Islands or any territory or insular possession subject to the  
59 jurisdiction of the United States.

60 (14) “Stocks and bonds” means stocks, bonds, mutual  
61 funds and all other types of securities and financial  
62 instruments, whether held directly, indirectly or in any other  
63 manner. The term does not include commodity futures  
64 contracts and call or put options on stocks or stock indexes.

### **§39B-1-103. Applicability.**

1 This act applies to all powers of attorney except:

2 (1) A power to the extent it is coupled with an interest  
3 in the subject of the power, including a power given to or  
4 for the benefit of a creditor in connection with a credit  
5 transaction;

6 (2) A power to make health-care decisions;

7 (3) A proxy or other delegation to exercise voting rights  
8 or management rights with respect to an entity; and

9 (4) A power created on a form prescribed by a  
10 government or governmental subdivision, agency or  
11 instrumentality for a governmental purpose.

**§39B-1-104. Power of attorney is durable.**

1 A power of attorney created under this act is durable  
2 unless it expressly provides that it is terminated by the  
3 incapacity of the principal.

**§39B-1-105. Execution of power of attorney.**

1 A power of attorney must be signed by the principal or in  
2 the principal's conscious presence by another individual  
3 directed by the principal to sign the principal's name on the  
4 power of attorney and must be acknowledged by the principal  
5 before a notary public or other individual authorized by law  
6 to take acknowledgments.

**§39B-1-106. Validity of power of attorney.**

1 (a) A power of attorney executed in this state on or after  
2 the effective date of this act, is valid if its execution complies  
3 with section one hundred five of this article.

4 (b) A power of attorney executed in this state before the  
5 effective date of this act, is valid if its execution complied with  
6 the law of this state as it existed at the time of execution.

7 (c) A power of attorney executed other than in this state  
8 is valid in this state if, when the power of attorney was  
9 executed, the execution complied with:

10 (1) The law of the jurisdiction that determines the  
11 meaning and effect of the power of attorney pursuant to  
12 section one hundred seven of this article; or

13 (2) The requirements for a military power of attorney  
14 pursuant to 10 U. S. C. §1044b.

15 (d) Except as otherwise provided by statute other than  
16 this act, a photocopy or electronically transmitted copy of  
17 an original power of attorney has the same effect as the  
18 original.

**§39B-1-107. Meaning and effect of power of attorney.**

1 The meaning and effect of a power of attorney is  
2 determined by the law of the jurisdiction indicated in the  
3 power of attorney and, in the absence of an indication of  
4 jurisdiction, by the law of the jurisdiction in which the power  
5 of attorney was executed.

**§39B-1-108. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.**

1 (a) In a power of attorney, a principal may nominate a  
2 conservator of the principal's estate or guardian of the  
3 principal's person for consideration by the court if  
4 protective proceedings for the principal's estate or person  
5 are begun after the principal executes the power of attorney.  
6 In the protective proceedings the court shall consider the  
7 nomination in accordance with the provisions of section  
8 eight, article two, chapter forty-four-a of this code.

9 (b) If, after a principal executes a power of attorney, a  
10 court appoints a conservator of the principal's estate or other  
11 fiduciary charged with the management of some or all of the  
12 principal's property, the agent is accountable to the fiduciary  
13 as well as to the principal. Unless otherwise ordered by the  
14 court making the appointment, the power of attorney and the  
15 agent's authority thereunder terminates upon the  
16 appointment.

**§39B-1-109. When power of attorney effective.**

1 (a) A power of attorney is effective when executed unless  
2 the principal provides in the power of attorney that it  
3 becomes effective at a future date or upon the occurrence of  
4 a future event or contingency.

5 (b) If a power of attorney becomes effective upon the  
6 occurrence of a future event or contingency, the principal, in  
7 the power of attorney, may authorize one or more persons to  
8 determine in a writing or other record that the event or  
9 contingency has occurred.

10 (c) If a power of attorney becomes effective upon the  
11 principal's incapacity and the principal has not authorized a  
12 person to determine whether the principal is incapacitated, or  
13 the person authorized is unable or unwilling to make the  
14 determination, the power of attorney becomes effective upon  
15 a determination in a writing or other record by:

16 (1) A physician or licensed psychologist that the principal  
17 is incapacitated within the meaning of section one hundred  
18 two (5)(A) of this article; or

19 (2) An attorney at law, a judge or an appropriate  
20 governmental official that the principal is incapacitated  
21 within the meaning of section one hundred two (5)(B) of this  
22 article.



23 (d) A person authorized by the principal in the power of  
24 attorney to determine that the principal is incapacitated may  
25 act as the principal's personal representative pursuant to the  
26 Health Insurance Portability and Accountability Act, §1171  
27 through §1179 of the Social Security Act, 42 U. S. C.  
28 §1320d, and applicable regulations, to obtain access to the  
29 principal's health-care information and communicate with the  
30 principal's health-care provider.

**§39B-1-110. Termination of power of attorney or agent's  
authority.**

1 (a) A power of attorney terminates when:

2 (1) The principal dies;

3 (2) The principal becomes incapacitated, if the power of  
4 attorney is not durable;

5 (3) The principal revokes the power of attorney;

6 (4) The power of attorney provides that it terminates;

7 (5) The purpose of the power of attorney is accomplished;

8 or

9 (6) The principal revokes the agent's authority or the  
10 agent dies, becomes incapacitated, or resigns, and the power  
11 of attorney does not provide for another agent to act under  
12 the power of attorney.

13 (b) An agent's authority terminates when:

14 (1) The principal revokes the authority;

15 (2) The agent dies, becomes incapacitated, or resigns;

16 (3) An action is filed for the dissolution or annulment of  
17 the agent's marriage to the principal or their legal separation,  
18 unless the power of attorney otherwise provides; or

19 (4) The power of attorney terminates.

20 (c) Unless the power of attorney otherwise provides, an  
21 agent's authority is exercisable until the authority terminates  
22 pursuant to this section, notwithstanding a lapse of time since  
23 the execution of the power of attorney.

24 (d) Termination of an agent's authority or of a power of  
25 attorney is not effective as to the agent or another person that,  
26 without actual knowledge of the termination, acts in good  
27 faith under the power of attorney. An act so performed,  
28 unless otherwise invalid or unenforceable, binds the principal  
29 and the principal's successors in interest.

30 (e) Incapacity of the principal of a power of attorney that  
31 is not durable does not revoke or terminate the power of  
32 attorney as to an agent or other person who, without actual  
33 knowledge of the incapacity, acts in good faith under the  
34 power of attorney. An act so performed, unless otherwise  
35 invalid or unenforceable, binds the principal and the  
36 principal's successors in interest.

37 (f) The execution of a power of attorney does not revoke  
38 a power of attorney previously executed by the principal  
39 unless the subsequent power of attorney provides that the  
40 previous power of attorney is revoked or that all other powers  
41 of attorney are revoked.

**§39B-1-111. Coagents and successor agents.**

1 (a) A principal may designate two or more persons to act  
2 as coagents. Unless the power of attorney otherwise provides,  
3 each coagent may exercise his or her authority independently

4 and the consent of all coagents is not necessary for the  
5 validity of an act or transaction.

6 (b) A principal may designate one or more successor  
7 agents to act if an agent resigns, dies, becomes incapacitated,  
8 is not qualified to serve, or declines to serve. A principal  
9 may grant authority to designate one or more successor  
10 agents to an agent or other person designated by name, office  
11 or function. Unless the power of attorney otherwise provides,  
12 a successor agent:

13 (1) Has the same authority as that granted to the original  
14 agent; and

15 (2) May not act until all predecessor agents have  
16 resigned, died, become incapacitated, are no longer qualified  
17 to serve, or have declined to serve.

18 (c) Except as otherwise provided in the power of attorney and  
19 this act, an agent who does not participate in or conceal a breach  
20 of fiduciary duty committed by another agent, including a  
21 predecessor agent, is not liable for the actions of the other agent.

22 (d) An agent who has actual knowledge of a breach or  
23 imminent breach of fiduciary duty by another agent has a  
24 duty to notify the principal and, if the principal is  
25 incapacitated, take any action reasonably appropriate in the  
26 circumstances to safeguard the principal's best interest. An  
27 agent who fails to notify the principal or take action as  
28 required by this article is liable for the reasonably foreseeable  
29 damages that could have been avoided if the agent had  
30 notified the principal or taken such action.

### **§39B-1-112. Reimbursement and compensation of agent.**

1 Unless the power of attorney otherwise provides, an agent  
2 is entitled to reimbursement of expenses reasonably incurred on

3    behalf of the principal and to compensation that is reasonable  
4    under the circumstances: *Provided*, That an agent who is related  
5    to the principal as an ancestor, spouse or descendent is not  
6    entitled to compensation for services as agent, unless the power  
7    of attorney specifically provides for compensation.

**§39B-1-113. Agent's acceptance.**

1           Except as otherwise provided in the power of attorney, a  
2    person accepts appointment as an agent under a power of  
3    attorney by exercising authority or performing duties as an  
4    agent or by any other assertion or conduct indicating  
5    acceptance.

**§39B-1-114. Agent's duties.**

1           (a) Notwithstanding provisions in the power of attorney,  
2    an agent who has accepted appointment shall:

3           (1) Act in accordance with the principal's reasonable  
4    expectations to the extent actually known by the agent and,  
5    otherwise, in the principal's best interest;

6           (2) Act in good faith; and

7           (3) Act only within the scope of authority granted in the  
8    power of attorney.

9           (b) Except as otherwise provided in the power of  
10   attorney, an agent who has accepted appointment shall:

11          (1) Act loyally for the principal's benefit;

12          (2) Act so as not to create a conflict of interest that  
13   impairs the agent's ability to act impartially in the principal's  
14   best interest;

15           (3) Act with the care, competence and diligence  
16           ordinarily exercised by agents in similar circumstances;

17           (4) Keep a record of all receipts, disbursements and  
18           transactions made on behalf of the principal;

19           (5) Cooperate with a person that has authority to make  
20           health-care decisions for the principal to carry out the  
21           principal's reasonable expectations to the extent actually  
22           known by the agent and, otherwise, act in the principal's best  
23           interest; and

24           (6) Attempt to preserve the principal's estate plan, to the  
25           extent actually known by the agent, if preserving the plan is  
26           consistent with the principal's best interest based on all  
27           relevant factors, including:

28           (A) The value and nature of the principal's property;

29           (B) The principal's foreseeable obligations and need for  
30           maintenance;

31           (C) Minimization of taxes, including income, estate,  
32           inheritance, generation-skipping transfer and gift taxes; and

33           (D) Eligibility for a benefit, a program or assistance  
34           under a statute or regulation.

35           (c) An agent that acts in good faith is not liable to any  
36           beneficiary of the principal's estate plan for failure to  
37           preserve the plan.

38           (d) An agent that acts with care, competence and  
39           diligence for the best interest of the principal is not liable  
40           solely because the agent also benefits from the act or has an  
41           individual or conflicting interest in relation to the property or  
42           affairs of the principal.

43 (e) If an agent is selected by the principal because of  
44 special skills or expertise possessed by the agent or in  
45 reliance on the agent's representation that the agent has  
46 special skills or expertise, the special skills or expertise must  
47 be considered in determining whether the agent has acted  
48 with care, competence and diligence under the circumstances.

49 (f) Absent a breach of duty to the principal, an agent is  
50 not liable if the value of the principal's property declines.

51 (g) An agent who exercises authority to delegate to  
52 another person the authority granted by the principal or who  
53 engages another person on behalf of the principal is not liable  
54 for an act, error of judgment or default of that person if the  
55 agent exercises care, competence and diligence in selecting  
56 and monitoring the person.

57 (h) Except as otherwise provided in the power of  
58 attorney, an agent is not required to disclose receipts,  
59 disbursements or transactions conducted on behalf of the  
60 principal or provide an accounting unless: ordered by a court  
61 or requested by the principal, a guardian, a conservator,  
62 another fiduciary acting for the principal, a governmental  
63 agency having authority to protect the welfare of the principal  
64 or, upon the death of the principal, by the personal  
65 representative or successor in interest of the principal's  
66 estate. If so requested, within thirty days the agent shall  
67 comply with the request or provide a writing or other record  
68 substantiating why additional time is needed and shall  
69 comply with the request within an additional thirty days. If  
70 an agent fails or refuses to comply with the provisions of this  
71 section, the court may award the principal or other authorized  
72 party requesting the disclosure reimbursement of reasonable  
73 attorneys fees and costs incurred.

**§39B-1-115. Exoneration of agent.**

1 (a) A provision in a power of attorney relieving an agent of  
2 liability for breach of duty is binding on the principal and the  
3 principal's successors in interest except to the extent the provision:

4 (1) Relieves the agent of liability for breach of duty  
5 committed dishonestly, with an improper motive or with  
6 reckless indifference to the purposes of the power of attorney  
7 or the best interest of the principal; or

8 (2) Was inserted as a result of an abuse of a confidential  
9 or fiduciary relationship with the principal.

**§39B-1-116. Judicial relief.**

1 (a) The following persons may petition a court to  
2 construe a power of attorney or review the agent's conduct  
3 and grant appropriate relief:

4 (1) The principal or the agent;

5 (2) A guardian, conservator or other fiduciary acting for  
6 the principal;

7 (3) A person authorized to make health-care decisions for  
8 the principal;

9 (4) The principal's spouse, parent or descendant;

10 (5) An individual who would qualify as a presumptive  
11 heir of the principal;

12 (6) A person named as a beneficiary to receive any  
13 property, benefit or contractual right on the principal's death  
14 or as a beneficiary of a trust created by or for the principal  
15 that has a financial interest in the principal's estate;

16 (7) A governmental agency having regulatory authority  
17 to protect the welfare of the principal;

18 (8) The principal's caregiver or another person that  
19 demonstrates sufficient interest in the principal's welfare; and

20 (9) A person asked to accept the power of attorney.

21 (b) Upon motion by the principal, the court shall dismiss  
22 a petition filed under this section, unless the court finds that  
23 the principal lacks capacity to revoke the agent's authority or  
24 the power of attorney.

**§39B-1-117. Agent's liability.**

1 (a) An agent that violates this act is liable to the principal  
2 or the principal's successors in interest for the amount  
3 required to:

4 (1) Restore the value of the principal's property to what  
5 it would have been had the violation not occurred;

6 (2) Reimburse the principal or the principal's successors  
7 in interest for the attorney's fees and costs paid on the agent's  
8 behalf out of the principal's assets;

9 (3) Reimburse the reasonable attorneys fees and costs  
10 incurred by the principal or the principal's successors in interest  
11 in pursuing rectification of the violation by the agent; and

12 (4) Pay such other amounts, damages, costs or expenses  
13 as the court may award.

**§39B-1-118. Agent's resignation; notice.**

1 (a) Unless the power of attorney provides a different  
2 method for an agent's resignation, an agent may resign by



3 giving notice to the principal and, if the principal is  
4 incapacitated:

5 (1) To the conservator or guardian, if one has been appointed  
6 for the principal, and a coagent or successor agent; or

7 (2) If there is no person described in paragraph (1), to:

8 (A) The principal's caregiver;

9 (B) Another person reasonably believed by the agent to  
10 have sufficient interest in the principal's welfare; or

11 (C) A governmental agency having authority to protect  
12 the welfare of the principal.

**§39B-1-119. Acceptance of and reliance upon acknowledged  
power of attorney.**

1 (a) For purposes of this section and section one hundred  
2 five of this article, "acknowledged" means purportedly  
3 verified before a notary public or other individual authorized  
4 to take acknowledgments.

5 (b) A person who in good faith accepts an acknowledged  
6 power of attorney without actual knowledge that the  
7 signature is not genuine may rely upon the presumption under  
8 the provisions of section one hundred five of this article that  
9 the signature is genuine.

10 (c) A person who in good faith accepts an acknowledged  
11 power of attorney without actual knowledge that the power  
12 of attorney is void, invalid or terminated, that the purported  
13 agent's authority is void, invalid or terminated, or that the  
14 agent is exceeding or improperly exercising the agent's  
15 authority may rely upon the power of attorney as if the power  
16 of attorney were genuine, valid and still in effect, the agent's

17 authority were genuine, valid and still in effect, and the agent  
18 had not exceeded and had properly exercised the authority  
19 except as to a conveyance of interests in real property where  
20 the principal has previously filed a notice of termination of  
21 the power of attorney in the office of the clerk of the county  
22 commission in the county in which the property is located.

23 (d) A person who is asked to accept an acknowledged  
24 power of attorney may request, and rely upon, without further  
25 investigation:

26 (1) An agent's certification under penalty of perjury of any  
27 factual matter concerning the principal, agent or power of attorney;

28 (2) An English translation of the power of attorney if the  
29 power of attorney contains, in whole or in part, language  
30 other than English; and

31 (3) An opinion of counsel as to any matter of law concerning  
32 the power of attorney if the person making the request provides in  
33 a writing or other record the reason for the request.

34 (e) An English translation or an opinion of counsel  
35 requested under this section must be provided at the  
36 principal's expense unless the request is made more than  
37 seven business days after the power of attorney is presented  
38 for acceptance.

39 (f) For purposes of this section and the act, a person who  
40 conducts activities through employees is without actual  
41 knowledge of a fact relating to a power of attorney, a  
42 principal or an agent if the employee conducting the  
43 transaction involving the power of attorney is without actual  
44 knowledge of the fact.

**§39B-1-120. Liability for refusal to accept acknowledged statutory form power of attorney.**

1 (a) In this section, “statutory form power of attorney”  
2 means a power of attorney substantially in the form provided  
3 in this act or that meets the requirements for a military power  
4 of attorney pursuant to 10 U. S. C. §1044b.

5 (b) Except as otherwise provided in this section:

6 (1) A person shall either accept an acknowledged  
7 statutory form power of attorney or request a certification, a  
8 translation or an opinion of counsel under section one  
9 hundred nineteen subsection (d) of this article no later than  
10 seven business days after presentation of the power of  
11 attorney for acceptance;

12 (2) If a person requests a certification, a translation, or an  
13 opinion of counsel under section one hundred nineteen  
14 subsection (d) of this article, the person shall accept the  
15 statutory form power of attorney no later than five business  
16 days after receipt of the certification, translation or opinion of  
17 counsel; and

18 (3) A person may not require an additional or different  
19 form of power of attorney for authority granted in the  
20 statutory form power of attorney presented.

21 (c) A person is not required to accept an acknowledged  
22 statutory form power of attorney if:

23 (1) The person is not otherwise required to engage in a  
24 transaction with the principal in the same circumstances;

25 (2) Engaging in a transaction with the agent or the  
26 principal in the same circumstances would be inconsistent  
27 with federal law;

28           (3) The person has actual knowledge of the termination  
29 of the agent's authority or of the power of attorney before  
30 exercise of the power;

31           (4) A request for a certification, a translation, or an  
32 opinion of counsel under section one hundred nineteen  
33 subsection (d) of this article is not timely provided;

34           (5) The person in good faith believes that the power is not  
35 valid or that the agent does not have the authority to perform the  
36 act requested, whether or not a certification, a translation or an  
37 opinion of counsel under section one hundred nineteen  
38 subsection (d) of this article has been requested or provided; or

39           (6) The person makes, or has actual knowledge that  
40 another person has made, a report to the local adult protective  
41 services agency stating a good faith belief that the principal  
42 may be subject to physical or financial abuse, neglect,  
43 exploitation or abandonment by the agent or a person acting  
44 for or with the agent.

45           (d) A person who refuses in violation of this section to  
46 accept an acknowledged statutory form power of attorney is  
47 subject to a court order mandating acceptance of the power of  
48 attorney. The court may at its discretion award to the  
49 principal or the principal's agent reasonable attorney's fees  
50 and costs incurred in any action or proceeding that confirms  
51 the validity of the power of attorney or mandates acceptance  
52 of the power of attorney.

**§39B-1-121. Principles of law and equity.**

1           Unless displaced by a provision of this act, the principles  
2 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  
2   financial institutions or other entities, and the other law  
3   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  
2   abrogate any right or remedy under the law of this state other  
3   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  
2   following on behalf of the principal or with the principal's  
3   property only if the power of attorney expressly grants the  
4   agent the authority and exercise of the authority is not  
5   otherwise prohibited by another agreement or instrument to  
6   which the authority or property is subject to:

7           (1) Create, amend, revoke or terminate an inter vivos  
8   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  
13   attorney;

14           (6) Waive the principal's right to be a beneficiary of a  
15 joint and survivor annuity, including a survivor benefit under  
16 a retirement plan;

17           (7) Exercise fiduciary powers that the principal has  
18 authority to delegate; or

19           (8) Disclaim property, including a power of appointment.

20           (b) Notwithstanding a grant of authority to do an act  
21 described in this section, unless the power of attorney  
22 otherwise provides, an agent that is not an ancestor, spouse  
23 or descendant of the principal may not exercise authority  
24 under a power of attorney to create in the agent, or in an  
25 individual to whom the agent owes a legal obligation of  
26 support, an interest in the principal's property, whether by  
27 gift, right of survivorship, beneficiary designation, disclaimer  
28 or otherwise.

29           (c) Subject to subsections (a), (b), (d) and (e) of this  
30 section, if a power of attorney grants to an agent authority to  
31 do all acts that a principal could do, the agent has the general  
32 authority described in section one hundred four through  
33 section one hundred sixteen of this article.

34           (d) Unless the power of attorney otherwise provides, a  
35 grant of authority to make a gift is subject to the provisions  
36 of section one hundred seventeen of this article.

37           (e) Subject to subsections (a), (b) and (d) of this section,  
38 if the subjects over which authority is granted in a power of  
39 attorney are similar or overlap, the broadest authority  
40 controls.

41           (f) Authority granted in a power of attorney is exercisable  
42 with respect to property that the principal has when the power  
43 of attorney is executed or acquires later, whether or not the

44 property is located in this state and whether or not the  
45 authority is exercised or the power of attorney is executed in  
46 this state.

47 (g) An act performed by an agent pursuant to a power of  
48 attorney has the same effect and inures to the benefit of and  
49 binds the principal and the principal's successors in interest  
50 as if the principal had performed the act.

**§39B-2-102. Incorporation of authority.**

1 (a) An agent has authority described in this article if the  
2 power of attorney refers to general authority with respect to  
3 the descriptive term for the subjects stated in section one  
4 hundred four through section one hundred seventeen of this  
5 article or cites the section in this article in which the authority  
6 is described.

7 (b) A reference in a power of attorney to general  
8 authority with respect to the descriptive term for a subject in  
9 section one hundred four through section one hundred  
10 seventeen of this article or a citation to a section of section  
11 one hundred four through section one hundred seventeen of  
12 this article incorporates the entire section as if it were set out  
13 in full in the power of attorney.

14 (c) A principal may modify authority incorporated by  
15 reference.

**§39B-2-103. Construction of authority generally.**

1 Except as otherwise provided in the power of attorney, by  
2 executing a power of attorney that incorporates by reference  
3 a subject described in sections one hundred four through one  
4 hundred seventeen of this article or that grants to an agent  
5 authority to do all acts that a principal could do pursuant to  
6 the provisions of section one hundred one subsection (c) of

7 this article, a principal authorizes the agent, with respect to  
8 that subject, to:

9 (1) Demand, receive and obtain by litigation or otherwise,  
10 money or another thing of value to which the principal is,  
11 may become or claims to be entitled, and conserve, invest,  
12 disburse or use anything so received or obtained for the  
13 purposes intended;

14 (2) Contract in any manner with any person, on terms  
15 agreeable to the agent, to accomplish a purpose of a  
16 transaction and perform, rescind, cancel, terminate, reform,  
17 restate, release or modify the contract or another contract  
18 made by or on behalf of the principal;

19 (3) Execute, acknowledge, seal, deliver, file or record any  
20 instrument or communication the agent considers desirable to  
21 accomplish a purpose of a transaction, including creating at  
22 any time a schedule listing some or all of the principal's  
23 property and attaching it to the power of attorney;

24 (4) Initiate, participate in, submit to alternative dispute  
25 resolution, settle, oppose or propose or accept a compromise  
26 with respect to a claim existing in favor of or against the  
27 principal or intervene in litigation relating to the claim;

28 (5) Seek on the principal's behalf the assistance of a court  
29 or other governmental agency to carry out an act authorized  
30 in the power of attorney;

31 (6) Engage, compensate and discharge an attorney,  
32 accountant, discretionary investment manager, expert witness  
33 or other advisor;

34 (7) Prepare, execute and file a record, report or other  
35 document to safeguard or promote the principal's interest  
36 under a statute or rule;



37           (8) Communicate with any representative or employee of  
38 a government or governmental subdivision, agency or  
39 instrumentality, on behalf of the principal;

40           (9) Access communications intended for, and  
41 communicate on behalf of the principal, whether by mail,  
42 electronic transmission, telephone or other means; and

43           (10) Do any lawful act with respect to the subject and all  
44 property related to the subject.

**§39B-2-104. Real property.**

1           (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to real property authorizes the agent to:

4           (1) Demand, buy, lease, receive, accept as a gift or as  
5 security for an extension of credit, or otherwise acquire or reject  
6 an interest in real property or a right incident to real property;

7           (2) Sell, exchange, convey with or without covenants,  
8 representations, or warranties, quitclaim, release, surrender,  
9 retain title for security, encumber, partition, consent to  
10 partitioning, subject to an easement or covenant, subdivide,  
11 apply for zoning or other governmental permits, plat or  
12 consent to platting; develop, grant an option concerning,  
13 lease, sublease, contribute to an entity in exchange for an  
14 interest in that entity or otherwise grant or dispose of an  
15 interest in real property or a right incident to real property;

16           (3) Pledge or mortgage an interest in real property or  
17 right incident to real property as security to borrow money or  
18 pay, renew or extend the time of payment of a debt of the  
19 principal or a debt guaranteed by the principal;

20 (4) Release, assign, satisfy or enforce by litigation or  
21 otherwise a mortgage, deed of trust, conditional sale contract,  
22 encumbrance, lien or other claim to real property which exists  
23 or is asserted;

24 (5) Manage or conserve an interest in real property or a  
25 right incident to real property owned or claimed to be owned  
26 by the principal, including:

27 (A) Insuring against liability or casualty or other loss;

28 (B) Obtaining or regaining possession of or protecting the  
29 interest or right by litigation or otherwise;

30 (C) Paying, assessing, compromising or contesting taxes  
31 or assessments or applying for and receiving refunds in  
32 connection with them; and

33 (D) Purchasing supplies, hiring assistance or labor and  
34 making repairs or alterations to the real property;

35 (6) Use, develop, alter, replace, remove, erect or install  
36 structures or other improvements upon real property in or  
37 incident to which the principal has, or claims to have, an  
38 interest or right;

39 (7) Participate in a reorganization with respect to real  
40 property or an entity that owns an interest in or right incident  
41 to real property and receive, hold and act with respect to  
42 stocks and bonds or other property received in a plan of  
43 reorganization, including:

44 (A) Selling or otherwise disposing of them;

45 (B) Exercising or selling an option, right of conversion or  
46 similar right with respect to them; and

- 47           (C) Exercising any voting rights in person or by proxy;
- 48           (8) Change the form of title of an interest in or right  
49 incident to real property; and
- 50           (9) Dedicate to public use, with or without consideration,  
51 easements or other real property in which the principal has,  
52 or claims to have, an interest.
- 53           (b) In order to exercise the powers provided in  
54 subdivisions (2), (3), (8) and (9), subsection (a) of this  
55 section, or to release or assign an interest in real property as  
56 described in subdivision (4), subsection (a) of this section, the  
57 power of attorney must first be recorded in the office of the  
58 clerk of the county commission in the county in which the  
59 property is located.

**§39B-2-105. Tangible personal property.**

- 1           (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to tangible personal property authorizes the  
4 agent to:
- 5           (1) Demand, buy, receive or accept as a gift or as security  
6 for an extension of credit, or otherwise acquire or reject  
7 ownership or possession of tangible personal property or an  
8 interest in tangible personal property;
- 9           (2) Sell, exchange, convey with or without covenants,  
10 representations, or warranties; quitclaim, release, surrender,  
11 create a security interest in, grant options concerning, lease,  
12 sublease or, otherwise dispose of tangible personal property  
13 or an interest in tangible personal property;
- 14           (3) Grant a security interest in tangible personal property  
15 or an interest in tangible personal property as security to

16 borrow money or pay, renew or extend the time of payment  
17 of a debt of the principal or a debt guaranteed by the  
18 principal;

19 (4) Release, assign, satisfy or enforce by litigation or  
20 otherwise, a security interest, lien or other claim on behalf of  
21 the principal, with respect to tangible personal property or an  
22 interest in tangible personal property;

23 (5) Manage or conserve tangible personal property or an  
24 interest in tangible personal property on behalf of the  
25 principal, including:

26 (A) Insuring against liability or casualty or other loss;

27 (B) Obtaining or regaining possession of or protecting the  
28 property or interest, by litigation or otherwise;

29 (C) Paying, assessing, compromising or contesting taxes  
30 or assessments or applying for and receiving refunds in  
31 connection with taxes or assessments;

32 (D) Moving the property from place to place;

33 (E) Storing the property for hire or on a gratuitous  
34 bailment; and

35 (F) Using and making repairs, alterations or  
36 improvements to the property; and

37 (6) Change the form of title of an interest in tangible  
38 personal property.

**§39B-2-106. Stocks and bonds.**

1 (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to stocks and bonds authorizes the agent to:

- 4           (1) Buy, sell and exchange stocks and bonds;
- 5           (2) Establish, continue, modify or terminate an account  
6 with respect to stocks and bonds;
- 7           (3) Pledge stocks and bonds as security to borrow, pay,  
8 renew or extend the time of payment of a debt of the  
9 principal;
- 10          (4) Receive certificates and other evidences of ownership  
11 with respect to stocks and bonds; and
- 12          (5) Exercise voting rights with respect to stocks and  
13 bonds in person or by proxy, enter into voting trusts and  
14 consent to limitations on the right to vote.

**§39B-2-107. Commodities and options.**

- 1           (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority with  
3 respect to commodities and options authorizes the agent to:
  - 4           (1) Buy, sell, exchange, assign, settle and exercise  
5 commodity futures contracts and call or put options on stocks  
6 or stock indexes traded on a regulated option exchange; and
  - 7           (2) Establish, continue, modify and terminate option  
8 accounts.

**§39B-2-108. Banks and other financial institutions.**

- 1           (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to banks and other financial institutions  
4 authorizes the agent to:

5           (1) Continue, modify and terminate an account or other  
6 banking arrangement made by or on behalf of the principal;

7           (2) Establish, modify and terminate an account or other  
8 banking arrangement with a bank, trust company, savings and  
9 loan association, credit union, thrift company, brokerage firm  
10 or other financial institution selected by the agent;

11          (3) Contract for services available from a financial  
12 institution, including renting a safe deposit box or space in a  
13 vault;

14          (4) Withdraw, by check, order, electronic funds transfer  
15 or otherwise, money or property of the principal deposited  
16 with or left in the custody of a financial institution;

17          (5) Receive statements of account, vouchers, notices and  
18 similar documents from a financial institution and act with  
19 respect to them;

20          (6) Enter a safe deposit box or vault and withdraw or add  
21 to the contents;

22          (7) Borrow money and pledge as security personal  
23 property of the principal necessary to borrow money or pay,  
24 renew or extend the time of payment of a debt of the principal  
25 or a debt guaranteed by the principal;

26          (8) Make, assign, draw, endorse, discount, guarantee and  
27 negotiate promissory notes, checks, drafts and other  
28 negotiable or nonnegotiable paper of the principal or payable  
29 to the principal or the principal's order, transfer money,  
30 receive the cash or other proceeds of those transactions, and  
31 accept a draft drawn by a person upon the principal and pay  
32 it when due;

33           (9) Receive for the principal and act upon a sight draft,  
34 warehouse receipt or other document of title whether tangible  
35 or electronic or other negotiable or nonnegotiable instrument;

36           (10) Apply for, receive and use letters of credit, credit and  
37 debit cards, electronic transaction authorizations and traveler's  
38 checks from a financial institution and give an indemnity or  
39 other agreement in connection with letters of credit; and

40           (11) Consent to an extension of the time of payment with  
41 respect to commercial paper or a financial transaction with a  
42 financial institution.

**§39B-2-109. Operation of entity or business.**

1           (a) Subject to the terms of a document or an agreement  
2 governing an entity or an entity ownership interest, and  
3 unless the power of attorney otherwise provides, language in  
4 a power of attorney granting general authority with respect to  
5 operation of an entity or business authorizes the agent to:

6           (1) Operate, buy, sell, enlarge, reduce or terminate an  
7 ownership interest;

8           (2) Perform a duty or discharge a liability and exercise in  
9 person or by proxy a right, power, privilege or option that the  
10 principal has, may have, or claims to have;

11           (3) Enforce the terms of an ownership agreement;

12           (4) Initiate, participate in, submit to alternative dispute  
13 resolution, settle, oppose or propose or accept a compromise  
14 with respect to litigation to which the principal is a party  
15 because of an ownership interest;

16           (5) Exercise in person or by proxy, or enforce by  
17 litigation or otherwise, a right, power, privilege or option the

18 principal has or claims to have as the holder of stocks and  
19 bonds;

20 (6) Initiate, participate in, submit to alternative dispute  
21 resolution, settle, oppose or propose or accept a compromise  
22 with respect to litigation to which the principal is a party  
23 concerning stocks and bonds;

24 (7) With respect to an entity or business owned solely by  
25 the principal:

26 (A) Continue, modify, renegotiate, extend and terminate  
27 a contract made by or on behalf of the principal with respect  
28 to the entity or business before execution of the power of  
29 attorney;

30 (B) Determine:

31 (i) The location of its operation;

32 (ii) The nature and extent of its business;

33 (iii) The methods of manufacturing, selling,  
34 merchandising, financing, accounting and advertising  
35 employed in its operation;

36 (iv) The amount and types of insurance carried; and

37 (v) The mode of engaging, compensating and dealing  
38 with its employees and accountants, attorneys or other  
39 advisors;

40 (C) Change the name or form of organization under  
41 which the entity or business is operated and enter into an  
42 ownership agreement with other persons to take over all or  
43 part of the operation of the entity or business; and



44 (D) Demand and receive money due or claimed by the  
45 principal or on the principal's behalf in the operation of the  
46 entity or business and control and disburse the money in the  
47 operation of the entity or business;

48 (8) Put additional capital into an entity or business in  
49 which the principal has an interest;

50 (9) Join in a plan of reorganization, consolidation,  
51 conversion, domestication, or merger of the entity or  
52 business;

53 (10) Sell or liquidate all or part of an entity or business;

54 (11) Establish the value of an entity or business under a  
55 buy-out agreement to which the principal is a party;

56 (12) Prepare, sign, file and deliver reports, compilations  
57 of information, returns or other papers with respect to an  
58 entity or business and make related payments; and

59 (13) Pay, compromise, or contest taxes, assessments, fines  
60 or penalties and perform any other act to protect the principal  
61 from illegal or unnecessary taxation, assessments, fines or  
62 penalties, with respect to an entity or business, including  
63 attempts to recover, in any manner permitted by law, money  
64 paid before or after the execution of the power of attorney.

**§39B-2-110. Insurance and annuities.**

1 (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to insurance and annuities authorizes the agent  
4 to:

5 (1) Continue, pay the premium or make a contribution on,  
6 modify, exchange, rescind, release or terminate a contract

7 procured by or on behalf of the principal which insures or  
8 provides an annuity to either the principal or another person,  
9 whether or not the principal is a beneficiary under the contract;

10 (2) Procure new, different and additional contracts of  
11 insurance and annuities for the principal and the principal's  
12 spouse, children and other dependents, and select the amount,  
13 type of insurance or annuity and mode of payment;

14 (3) Pay the premium or make a contribution on, modify,  
15 exchange, rescind, release or terminate a contract of  
16 insurance or annuity procured by the agent;

17 (4) Apply for and receive a loan secured by a contract of  
18 insurance or annuity;

19 (5) Surrender and receive the cash surrender value on a  
20 contract of insurance or annuity;

21 (6) Exercise an election;

22 (7) Exercise investment powers available under a contract  
23 of insurance or annuity;

24 (8) Change the manner of paying premiums on a contract  
25 of insurance or annuity;

26 (9) Change or convert the type of insurance or annuity  
27 with respect to which the principal has or claims to have  
28 authority described in this section;

29 (10) Apply for and procure a benefit or assistance under  
30 a statute or regulation to guarantee or pay premiums of a  
31 contract of insurance on the life of the principal;

32 (11) Collect, sell, assign, hypothecate, borrow against or  
33 pledge the interest of the principal in a contract of insurance  
34 or annuity;

35           (12) Select the form and timing of the payment of  
36           proceeds from a contract of insurance or annuity; and

37           (13) Pay, from proceeds or otherwise, compromise or  
38           contest and apply for refunds in connection with, a tax or  
39           assessment levied by a taxing authority with respect to a  
40           contract of insurance or annuity or its proceeds or liability  
41           accruing by reason of the tax or assessment.

**§39B-2-111. Estates, trusts and other beneficial interests.**

1           (a) In this section, “estate, trust, or other beneficial  
2           interest” means a trust, probate estate, guardianship,  
3           conservatorship, escrow, custodianship, or a fund from which  
4           the principal is, may become, or claims to be, entitled to a  
5           share or payment.

6           (b) Unless the power of attorney otherwise provides,  
7           language in a power of attorney granting general authority  
8           with respect to estates, trusts and other beneficial interests  
9           authorizes the agent to:

10           (1) Accept, receive, receipt for, sell, assign, pledge or  
11           exchange a share in or payment from an estate, trust or other  
12           beneficial interest;

13           (2) Demand or obtain money or another thing of value to  
14           which the principal is, may become, or claims to be, entitled  
15           by reason of an estate, trust or other beneficial interest, by  
16           litigation or otherwise;

17           (3) Exercise for the benefit of the principal a presently  
18           exercisable general power of appointment held by the  
19           principal;

20           (4) Initiate, participate in, submit to alternative dispute  
21           resolution, settle, oppose or propose or accept a compromise

22 with respect to litigation to ascertain the meaning, validity or  
23 effect of a deed, will, declaration of trust or other instrument  
24 or transaction affecting the interest of the principal;

25 (5) Initiate, participate in, submit to alternative dispute  
26 resolution, settle, oppose or propose or accept a compromise  
27 with respect to litigation to remove, substitute or surcharge a  
28 fiduciary;

29 (6) Conserve, invest, disburse or use anything received  
30 for an authorized purpose;

31 (7) Transfer an interest of the principal in real property,  
32 stocks and bonds, accounts with financial institutions or  
33 securities intermediaries, insurance, annuities and other  
34 property to the trustee of a revocable trust created by the  
35 principal as settler; and

36 (8) Reject, renounce, disclaim, release or consent to a  
37 reduction in or modification of a share in or payment from an  
38 estate, trust or other beneficial interest.

**§39B-2-112. Claims and litigation.**

1 (a) Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to claims and litigation authorizes the agent to:

4 (1) Assert and maintain before a court or administrative  
5 agency a claim, claim for relief, cause of action, counterclaim,  
6 offset, recoupment or defense, including an action to recover  
7 property or other thing of value, recover damages sustained by  
8 the principal, eliminate or modify tax liability, or seek an  
9 injunction, specific performance or other relief;

10 (2) Bring an action to determine adverse claims or  
11 intervene or otherwise participate in litigation;

12           (3) Seek an attachment, garnishment, order of arrest or  
13 other preliminary, provisional or intermediate relief and use  
14 an available procedure to effect or satisfy a judgment, order  
15 or decree;

16           (4) Make or accept a tender, offer of judgment or  
17 admission of facts, submit a controversy on an agreed  
18 statement of facts, consent to examination and bind the  
19 principal in litigation;

20           (5) Submit to alternative dispute resolution, settle and  
21 propose or accept a compromise;

22           (6) Waive the issuance and service of process upon the  
23 principal, accept service of process, appear for the principal,  
24 designate persons upon which process directed to the  
25 principal may be served, execute and file or deliver  
26 stipulations on the principal's behalf, verify pleadings, seek  
27 appellate review, procure and give surety and indemnity  
28 bonds, contract and pay for the preparation and printing of  
29 records and briefs, receive, execute and file or deliver a  
30 consent, waiver, release, confession of judgment, satisfaction  
31 of judgment, notice, agreement or other instrument in  
32 connection with the prosecution, settlement or defense of a  
33 claim or litigation;

34           (7) Act for the principal with respect to bankruptcy or  
35 insolvency, whether voluntary or involuntary, concerning the  
36 principal or some other person, or with respect to a  
37 reorganization, receivership or application for the  
38 appointment of a receiver or trustee which affects an interest  
39 of the principal in property or other thing of value;

40           (8) Pay a judgment, award or order against the principal  
41 or a settlement made in connection with a claim or litigation;  
42 and

43       (9) Receive money or other thing of value paid in  
44       settlement of or as proceeds of a claim or litigation.

**§39B-2-113. Personal and family maintenance.**

1       (a) Unless the power of attorney otherwise provides,  
2       language in a power of attorney granting general authority  
3       with respect to personal and family maintenance authorizes  
4       the agent to:

5       (1) Perform the acts necessary to maintain the customary  
6       standard of living of the principal, the principal's spouse and  
7       the following individuals, whether living when the power of  
8       attorney is executed or later born:

9       (A) The principal's children;

10       (B) Other individuals legally entitled to be supported by  
11       the principal; and

12       (C) The individuals whom the principal has customarily  
13       supported or indicated the intent to support;

14       (2) Make periodic payments of child support and other  
15       family maintenance required by a court or governmental  
16       agency or an agreement to which the principal is a party;

17       (3) Provide living quarters for the individuals described  
18       in subsection (1) of this section by:

19       (A) Purchase, lease or other contract; or

20       (B) Paying the operating costs, including interest,  
21       amortization payments, repairs, improvements and taxes, for  
22       premises owned by the principal or occupied by those  
23       individuals;

24           (4) Provide normal domestic help, usual vacations and  
25 travel expenses, and funds for shelter, clothing, food,  
26 appropriate education, including postsecondary and  
27 vocational education and other current living costs for the  
28 individuals described in subsection (1) of this section;

29           (5) Pay expenses for necessary health care and custodial  
30 care on behalf of the individuals described in subdivision (1)  
31 of this section;

32           (6) Act as the principal's personal representative pursuant  
33 to the Health Insurance Portability and Accountability Act,  
34 §1171 through §1179 of the Social Security Act, §42 U. S. C.  
35 1320d, and applicable regulations, in making decisions  
36 related to the past, present or future payment for the provision  
37 of health care consented to by the principal or anyone  
38 authorized under the law of this state to consent to health care  
39 on behalf of the principal;

40           (7) Continue any provision made by the principal for  
41 automobiles or other means of transportation, including  
42 registering, licensing, insuring and replacing them, for the  
43 individuals described in subsection (1) of this section;

44           (8) Maintain credit and debit accounts for the  
45 convenience of the individuals described in subsection (1) of  
46 this section and open new accounts; and

47           (9) Continue payments incidental to the membership or  
48 affiliation of the principal in a religious institution, club,  
49 society, order or other organization or to continue  
50 contributions to those organizations.

51           (b) Authority with respect to personal and family  
52 maintenance is neither dependent upon, nor limited by,  
53 authority that an agent may or may not have with respect to  
54 gifts under this article.

**§39B-2-114. Benefits from governmental programs or civil or military service.**

1 (a) In this section, “benefits from governmental  
2 programs or civil or military service” means any benefit,  
3 program or assistance provided under a federal, state or  
4 local statute or regulation including Social Security,  
5 Medicare and Medicaid.

6 (b) Unless the power of attorney otherwise provides,  
7 language in a power of attorney granting general authority  
8 with respect to benefits from governmental programs or civil  
9 or military service authorizes the agent to:

10 (1) Execute vouchers in the name of the principal for  
11 allowances and reimbursements payable by the United States  
12 or a foreign government or by a state or subdivision of a state  
13 to the principal, including allowances and reimbursements for  
14 transportation of the individuals described in section one  
15 hundred thirteen, subsection (a)(1) of this article, and for  
16 shipment of their household effects;

17 (2) Take possession and order the removal and shipment  
18 of property of the principal from a post, warehouse, depot,  
19 dock or other place of storage or safekeeping, either  
20 governmental or private, and execute and deliver a release,  
21 voucher, receipt, bill of lading, shipping ticket, certificate or  
22 other instrument for that purpose;

23 (3) Enroll in, apply for, select, reject, change, amend or  
24 discontinue, on the principal’s behalf, a benefit or program;

25 (4) Prepare, file and maintain a claim of the principal for  
26 a benefit or assistance, financial or otherwise, to which the  
27 principal may be entitled under a statute or rule;



28           (5) Initiate, participate in, submit to alternative dispute  
29 resolution, settle, oppose or propose or accept a compromise with  
30 respect to litigation concerning any benefit or assistance the  
31 principal may be entitled to receive under a statute or rule; and

32           (6) Receive the financial proceeds of a claim described in  
33 subdivision(4) of this section and conserve, invest, disburse  
34 or use for a lawful purpose anything so received.

**§39B-2-115. Retirement plans.**

1           (a) In this section, “retirement plan” means a plan or  
2 account created by an employer, the principal or another  
3 individual to provide retirement benefits or deferred  
4 compensation of which the principal is a participant,  
5 beneficiary or owner, including a plan or account under the  
6 following sections of the Internal Revenue Code:

7           (1) An individual retirement account under Internal  
8 Revenue Code, 26 U. S. C. §408;

9           (2) A Roth individual retirement account under Internal  
10 Revenue Code, 26 U. S. C. §408A;

11           (3) A deemed individual retirement account under  
12 Internal Revenue Code, 26 U. S. C. §408(q);

13           (4) An annuity or mutual fund custodial account under  
14 Internal Revenue Code, 26 U. S. C. §403(b);

15           (5) A pension, profit-sharing, stock bonus or other retirement  
16 plan qualified under Internal Revenue Code, 26 U. S. C. §401(a);

17           (6) A plan under Internal Revenue Code, 26 U. S. C.  
18 §457(b); and

19 (7) A nonqualified deferred compensation plan under  
20 Internal Revenue Code, 26 U. S. C. §409A.

21 (b) Unless the power of attorney otherwise provides,  
22 language in a power of attorney granting general authority  
23 with respect to retirement plans authorizes the agent to:

24 (1) Select the form and timing of payments under a  
25 retirement plan and withdraw benefits from a plan;

26 (2) Make a rollover, including a direct trustee-to-trustee  
27 rollover, of benefits from one retirement plan to another;

28 (3) Establish a retirement plan in the principal's name;

29 (4) Make contributions to a retirement plan;

30 (5) Exercise investment powers available under a  
31 retirement plan; and

32 (6) Borrow from, sell assets to or purchase assets from a  
33 retirement plan.

### **§39B-2-116. Taxes.**

1 Unless the power of attorney otherwise provides,  
2 language in a power of attorney granting general authority  
3 with respect to taxes authorizes the agent to:

4 (1) Prepare, sign and file federal, state, local and foreign  
5 income, gift, payroll, property, Federal Insurance  
6 Contributions Act and other tax returns, claims for refunds,  
7 requests for extension of time, petitions regarding tax matters  
8 and any other tax-related documents, including receipts,  
9 offers, waivers, consents, including consents and agreements  
10 under Internal Revenue Code, 26 U. S. C. §2032A, closing

11 agreements and any power of attorney required by the  
12 Internal Revenue Service or other taxing authority with  
13 respect to a tax year upon which the statute of limitations has  
14 not run and the following twenty-five tax years;

15 (2) Pay taxes due, collect refunds, post bonds, receive  
16 confidential information and contest deficiencies determined  
17 by the Internal Revenue Service or other taxing authority;

18 (3) Exercise any election available to the principal under  
19 federal, state, local or foreign tax law; and

20 (4) Act for the principal in all tax matters for all periods  
21 before the Internal Revenue Service or other taxing authority.

**§39B-2-117. Gifts.**

1 (a) In this section, a gift “for the benefit of” a person  
2 includes a gift to a trust, an account under the Uniform  
3 Transfers to Minors Act and a tuition savings account or  
4 prepaid tuition plan as defined under Internal Revenue Code,  
5 26 U. S. C. §529, as amended.

6 (b) Unless the power of attorney otherwise provides,  
7 language in a power of attorney granting general authority  
8 with respect to gifts authorizes the agent only to:

9 (1) Make outright to, or for the benefit of, a person, a gift  
10 of any of the principal’s property, including by the exercise  
11 of a presently exercisable general power of appointment held  
12 by the principal, in an amount per donee not to exceed the  
13 annual dollar limits of the federal gift tax exclusion under  
14 Internal Revenue Code, 26 U. S. C. §2503(b), without regard  
15 to whether the federal gift tax exclusion applies to the gift or  
16 if the principal’s spouse agrees to consent to a split gift  
17 pursuant to Internal Revenue Code, 26 U. S. C. §2513, as

18 amended, in an amount per donee not to exceed twice the  
19 annual federal gift tax exclusion limit; and

20 (2) Consent, pursuant to Internal Revenue Code, 26 U. S.  
21 C. §2513, to the splitting of a gift made by the principal's  
22 spouse in an amount per donee not to exceed the aggregate  
23 annual gift tax exclusions for both spouses.

24 (c) An agent may make a gift of the principal's property  
25 only as the agent determines is consistent with the principal's  
26 objectives if actually known by the agent and, if unknown, as  
27 the agent determines is consistent with the principal's best  
28 interest based on all relevant factors, including:

29 (1) The value and nature of the principal's property;

30 (2) The principal's foreseeable obligations and need for  
31 maintenance;

32 (3) Minimization of taxes, including income, estate,  
33 inheritance, generation-skipping transfer and gift taxes;

34 (4) Eligibility for a benefit, a program or assistance under  
35 a statute or regulation; and

36 (5) The principal's personal history of making or joining  
37 in making gifts.

### **ARTICLE 3. STATUTORY FORMS.**

#### **§39B-3-101. Statutory form power of attorney.**

1 A document substantially in the following form may be  
2 used to create a statutory form power of attorney that has the  
3 meaning and effect prescribed by this act.

**State of West Virginia****STATUTORY FORM POWER OF ATTORNEY****IMPORTANT INFORMATION**

1           This power of attorney authorizes another person (your  
2 agent) to make decisions concerning your property for you  
3 (the principal). Your agent will be able to make decisions  
4 and act with respect to your property (including your money)  
5 whether or not you are able to act for yourself. The meaning  
6 of authority over subjects listed on this form is explained in  
7 the Uniform Power of Attorney Act [insert citation].

8           This power of attorney does not authorize the agent to  
9 make health-care decisions for you.

10          You should select someone you trust to serve as your  
11 agent. Unless you specify otherwise, generally the agent's  
12 authority will continue until you die or revoke the power of  
13 attorney or the agent resigns or is unable to act for you.

14          Your agent is entitled to reasonable compensation unless  
15 you state otherwise in the special instructions. This form  
16 provides for designation of one agent. If you wish to name  
17 more than one agent you may name a coagent in the Special  
18 Instructions. Coagents are not required to act together unless  
19 you include that requirement in the Special Instructions. If  
20 your agent is unable or unwilling to act for you, your power  
21 of attorney will end unless you have named a successor  
22 agent. You may also name a second successor agent.

23          This power of attorney becomes effective immediately  
24 unless you state otherwise in the Special Instructions.

25       **If you have questions about the power of attorney or**  
26 **the authority you are granting to your agent, you should**  
27 **seek legal advice before signing this form.**

28                                   **DESIGNATION OF AGENT**

29    I \_\_\_\_\_ name the following person as my agent:  
30       (Name of Principal)

31    Name of Agent: \_\_\_\_\_

32    Agent's Address: \_\_\_\_\_

33    Agent's Telephone Number: \_\_\_\_\_

34       If my agent is unable or unwilling to act for me, I name as  
35    my successor agent:

36    Name of Successor Agent: \_\_\_\_\_

37    Successor Agent's Address: \_\_\_\_\_

38    Successor Agent's Telephone Number: \_\_\_\_\_

39       If my successor agent is unable or unwilling to act for me,  
40    I name as my second successor agent:

41    Name of Second Successor Agent: \_\_\_\_\_

42    Second Successor Agent's Address: \_\_\_\_\_

43    Second Successor Agent's Telephone Number: \_\_\_\_\_

44                                   **GRANT OF GENERAL AUTHORITY**

45       I grant my agent and any successor agent general  
46    authority to act for me with respect to the following subjects

47 as defined in the Uniform Power of Attorney Act [insert  
48 citation]:

49 (INITIAL each subject you want to include in the agent's  
50 general authority. If you wish to grant general authority over  
51 all of the subjects you may initial "All Preceding Subjects"  
52 instead of initialing each subject.)

53  Real Property

54  Tangible Personal Property

55  Stocks and Bonds

56  Commodities and Options

57  Banks and Other Financial Institutions

58  Operation of Entity or Business

59  Insurance and Annuities

60  Estates, Trusts, and Other Beneficial Interests

61  Claims and Litigation

62  Personal and Family Maintenance

63  Benefits from Governmental Programs or Civil or  
64 Military Service

65  Retirement Plans

66  Taxes

67  All Preceding Subjects

**68 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

69 My agent MAY NOT do any of the following specific  
70 acts for me UNLESS I have INITIALED the specific  
71 authority listed below:

72 (CAUTION: Granting any of the following will give your  
73 agent the authority to take actions that could significantly  
74 reduce your property or change how your property is  
75 distributed at your death. INITIAL ONLY the specific  
76 authority you WANT to give your agent.)

77  Create, amend, revoke, or terminate an inter vivos trust

78  Make a gift, subject to the limitations of the West  
79 Virginia Uniform Power of Attorney Act and any  
80 special instructions in this power of attorney

81  Create or change rights of survivorship

82  Create or change a beneficiary designation

83  Authorize another person to exercise the authority  
84 granted under this power of attorney

85  Waive the principal's right to be a beneficiary of a  
86 joint and survivor annuity, including a survivor  
87 benefit under a retirement plan

88  Exercise fiduciary powers that the principal has  
89 authority to delegate

90 [ Disclaim or refuse an interest in property, including a  
91 power of appointment]



92           **LIMITATION ON AGENT’S AUTHORITY**

93           An agent that is not my ancestor, spouse or descendant MAY  
94 NOT use my property to benefit the agent or a person to whom the  
95 agent owes an obligation of support unless I have included that  
96 authority in the Special Instructions.

97           **SPECIAL INSTRUCTIONS (OPTIONAL)**

98           You may give special instructions on the following lines:

99 \_\_\_\_\_  
100 \_\_\_\_\_  
101 \_\_\_\_\_  
102 \_\_\_\_\_  
103 \_\_\_\_\_  
104 \_\_\_\_\_  
105 \_\_\_\_\_

106                           **EFFECTIVE DATE**

107           This power of attorney is effective immediately unless I  
108 have stated otherwise in the special instructions.

109                           **NOMINATION OF [CONSERVATOR OR**  
110   **GUARDIAN] (OPTIONAL)**

111           If it becomes necessary for a court to appoint a  
112 [conservator or guardian] of my estate or [guardian] of my  
113 person, I nominate the following person(s) for appointment:

114           Name of Nominee for [conservator or guardian] of my estate:

115 \_\_\_\_\_

116           Nominee’s Address: \_\_\_\_\_



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  
164 in the principal's best interest;
- 165 (3) Act with care, competence and diligence;
- 166 (4) Keep a record of all receipts, disbursements and  
167 transactions made on behalf of the principal;
- 168 (5) Cooperate with any person that has authority to make  
169 health-care decisions for the principal to do what you know  
170 the principal reasonably expects or, if you do not know the  
171 principal's expectations, to act in the principal's best interest;  
172 and attempt to preserve the principal's estate plan if you  
173 know the plan and preserving the plan is consistent with the  
174 principal's best interest.

175 **Termination of Agent's Authority**

176 You must stop acting on behalf of the principal if you  
177 learn of any event that terminates this power of attorney or  
178 your authority under this power of attorney. Events that  
179 terminate a power of attorney or your authority to act under  
180 a power of attorney include:

- 181 (1) Death of the principal;
- 182 (2) The principal's revocation of the power of attorney or  
183 your authority;
- 184 (3) The occurrence of a termination event stated in the  
185 power of attorney;
- 186 (4) The purpose of the power of attorney is fully  
187 accomplished; or

188 (5) If you are married to the principal, a legal action is  
189 filed with a court to end your marriage or for your legal  
190 separation, unless the Special Instructions in this power of  
191 attorney state that such an action will not terminate your  
192 authority.

### 193 **Liability of Agent**

194 The meaning of the authority granted to you is defined in  
195 the Uniform Power of Attorney Act [insert citation]. If you  
196 violate the Uniform Power of Attorney Act [insert citation] or  
197 act outside the authority granted, you may be liable for any  
198 damages caused by your violation.

199 **If there is anything about this document or your**  
200 **duties that you do not understand, you should seek legal**  
201 **advice.**

### §39B-3-102. Agent's certification

1 The following optional form may be used by an agent to  
2 certify facts concerning a power of attorney:

3 **AGENT'S CERTIFICATION AS TO THE VALIDITY**  
4 **OF POWER OF ATTORNEY AND AGENT'S**  
5 **AUTHORITY**

6 State of \_\_\_\_\_

7 [County] of \_\_\_\_\_]

8 I, \_\_\_\_\_ (Name of  
9 Agent), [certify] under penalty of perjury that  
10 \_\_\_\_\_ (Name of Principal)  
11 granted me authority as an agent or successor agent in a  
12 power of attorney dated \_\_\_\_\_.

13 I, further [certify] that to my knowledge:

14 (1) The Principal is alive and has not revoked the power  
15 of attorney or my authority to act under the power of  
16 attorney and the power of attorney and my authority to act  
17 under the power of attorney have not terminated;

18 (2) If the power of attorney was drafted to become  
19 effective upon the happening of an event or contingency, the  
20 event or contingency has occurred;

21 (3) If I was named as a successor agent, the prior agent is  
22 no longer able or willing to serve; and

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_

26 (Insert other relevant statements)

27 **SIGNATURE AND ACKNOWLEDGMENT**

28 \_\_\_\_\_

29 Agent's Signature Date

30 Agent's Name Printed \_\_\_\_\_

31 Agent's Address \_\_\_\_\_

32 Agent's Telephone Number \_\_\_\_\_

33 This document was acknowledged before me on  
34 \_\_\_\_\_,

35 (Date)

36 by \_\_\_\_\_.

37 (Name of Agent)

38 \_\_\_\_\_(Seal, if any)

39 Signature of Notary

40 My commission expires: \_\_\_\_\_

41 [This document prepared by:\_\_\_\_\_]

**ARTICLE 4. MISCELLANEOUS PROVISIONS.**

**§39B-4-101. Uniformity of application and construction.**

1 In applying and construing the provisions of this chapter,  
2 consideration must be given to the need to promote  
3 uniformity of the law with respect to its subject matter among  
4 the states that enact it.

**§39B-4-102. Relation to electronic signatures in Global and National Commerce Act.**

1 This act modifies, limits and supersedes the federal  
2 Electronic Signatures in Global and National Commerce  
3 Act,15 U. S. C. §7001 et seq., but does not modify, limit or  
4 supersede 15 U. S. C. Section 7001(c), of that act, or  
5 authorize electronic delivery of any of the notices described  
6 in 15 U. S. C. Section §7003(b), of that act.

**§39B-4-103. Effect on existing powers of attorney.**

1 (a) Except as otherwise provided in this act, on the  
2 effective date of this act its provisions apply to:

3 (1) A power of attorney created before, on, or after the  
4 effective date of this act;

5 (2) A judicial proceeding concerning a power of attorney  
6 commenced on or after the effective date of this act; and

7           (3) A judicial proceeding concerning a power of attorney  
8 commenced before the effective date of this act unless the court  
9 finds that application of a provision of this chapter would  
10 substantially interfere with the effective conduct of the judicial  
11 proceeding or prejudice the rights of a party, in which case that  
12 provision does not apply and the superseded law applies.

13           (b) An act done before the effective date of this act is not  
14 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.**

1           (a) A conservator of a protected person, without the  
2 necessity of seeking prior court authorization, shall apply the  
3 income and principal of the estate as needed for the protected  
4 person's support, care, health, and if applicable, habilitation,  
5 education or therapeutic needs. A conservator shall also  
6 apply the income and principal as needed for the support of  
7 any legal dependents who are unable to support themselves  
8 and who are in need of support.

9           (b) A conservator, when making distributions, shall  
10 exercise authority only to the extent necessitated by the  
11 protected person's limitations, and shall, where feasible,  
12 encourage the protected person to participate in decisions, to  
13 act on his or her own behalf, and to develop or regain the  
14 capacity to manage the estate and his or her financial affairs.  
15 A conservator shall also consider the size of the estate, the  
16 probable duration of the conservatorship, the protected  
17 person's accustomed manner of living, other resources known



18 to the conservator to be available, and the recommendations  
19 of the guardian.

20 (c) A conservator shall, to the extent known, consider the  
21 express desires and personal values of the protected person  
22 when making decisions, and shall otherwise act in the  
23 protected person's best interests and exercise reasonable care,  
24 diligence and prudence.

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## CHAPTER 200

**(Com. Sub. for H. B. 4493 - By Delegates Ashley,  
Anderson, Iaquina, 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.**

1           (a) The Governor shall, by proclamation, declare the  
2 week beginning with the Sunday before Thanksgiving as a  
3 special memorial week to be known as Native American  
4 Indian Heritage Week.

5           (b) The first Tuesday after the first Monday of November  
6 is designated Susan B. Anthony Day and shall only be a legal  
7 holiday in all years ending in an even number. The Governor  
8 shall annually issue a proclamation calling on all schools,  
9 civic organizations, government departments and citizens to  
10 undertake activities on the designated day and surrounding  
11 days to pay tribute to the accomplishments of Susan B.  
12 Anthony in securing the civil and political rights of all  
13 Americans, including securing equal voting rights for women.

14           (c) The Governor shall, by proclamation, declare the  
15 week during which December 7 falls to be a special memorial  
16 week, to be known as Pearl Harbor and Military Appreciation  
17 week, honoring all West Virginians who fought in World  
18 War II and all other military conflicts and shall encourage all  
19 municipalities in the state to do the same. The State  
20 Department of Education is directed to implement a program  
21 involving activities in which students shall participate which  
22 shall recognize the contributions West Virginians have made  
23 to their country through service in the United States military.

24           (d) The Governor shall, by proclamation, declare March  
25 30 as a special memorial day to be known as Vietnam

26 Veteran Recognition Day honoring all West Virginians who  
27 served in the United States Armed Forces in the Republic of  
28 Vietnam during the period beginning February 28, 1961 and  
29 ending May 7, 1975, and shall encourage all counties and  
30 municipalities in the state to do the same.

31 (e) The Governor shall, by proclamation, declare August  
32 7 as a special memorial day, to be known as Purple Heart  
33 Recognition Day, honoring all West Virginians who, while  
34 serving in the United States Armed Forces, have been  
35 wounded or killed in action and shall encourage all  
36 municipalities and counties in the state to do the same.

37 (f) The Governor shall, by proclamation, declare July 27  
38 as a special memorial day to be known as Korean War  
39 Veteran Recognition Day honoring all West Virginians who  
40 served in the United States Armed Forces in the Korean War,  
41 and shall encourage all counties and municipalities in the  
42 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.**

1 As used in this article:

2 (a) “Applicant” means any emergency medical service  
3 applicant, law-enforcement applicant or medical services  
4 applicant, that is registered as a volunteer of the nonprofit  
5 organization, making application for a nonprofit volunteer  
6 permit under the provisions of this article.

7 (b) “Appropriate licensing agency” means the board,  
8 department, division or other agency in each jurisdiction  
9 charged with the licensing, certification or permitting of  
10 persons performing services of the nature and kind described  
11 or duties provided for in this article.

12 (c) “Emergency medical service applicant” means a  
13 person authorized to provide emergency medical services in  
14 West Virginia, or in another state who but for this article  
15 would be required to obtain a certification from the  
16 Commissioner of the Bureau for Public Health pursuant to  
17 article eight, chapter sixteen of this code to perform  
18 emergency medical services in this state.

19 (d) “Law-enforcement applicant” means a person  
20 authorized to work as a law-enforcement officer in West  
21 Virginia, or in another state who but for this article would be  
22 required to obtain authorization pursuant to article twenty-  
23 nine, chapter thirty of this code to work as a law-enforcement

24 officer in this state: *Provided*, That any person authorized to  
25 work as a law-enforcement officer in another state shall have  
26 completed a training program approved by the governing  
27 authority of a political subdivision in order to work as a law-  
28 enforcement officer in that state.

29 (e) “Medical services applicant” means a person  
30 authorized to provide medical services in West Virginia, or  
31 in another state who but for this article would be required to  
32 obtain authorization to practice in this state, and who is a:

33 (1) Practitioner of medicine, surgery or podiatry as  
34 defined in article three, chapter thirty of this code;

35 (2) Physician assistant as defined in section three, article  
36 three, chapter thirty of this code;

37 (3) Chiropractor as defined in section three, article  
38 sixteen, chapter thirty of this code;

39 (4) Dentist or dental assistant as defined in article four,  
40 chapter thirty of this code;

41 (5) Nurse as defined in article seven or seven-a, chapter  
42 thirty of this code;

43 (6) Nurse practitioner as defined in section one, article  
44 four-b, chapter nine of this code;

45 (7) Occupational therapist as defined in section three,  
46 article twenty-eight, chapter thirty of this code;

47 (8) Practitioner of optometry as defined in section three,  
48 article eight, chapter thirty of this code;

49           (9) Osteopathic physician or surgeon as defined in article  
50           fourteen, chapter thirty of this code;

51           (10) Osteopathic physician assistant as defined in article  
52           fourteen-a, chapter thirty of this code;

53           (11) Pharmacist as defined in section one-b, article five,  
54           chapter thirty of this code;

55           (12) Physical therapist as defined in article twenty,  
56           chapter thirty of this code;

57           (13) Professional counselor as defined in section three,  
58           article thirty-one, chapter thirty of this code;

59           (14) Practitioner of psychology or school psychologist as  
60           defined in section two, article twenty-one, chapter thirty of  
61           this code;

62           (15) Radiologic technologist, nuclear medicine  
63           technologist or practitioner of medical imaging and radiation  
64           therapy technology as defined in section four, article twenty-  
65           three, chapter thirty of this code; and

66           (16) Social worker licensed by the state Board of Social  
67           Work Examiners pursuant to article thirty, chapter thirty of  
68           this code.

69           (f) “Nonprofit volunteer permit” or “permit” means a  
70           permit issued to an applicant pursuant to the provisions of  
71           this article.

72           (g) “Nonprofit volunteer permittee” or “permittee” means  
73           a person holding a nonprofit volunteer permit issued under  
74           the provisions of this article.

75 (h) “Nonprofit youth organization” or “organization”  
76 means any nonprofit organization, including any subsidiary,  
77 affiliated or other related entity within its corporate or  
78 business structure, that has been chartered by the United  
79 States Congress to help train young people to do things for  
80 themselves and others, and that has established an area of at  
81 least six thousand contiguous acres within West Virginia in  
82 which to provide adventure or recreational activities for these  
83 young people and others.

84 (i) “Nonprofit volunteer organization medical director”  
85 means an individual licensed in West Virginia as a  
86 practitioner of medicine or surgery pursuant to article three,  
87 chapter thirty of this code, or an individual licensed in West  
88 Virginia as an osteopathic physician or surgeon pursuant to  
89 article fourteen, chapter thirty of this code, that has been  
90 designated by the nonprofit volunteer organization to serve  
91 as the medical director for an event or program offered by the  
92 organization.

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## 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.]

AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to establishing a public policy for narrative water quality standards; establishing a procedure to determine compliance with the biologic

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.**

1 (a) All authority to promulgate rules and implement water  
2 quality standards is vested in the Secretary of the Department  
3 of Environmental Protection.

4 (b) All meetings with the secretary or any employee of  
5 the department and any interested party which are convened  
6 for the purpose of making a decision or deliberating toward  
7 a decision as to the form and substance of the rule governing  
8 water quality standards or variances thereto shall be held in  
9 accordance with the provisions of article nine-a, chapter six  
10 of this code. When the secretary is considering the form and  
11 substance of the rules governing water quality standards, the  
12 following are not meetings pursuant to article nine-a, chapter  
13 six of this code: (i) Consultations between the department's  
14 employees or its consultants, contractors or agents; (ii)  
15 consultations with other state or federal agencies and the  
16 department's employees or its consultants, contractors or  
17 agents; or (iii) consultations between the secretary, the  
18 department's employees or its consultants, contractors or  
19 agents with any interested party for the purpose of collecting



20 facts and explaining state and federal requirements relating to  
21 a site specific change or variance.

22 (c) In order to carry out the purposes of this chapter, the  
23 secretary shall promulgate legislative rules in accordance  
24 with the provisions of article three, chapter twenty-nine-a of  
25 this code setting standards of water quality applicable to both  
26 the surface waters and groundwaters of this state. Standards  
27 of quality with respect to surface waters shall protect the  
28 public health and welfare, wildlife, fish and aquatic life and  
29 the present and prospective future uses of the water for  
30 domestic, agricultural, industrial, recreational, scenic and  
31 other legitimate beneficial uses thereof. The water quality  
32 standards of the secretary may not specify the design of  
33 equipment, type of construction or particular method which  
34 a person shall use to reduce the discharge of a pollutant.

35 (d) The secretary shall establish the antidegradation  
36 implementation procedures as required by 40 C. F. R.  
37 131.12(a) which apply to regulated activities that have the  
38 potential to affect water quality. The secretary shall propose  
39 for legislative approval, pursuant to article three, chapter  
40 twenty-nine-a of the code, legislative rules to establish  
41 implementation procedures which include specifics of the  
42 review depending upon the existing uses of the water body  
43 segment that would be affected, the level of protection or  
44 "tier" assigned to the applicable water body segment, the  
45 nature of the activity and the extent to which existing water  
46 quality would be degraded. Any final classification  
47 determination of a water as a Tier 2.5 water (Water of Special  
48 Concern) does not become effective until that determination  
49 is approved by the Legislature through the legislative rule-  
50 making process as provided in article three, chapter  
51 twenty-nine-a of the code.

52 (e) All remaining variances shall be applied for and  
53 considered by the secretary and any variance granted shall be

54 consistent with 33 U. S. C. Section 1311(p) of the Federal  
55 Water Control Act. At a minimum, when considering an  
56 application for a reming variance the secretary shall  
57 consider the data and information submitted by the applicant  
58 for the variance; and comments received at a public comment  
59 period and public hearing. The secretary may not grant a  
60 variance without requiring the applicant to improve the  
61 instream water quality as much as is reasonably possible by  
62 applying best available technology economically achievable  
63 using best professional judgment. Any such requirement will  
64 be included as a permit condition. The secretary may not  
65 grant a variance without a demonstration by the applicant that  
66 the coal reming operation will result in the potential for  
67 improved instream water quality as a result of the reming  
68 operation. The secretary may not grant a variance where he  
69 or she determines that degradation of the instream water  
70 quality will result from the reming operation.

71 (f) The secretary shall propose rules measuring  
72 compliance with the biologic component of West Virginia's  
73 narrative water quality standard requires evaluation of the  
74 holistic health of the aquatic ecosystem and a determination  
75 that the stream: (i) Supports a balanced aquatic community  
76 that is diverse in species composition; (ii) contains  
77 appropriate trophic levels of fish, in streams that have flows  
78 sufficient to support fish populations; and (iii) the aquatic  
79 community is composed of benthic invertebrate assemblages  
80 sufficient to perform the biological functions necessary to  
81 support fish communities within the assessed reach, or, if the  
82 assessed reach has insufficient flows to support a fish  
83 community, in those downstream reaches where fish are  
84 present. The secretary shall propose rules for legislative  
85 approval in accordance with the provisions of article three,  
86 chapter twenty-nine-a of this code that implement the  
87 provisions of this subsection. Rules promulgated pursuant to  
88 this subsection may not establish measurements for biologic  
89 components of West Virginia's narrative water quality

90 standards that would establish standards less protective than  
91 requirements that exist at the time of enactment of the  
92 amendments to this subsection by the Legislature during the  
93 2012 regular session.

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## 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 thereto 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:

**ARTICLE 8. WHOLESALE DRUG DISTRIBUTION  
LICENSING ACT OF 1991.**

**§60A-8-3. Purpose.**

1       The purpose of this article is to protect the health, safety  
2 and general welfare of residents of this state and to  
3 implement the federal Prescription Drug Marketing Act of  
4 1987 (“PDMA”), U. S. Public Law 100-293, 102 Stat. 95,  
5 codified at 21 U. S. Code §321; and particularly PDMA  
6 requirements that no person or entity may engage in the  
7 wholesale distribution of human prescription drugs in any  
8 state unless such person or entity is licensed by such state in  
9 accordance with federally-prescribed minimum standards,  
10 terms and conditions as set forth in guidelines issued by  
11 United States food and drug administration (FDA)  
12 regulations pursuant to 21 U. S. Code §353(e)(2)(A) and (B);  
13 and such regulations as are set forth in 21 C. F. R. Part 205.

**§60A-8-5. Definitions.**

1       As used in this article:

2       (a) “Wholesale distribution” and “wholesale  
3 distributions” mean distribution of prescription drugs,  
4 including directly or through the use of a third-party logistics  
5 provider or any other situation in which title, ownership or  
6 control over the prescription drug remains with one person or  
7 entity but the prescription drug is brought into this state by  
8 another person or entity on his, her or its behalf, to persons  
9 other than a consumer or patient, but does not include:

10           (1) Intracompany sales, being defined as any transaction,  
11 transfer or delivery into or within this state between any  
12 division, subsidiary, parent and/or affiliated or related  
13 company under the common ownership and control of a  
14 corporate entity;

15           (2) The purchase or other acquisition by a hospital or  
16 other health care entity that is a member of a group  
17 purchasing organization of a drug for its own use from the  
18 group purchasing organization or from other hospitals or  
19 health care entities that are members of such organizations;

20           (3) The sale, purchase or trade of a drug or an offer to  
21 sell, purchase or trade a drug by a charitable organization  
22 described in section 501(c)(3) of the United States Internal  
23 Revenue Code of 1986 to a nonprofit affiliate of the  
24 organization to the extent otherwise permitted by law;

25           (4) The sale, purchase or trade of a drug or an offer to  
26 sell, purchase or trade a drug among hospitals or other health  
27 care entities that are under common control. For purposes of  
28 this article, "common control" means the power to direct or  
29 cause the direction of the management and policies of a  
30 person or an organization, whether by ownership of stock,  
31 voting rights, by contract, or otherwise;

32           (5) The sale, purchase or trade of a drug or an offer to  
33 sell, purchase or trade a drug for "emergency medical  
34 reasons" for purposes of this article includes transfers of  
35 prescription drugs by a retail pharmacy to another retail  
36 pharmacy to alleviate a temporary shortage, except that the  
37 gross dollar value of such transfers shall not exceed five  
38 percent of the total prescription drug sales revenue of either  
39 the transferor or transferee pharmacy during any twelve  
40 consecutive month period;

41           (6) The sale, purchase or trade of a drug, an offer to sell,  
42 purchase, or trade a drug or the dispensing of a drug pursuant  
43 to a prescription;

44           (7) The distribution of drug samples by manufacturers'  
45 representatives or distributors' representatives, if the  
46 distribution is permitted under federal law [21 U. S. C.  
47 353(d)];

48           (8) Drug returns by a pharmacy or chain drug warehouse  
49 to wholesale drug distributor or the drug's manufacturer; or

50           (9) The sale, purchase or trade of blood and blood  
51 components intended for transfusion.

52           (b) "Wholesale drug distributor" or "wholesale  
53 distributor" means any person or entity engaged in wholesale  
54 distribution of prescription drugs, including, but not limited  
55 to, manufacturers, repackers, own-label distributors, jobbers,  
56 private-label distributors, brokers, warehouses, including  
57 manufacturers' and distributors' warehouses, chain drug  
58 warehouses and wholesale drug warehouses, independent  
59 wholesale drug traders, prescription drug repackagers,  
60 physicians, dentists, veterinarians, birth control and other  
61 clinics, individuals, hospitals, nursing homes and/or their  
62 providers, health maintenance organizations and other health  
63 care providers, and retail and hospital pharmacies that  
64 conduct wholesale distributions, including, but not limited to,  
65 any pharmacy distributor as defined in this section. A  
66 wholesale drug distributor shall not include any for hire  
67 carrier or person or entity hired solely to transport  
68 prescription drugs.

69           (c) "Pharmacy distributor" means any pharmacy licensed  
70 in this state or hospital pharmacy which is engaged in the  
71 delivery or distribution of prescription drugs either to any  
72 other pharmacy licensed in this state or to any other person or

73 entity, including, but not limited to, a wholesale drug  
74 distributor as defined in subdivision (b) of this section  
75 engaged in the delivery or distribution of prescription drugs  
76 and who is involved in the actual, constructive or attempted  
77 transfer of a drug in this state to other than the ultimate  
78 consumer except as otherwise provided for by law.

79 (d) “Manufacturer” means any person who is engaged in  
80 manufacturing, preparing, propagating, compounding,  
81 processing, packaging, repackaging or labeling of a  
82 prescription drug, whether within or outside this state.

83 (e) “West Virginia Board of Pharmacy”, “Board of  
84 Pharmacy” or “board” means the agency of this state  
85 authorized to license wholesale drug distribution except  
86 where otherwise provided.

87 (f) “Prescription drug” means any human drug required  
88 by federal law or regulation to be dispensed only by  
89 prescription, including finished dosage forms and active  
90 ingredients subject to section 503(b) of the federal food, drug  
91 and cosmetic act.

92 (g) “Blood” means whole blood collected from a single  
93 donor and processed either for transfusion or further  
94 manufacturing.

95 (h) “Blood component” means that part of blood  
96 separated by physical or mechanical means.

97 (i) “Drug sample” means a unit of a prescription drug that  
98 is not intended to be sold and is intended to promote the sale  
99 of the drug.

100 (j) “Person” means any individual, partnership,  
101 association, limited liability company, corporation or other  
102 entity.

103 (k) “Key person” means the person designated by the  
104 applicant or license holder from any of the following:

105 (1) An officer, director, trustee, partner, principal or  
106 proprietor of a person that has applied for or holds a license  
107 issued under this article or an affiliate or holding company  
108 that has control of a person that has applied for or holds a  
109 license under this article.

110 (2) A person that holds a combined direct, indirect or  
111 attributed debt or equity interest of more than five percent in  
112 a person that has applied for or holds a license under this  
113 article;

114 (3) A person that holds a combined direct, indirect or  
115 attributed equity interest of more than five percent in a person  
116 that has a controlling interest in a person that has applied for  
117 or holds license under this article;

118 (4) A managerial employee of a person that has applied  
119 for or holds a license under this article or a managerial  
120 employee of an affiliate or holding company that has control  
121 of a person that has applied for or holds a license under this  
122 article, who performs the function of principal executive  
123 officer, principal operating officer, principal accounting  
124 officer or an equivalent officer;

125 (5) A managerial employee of a person that has applied  
126 for or holds a license under this article or a managerial  
127 employee of an affiliate or holding company that has control  
128 of a person that has applied for or holds a license under this  
129 article who will perform or performs the function of an  
130 operations manager or will exercise or exercises  
131 management, supervisory or policy-making authority over the  
132 distribution of prescription drugs.



133 (1) "Third-party logistics provider" means a person who  
134 contracts with a prescription drug manufacturer to provide or  
135 coordinate warehousing, distribution or other services on  
136 behalf of a manufacturer, but does not take title to the  
137 prescription drug or have general responsibility to direct the  
138 prescription drug's sale or disposition. A third-party logistics  
139 provider must be licensed as a wholesale distributor under  
140 this article and, in order to be considered part of the normal  
141 distribution channel, must also be an authorized distributor of  
142 record.

**§60A-8-7. Wholesale drug distributor licensing requirements.**

1 (a) Every applicant for a license under this article shall  
2 provide the board with the following as part of the  
3 application for a license and as part of any renewal of such  
4 license:

5 (1) The name, full business address and telephone  
6 number of the licensee;

7 (2) All trade or business names used by the licensee;

8 (3) Addresses, telephone numbers and the names of  
9 contact persons for all facilities used by the licensee for the  
10 storage, handling and distribution of prescription drugs;

11 (4) The type of ownership or operation (i.e., partnership,  
12 corporation or sole proprietorship);

13 (5) The name(s) of the owner and operator, or both, of the  
14 licensee, including:

15 (A) If a person, the name of the person;

16 (B) If a partnership, the name of each partner and the  
17 name of the partnership;

18 (C) If a corporation, the name and title of each corporate  
19 officer and director, the corporate names and the name of the  
20 state of incorporation; and

21 (D) If a sole proprietorship, the full name of the sole  
22 proprietor and the name of the business entity; and

23 (6) Any other information or documentation that the  
24 board may require.

25 (b) All wholesale distributors and pharmacy distributors  
26 shall be subject to the following requirements:

27 (1) No person or distribution outlet may act as a  
28 wholesale drug distributor without first obtaining a license to  
29 do so from the Board of Pharmacy and paying any reasonable  
30 fee required by the Board of Pharmacy, such fee not to  
31 exceed four hundred dollars per year: *Provided*, That for  
32 licenses that are effective on and after July 1, 2012, the  
33 annual fee shall be \$750 per license until modified by  
34 legislative rule. All fees collected pursuant to this section  
35 shall be used for the operation and implementation of the  
36 West Virginia Controlled Substances Monitoring Program  
37 database or in the same manner as those fees governed by  
38 section fourteen-b, article five, chapter thirty of this code.

39 (2) The Board of Pharmacy may grant a temporary  
40 license when a wholesale drug distributor first applies to the  
41 board for a wholesale drug distributor's license and the  
42 temporary license shall remain valid until the Board of  
43 Pharmacy finds that the applicant meets or fails to meet the  
44 requirements for regular licensure, except that no temporary  
45 license shall be valid for more than ninety days from the date  
46 of issuance. Any temporary license issued pursuant to this  
47 subdivision shall be renewable for a similar period of time  
48 not to exceed ninety days pursuant to policies and procedures  
49 to be prescribed by the Board of Pharmacy.

50           (3) No license may be issued or renewed for a wholesale  
51 drug distributor to operate unless the distributor operates in  
52 a manner prescribed by law and according to the rules  
53 promulgated by the Board of Pharmacy with respect thereto.

54           (4) The Board of Pharmacy may require a separate  
55 license for each facility directly or indirectly owned or  
56 operated by the same business entity within this state, or for  
57 a parent entity with divisions, subsidiaries, or affiliate  
58 companies within this state when operations are conducted at  
59 more than one location and there exists joint ownership and  
60 control among all the entities.

61           (c) The minimum qualifications for licensure are set forth  
62 in this section as follows:

63           (1) As a condition for receiving and retaining any  
64 wholesale drug distributor license issued pursuant to this  
65 article, each applicant shall satisfy the Board of Pharmacy  
66 that it has and will continuously maintain:

67           (A) Acceptable storage and handling conditions plus  
68 facilities standards;

69           (B) Minimum liability and other insurance as may be  
70 required under any applicable federal or state law;

71           (C) A security system which includes after hours central  
72 alarm or comparable entry detection capability, restricted  
73 premises access, adequate outside perimeter lighting,  
74 comprehensive employment applicant screening and  
75 safeguards against employee theft;

76           (D) An electronic, manual or any other reasonable system  
77 of records describing all wholesale distributor activities  
78 governed by this article for the two-year period following

79 disposition of each product and being reasonably accessible  
80 as defined by Board of Pharmacy regulations during any  
81 inspection authorized by the Board of Pharmacy;

82 (E) Officers, directors, managers and other persons in  
83 charge of wholesale drug distribution, storage and handling,  
84 who must at all times demonstrate and maintain their  
85 capability of conducting business according to sound  
86 financial practices as well as state and federal law;

87 (F) Complete, updated information to be provided to the  
88 Board of Pharmacy as a condition for obtaining and retaining  
89 a license about each wholesale distributor to be licensed  
90 under this article including all pertinent licensee ownership  
91 and other key personnel and facilities information determined  
92 necessary for enforcement of this article;

93 (G) Written policies and procedures which assure  
94 reasonable wholesale distributor preparation for protection  
95 against and handling of any facility security or operation  
96 problems, including, but not limited to, those caused by  
97 natural disaster or government emergency, inventory  
98 inaccuracies or product shipping and receiving, outdated  
99 product or other unauthorized product control, appropriate  
100 disposition of returned goods and product recalls;

101 (H) Sufficient inspection procedures for all incoming and  
102 outgoing product shipments; and

103 (I) Operations in compliance with all federal legal  
104 requirements applicable to wholesale drug distribution.

105 (2) The board of pharmacy shall consider, at a minimum,  
106 the following factors in reviewing the qualifications of  
107 persons who apply for a wholesale distributor license under  
108 this section or for renewal of that license:

109 (A) Any conviction of the applicant under any federal,  
110 state or local laws relating to drug samples, wholesale or retail  
111 drug distribution or distribution of controlled substances;

112 (B) Any felony convictions of the applicant or any key  
113 person under federal, state or local laws;

114 (C) The applicant's past experience in the manufacture or  
115 distribution of prescription drugs, including, but not limited  
116 to, controlled substances;

117 (D) The furnishing by the applicant of false or fraudulent  
118 material in any application made in connection with drug  
119 manufacturing or distribution;

120 (E) Suspension or revocation by federal, state or local  
121 government of any license currently or previously held by the  
122 applicant for the manufacture or distribution of any drug,  
123 including, but not limited to, controlled substances;

124 (F) Compliance with licensing requirements under  
125 previously granted licenses, if any;

126 (G) Whether personnel employed by the applicant in  
127 wholesale drug distribution have appropriate education or  
128 experience, or both education and experience, to assume  
129 responsibility for positions related to compliance with the  
130 requirements of this article;

131 (H) Compliance with requirements to maintain and make  
132 available to the Board of Pharmacy or to federal, state or  
133 local law-enforcement officials those records required by this  
134 article; and

135 (I) Any other factors or qualifications the Board of  
136 Pharmacy considers relevant to and consistent with the public  
137 health and safety, including whether the granting of the  
138 license would not be in the public interest.

139 (3) All requirements set forth in this subsection shall  
140 conform to wholesale drug distributor licensing guidelines  
141 formally adopted by the United States Food and Drug  
142 Administration (FDA); and in case of conflict between any  
143 wholesale drug distributor licensing requirement imposed  
144 by the Board of Pharmacy pursuant to this subsection and  
145 any food and drug administration wholesale drug distributor  
146 licensing guideline, the latter shall control.

147 (d) An employee of any licensed wholesale drug  
148 distributor need not seek licensure under this section and may  
149 lawfully possess pharmaceutical drugs when the employee is  
150 acting in the usual course of business or employment.

151 (e) The issuance of a license pursuant to this article does  
152 not change or affect tax liability imposed by this state's  
153 Department of Tax and Revenue on any wholesale drug  
154 distributor.

155 (f) An applicant who is awarded a license or renewal of  
156 a license shall give the board written notification of any  
157 material change in the information previously submitted in,  
158 or with the application for the license or for renewal thereof,  
159 whichever is the most recent document filed with the board,  
160 within thirty days after the material change occurs or the  
161 licensee becomes aware of the material change, whichever  
162 event occurs last. Material changes include, but are not  
163 limited to:

164 (1) A change of the physical address or mailing address;

165           (2) A change of the responsible individual, compliance  
166 officer or other executive officers or board members;

167           (3) A change of the licensee's name or trade name;

168           (4) A change in the location where the records of the  
169 licensee are retained;

170           (5) The felony conviction of a key person of the licensee; and

171           (6) Any other material change that the board may specify  
172 by rule.

173           (g) Before denial of a license or application for renewal  
174 of a license, the applicant shall be entitled to a hearing in  
175 accordance with subsection (h), section eight, article one,  
176 chapter thirty of this code.

177           (h) The licensing of any person as a wholesale drug  
178 distributor subjects the person and the person's agents and  
179 employees to the jurisdiction of the board and to the laws of  
180 this state for the purpose of the enforcement of this article,  
181 article five, chapter thirty of this code and the rules of the  
182 board. However, the filing of an application for a license as  
183 a wholesale drug distributor by, or on behalf of, any person  
184 or the licensing of any person as a wholesale drug distributor  
185 may not, of itself, constitute evidence that the person is doing  
186 business within this state.

187           (i) The Board of Pharmacy may adopt rules pursuant to  
188 section nine of this article which permit out-of-state  
189 wholesale drug distributors to obtain any license required by  
190 this article on the basis of reciprocity to the extent that: (1)  
191 An out-of-state wholesale drug distributor possesses a valid  
192 license granted by another state pursuant to legal standards

193 comparable to those which must be met by a wholesale drug  
194 distributor of this state as prerequisites for obtaining a license  
195 under the laws of this state; and (2) such other state would  
196 extend reciprocal treatment under its own laws to a wholesale  
197 drug distributor of this state.

**§60A-8-14. Disciplinary actions - wholesale drug distributor.**

1 (a) In accordance with article five, chapter thirty of this  
2 code, the Board of Pharmacy may suspend, revoke or refuse  
3 to renew any license issued to a wholesale distributor of  
4 prescription drugs pursuant to this article or may impose a  
5 civil money penalty not to exceed \$1,000, in the discretion of  
6 the board for any of the following causes:

7 (1) Making any false material statements in an application  
8 for a license or for renewal of a license as a wholesale  
9 distributor or pharmacy distributor of prescription drugs;

10 (2) Violating any federal, state or local drug law, any  
11 provision of this article or any rule of the board;

12 (3) Conviction of a felony. For purposes of this  
13 subdivision "felony" means a felony or crime punishable as  
14 a felony under the laws of this state, any other state or the  
15 United States;

16 (4) Ceasing to satisfy the qualifications for licensure  
17 under section seven of this article or the rules of the board;

18 (5) The license or registration of a wholesale drug  
19 distributor licensed under this article has been revoked by the  
20 licensing authority of another state, jurisdiction of foreign  
21 nation; or



22 (6) Any reason for which the board may impose  
23 disciplinary sanctions under the provisions of chapter thirty  
24 of this code.

25 (b) Upon the suspension or revocation of the license of  
26 any wholesale distributor of prescription drugs, the  
27 distributor shall immediately surrender the license to the  
28 board.

29 (c) If the board suspends, revokes or refuses to renew any  
30 license issued to a wholesale distributor of prescription drugs  
31 and determines that there is clear and convincing evidence of  
32 a danger of immediate and serious harm to any person, the  
33 board may place under seal all drugs owned by or in the  
34 possession, custody or control of the affected wholesale  
35 distributor. Except as provided in this article, the board may  
36 not dispose of the drugs sealed under this subsection until the  
37 distributor exhausts all of his or her appeal rights under this  
38 article or article five, chapter thirty of this code. The court  
39 involved in the appeal may order the board, during the  
40 pendency of the appeal, to sell sealed dangerous drugs that  
41 are perishable. The board shall deposit the proceeds of the  
42 sale with the court.

**§60A-8-15. Maintenance of register and roster of wholesale and  
pharmacy distributors.**

1 (a) The Executive Director of the Board of Pharmacy  
2 shall maintain a register of the names, addresses and the date  
3 the current license was issued or renewed pursuant to this  
4 article for license years beginning on and after July 1, 2013.  
5 The register shall be the property of the board and shall be  
6 open for public examination and inspection at all reasonable  
7 times, as the board may direct.

8 (b) The register shall set forth the names and addresses  
9 of:

10 (1) Those persons who are or have been licensed under  
11 this article for the current license year;

12 (2) Those persons whose licenses have been suspended,  
13 revoked or surrendered during the current license year or  
14 during the two preceding license years; and

15 (3) Those persons whose licenses have not been renewed  
16 for the current license year.

17 (c) In lieu of annually publishing a typed or printed  
18 register providing the information required by this  
19 subsection, the board may make the information required to  
20 be published available at its website.

21 (d) A written statement signed and verified by the  
22 executive director of the board, in which it is stated that after  
23 diligent search of the register no record or entry of the  
24 issuance of a license or registration certificate to a person is  
25 found, is admissible in evidence and constitutes presumptive  
26 evidence of the fact that the person is not a licensed as a  
27 wholesale drug distributor under this article.

#### **§60A-8-16. Disposition of fees.**

1 The board shall pay all fees it collects under this article  
2 into the separate fund created in the State Treasury for the  
3 board pursuant to section ten, article one, chapter thirty of  
4 this code. The money in this fund shall be used exclusively  
5 by the board for the purposes of administering and  
6 enforcement of its duties pursuant to this article, articles one  
7 and five, chapter thirty of this code, or any other duty of the  
8 board prescribed by any other provision of this code.

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## CHAPTER 204

**(Com. Sub. for H. B. 4630 - By Delegate Boggs)**

[Passed March 6, 2012; in effect from passage.]

[Approved by the Governor on March 15, 2012.]

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
- 2 Authority is continued for the purposes and in the manner
- 3 provided in this act.

**§2. Acquisition, construction, maintenance, etc. of the county Four-H youth camps and recreational areas and facilities.**

1           The authority is authorized to acquire, equip, construct,  
2 improve, maintain and operate county Four-H youth camps  
3 and general public recreational areas and facilities in Braxton  
4 County with all usual and convenient appurtenances,  
5 including, but not limited to, recreational facilities, such as  
6 swimming pools, tennis courts, golf courses and horse riding  
7 stables; and to operate, either directly or on a concession  
8 basis, any activity that is necessary or convenient, customary  
9 or desirable, and related or incidental to the above-mentioned  
10 camps and recreational areas and facilities, including, but not  
11 limited to, hotels, restaurants and gift shops.

**§3. Members of the authority.**

1           (a) The management and control of the authority, its  
2 property, operations, business and affairs, is lodged in a  
3 board of five members each of whom shall be appointed for  
4 a term of five years. After June 30, 2012, as terms expire or  
5 vacancies are filled, appointments shall be made by the  
6 Braxton County Commission so that no more than two of  
7 these members represent any one magisterial district located  
8 within Braxton County.

9           (b) Effective July 1, 2012, the board shall include two  
10 additional members, bringing the total board membership to  
11 seven. One member shall be a member of and appointed by the  
12 Braxton County Commission. One member shall be a member  
13 of and appointed by the Braxton County Board of Education.  
14 These members serve for five-year terms or for as long as the  
15 member continues to serve on the county commission or board  
16 of education, respectively, whichever is shorter.

**§4. Removal of members.**

1 (a) The Braxton County Commission may remove a  
2 member of the authority whom it appointed in the manner set  
3 forth in subsection (c) of this section.

4 (b) The Braxton County Board of Education may remove  
5 a member of the authority whom it appointed in the manner  
6 set forth in subsection (c) of this section.

7 (c) (1) The appointing body shall notify the member  
8 whom it desires to remove in writing, stating the reasons for  
9 the removal.

10 (2) Within ten days of the receipt of the written notice of  
11 removal, the member may request a hearing before the  
12 appointing body.

13 (3) The appointing body shall hold a hearing within ten  
14 days of the receipt of the member's request.

15 (4) Any member who is removed may petition the  
16 Braxton County Circuit Court to review the removal action.

**§5. Substitution of members.**

1 If any member of the authority dies, resigns, or is removed,  
2 or for any other reason ceases to be a member of the authority,  
3 the appointing body shall appoint another person to fill the  
4 unexpired portion of the term of the member.

**§6. Qualification of members.**

1 All members must be residents of Braxton County and of  
2 legal voting age.

**§7. Payment of expenses of members.**

1 No member may receive any compensation, whether in  
2 form of salary, per diem allowances or otherwise, for or in  
3 connection with his or her service as a member. Each  
4 member is entitled to reimbursement by the authority for any  
5 necessary expenditures in connection with the performance  
6 of his or her general duties as a member.

**§8. Public corporation.**

1 The authority is a public corporation with the name of  
2 “Braxton County Recreational Development Authority” and  
3 as such has perpetual succession, may contract and be  
4 contracted with, sue and be sued, plead and be impleaded and  
5 have and use a common seal.

**§9. Powers generally.**

1 (a) The authority may:

2 (1) Make and adopt all necessary bylaws, rules and  
3 regulations for its organization and operation not inconsistent  
4 with law;

5 (2) Elect its own officers, to appoint committees and  
6 employ and fix the compensation for personnel necessary for  
7 its operation;

8 (3) Enter into contracts with any person, governmental  
9 department, firm or corporation, including both public and  
10 private corporations, and generally to do any and all things  
11 necessary or convenient for the purpose of acquiring,  
12 equipping, constructing, maintaining, improving, extending,  
13 financing and operating county youth camps and general  
14 public recreational areas and facilities and all usual and  
15 convenient appurtenant activities and facilities in Braxton

16 County, West Virginia, including, but not limited to, those  
17 enumerated in section two of this act;

18 (4) Delegate any authority given to it by law to any of its  
19 officers, committees, agents or employees;

20 (5) Apply from, receive and use grants-in-aid, donations  
21 and contributions from any source or sources, including, but  
22 not limited to, the federal government and any agency of the  
23 federal government, and the State of West Virginia, and to  
24 accept and use bequests, devises, gifts and donations from  
25 any person, firm or corporation;

26 (6) Acquire lands and hold title thereto in its own name;

27 (7) Purchase, own, hold, sell and dispose of personal  
28 property and to sell, lease or otherwise dispose of any real  
29 estate which it may own;

30 (8) Borrow money and execute and deliver negotiable  
31 notes, mortgage bonds, other bonds, debentures, and other  
32 evidences of indebtedness therefor, and give security therefor  
33 as is requisite, including giving a mortgage or deed of trust  
34 on its property and facilities in connection with the issuance  
35 of mortgage bonds;

36 (9) Raise funds by the issuance and sale of revenue bonds  
37 in the manner provided by the applicable provisions of article  
38 sixteen, chapter eight of the Code of West Virginia, one  
39 thousand nine hundred thirty-one, as amended, it being  
40 expressly provided that the authority is a "municipal  
41 authority" within the definition of that term as used in article  
42 sixteen, chapter eight of the code; and

43 (10) Expend its funds in the execution of its powers and  
44 authority.

45 (b) The buying, selling and trading of land must have a  
46 majority vote of the Braxton County Commission, the  
47 Braxton County Board of Education, and the five members of  
48 the Braxton County Recreational Development Authority  
49 appointed under subsection (a), section three of this act.

**§10. Indebtedness of the authority.**

1 The authority may incur any proper indebtedness and  
2 issue any obligations and give any security which it considers  
3 necessary or advisable in connection with carrying out its  
4 purposes. No statutory limitation with respect to the nature  
5 or amount of indebtedness which may be incurred by  
6 municipalities or other public bodies applies to indebtedness  
7 of the authority. No indebtedness of any nature of the  
8 authority is an indebtedness of the Braxton County  
9 Commission, nor of the county nor of the board of education,  
10 or a charge against any property of the county or board. No  
11 obligation incurred by the authority gives any right against  
12 any member or the Braxton County Commission or any  
13 member of the board of education or any member of the  
14 board or authority. The rights of creditors of the authority are  
15 solely against the authority as a corporate body and may be  
16 satisfied only out of property held by it in its corporate  
17 capacity.

**§11. Agreements in connection with obtaining funds.**

1 The authority may, in connection with obtaining funds for  
2 its purpose, enter into any agreement with any person, firm or  
3 corporation, including the federal government, or any agency  
4 or subdivision of the federal government, containing  
5 provisions, covenants, terms and conditions as it considers  
6 advisable.



**§12. Property, bonds and obligations of authority exempt from taxation.**

1 The authority is exempt from the payment of any taxes or  
2 fees to the state or any subdivisions of the state or to any  
3 officer or employee of the state or of any subdivisions of the  
4 state. The property of the authority is exempt from all local  
5 and municipal taxes. Bonds, notes, debentures and other  
6 evidence of indebtedness of the authority are declared to be  
7 issued for a public purpose and to be public instrumentalities  
8 and, together with interest thereon, are exempt from taxes.

**§13. County commission authorized to convey properties and facilities to authority.**

1 The Braxton County Commission is authorized to convey  
2 to the authority property owned by Braxton County, together  
3 with all the appurtenances and facilities therewith, the  
4 conveyance to be without consideration or for a price and  
5 with terms and conditions as the Braxton County  
6 Commission considers proper.

**§14. Property and facilities may be leased to the Braxton County Commission, the Braxton County Board of Education or others.**

1 The authority may lease the property on which the camp  
2 or camps and facilities are situated, in whole or in part, and  
3 all the appurtenances and facilities therewith, to the Braxton  
4 County Commission, to the Braxton County Board of  
5 Education or to any other available lessee or lessees at such  
6 rental and upon such terms and conditions as the authority  
7 considers proper. If the authority determines to lease the  
8 property and its appurtenances and facilities, as a whole, it  
9 shall first offer the same to the Braxton County Commission  
10 upon an annual lease and it may not lease the property and its  
11 appurtenances and facilities as a whole to any other lessee until

12 the Braxton County Commission has notified the authority that  
13 it does not desire to lease said properties, which notice shall be  
14 given within thirty days after notice by the authority of a desire  
15 on its part to lease the property as a whole. The Braxton  
16 County Commission is authorized to enter into a lease with the  
17 authority for the property and appurtenances and facilities at  
18 such rental and upon such terms and conditions as it considers  
19 proper, and the Braxton County Commission may levy taxes  
20 as provided by law for the purpose of paying the rent for the  
21 property, appurtenances and facilities. The authority, however,  
22 may lease one or more portions of its property without first  
23 offering the same to the Braxton County Commission. The  
24 lease shall be for some purpose associated with recreational or  
25 other related activities.

**§15. Disposition of surplus of authority.**

1 If the authority should realize a surplus, whether from  
2 operating the property or leasing it for operation, over and  
3 above the amount required for the maintenance, improvement  
4 and operation thereof and for meeting all required payments  
5 on its obligations, it shall set aside a reserve for future  
6 operations, improvements and contingencies as it considers  
7 proper and then apply the residue of the surplus, if any, to the  
8 payment of any recognized and established obligations not  
9 then due; and after all its recognized and established  
10 obligations have been paid off and discharged in full, the  
11 authority shall, at the end of each fiscal year, set aside the  
12 reserve for future operations, improvements and  
13 contingencies, and then pay the residue of the surplus, if any,  
14 to the Braxton County Commission to be used by the county  
15 commission for general county purposes.

**§16. Contributions; funds and accounts; publication of annual report.**

1 Contributions may be made to the authority from time to  
2 time by the Braxton County Commission, the Braxton County

3 Board of Education, the federal government, and by any  
4 persons, firms or corporations that desire to do so. All those  
5 funds and all other funds received by the authority shall be  
6 deposited in a bank or banks as the authority directs and shall be  
7 withdrawn as the authority directs. The authority shall keep  
8 strict account of all its receipts and expenditures and shall each  
9 quarter make a report to the Braxton County Commission  
10 containing an itemized account of its receipts and disbursements  
11 during the preceding quarter. The report shall be made within  
12 thirty days after the termination of the quarter. Within thirty  
13 days after the end of the fiscal year, the authority shall make an  
14 annual report containing an itemized statement of its receipts  
15 and disbursements for the preceding year and the annual report  
16 shall be published once a week for two successive weeks in two  
17 newspapers or opposite politics published in Braxton County,  
18 West Virginia, if there are two such papers, or otherwise in any  
19 newspaper of general circulation in the county. The books,  
20 records and accounts of the authority are subject to audit and  
21 examination by the West Virginia State Auditor, acting as the  
22 Chief Inspector and by any other proper public official or body  
23 in the manner provided by law.

**§17. Employees to be covered by workers' compensation.**

1 The authority is an employer subject to the requirements  
2 of chapter twenty-three of the Code of West Virginia.

**§18. Dissolution of authority.**

1 The authority may at any time pay off and discharge in full  
2 all of its indebtedness, obligations and liabilities, convey its  
3 properties, appurtenances and facilities to the Braxton County  
4 Commission and be dissolved. Before making such conveyance  
5 of its properties, the authority shall first publish notice of its  
6 intention so to do and of its intention to be dissolved, once a  
7 week for four successive weeks in two newspapers of opposite  
8 politics published in, and of general circulation in Braxton  
9 County, West Virginia, if there are two such papers, or

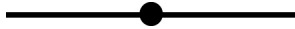
10 otherwise in any newspaper of general circulation in the county.  
11 Certificates from the publishers shall be filed with the Braxton  
12 County Commission on or before the deed conveying the  
13 properties is delivered. Any funds remaining in the hands of the  
14 authority at the time of the conveyance of the properties shall be  
15 paid over to the Braxton County Commission to be used by it  
16 for purposes in connection with the properties. Upon the  
17 payment of its indebtedness, obligations and liabilities, the  
18 publishing of the notices aforesaid, the conveyance of its  
19 properties and the paying over to the Braxton County  
20 Commission of any funds remaining in its hands, the authority  
21 shall cause a certificate showing its dissolution to be executed  
22 under its name and seal and to be recorded in the office of the  
23 clerk of the Braxton County Commission and thereupon its  
24 dissolution shall be complete.

**§19. Construction of act; additional powers of board of education and county commission.**

1 It is the purpose of this act to provide for the acquisition,  
2 construction, improvement, extension, maintenance and  
3 operation of a camp or camps and recreational facilities and  
4 appurtenant facilities in a prudent and economical manner.  
5 This act shall be liberally construed as giving to the authority  
6 full and complete power reasonably required to give effect to  
7 its purposes. The provisions of this act are in addition to and  
8 not in derogation of any power existing in the Braxton  
9 County Board of Education and the Braxton County  
10 Commission under any constitutional or statutory provisions  
11 which they may now have, or may acquire.

**§20. Provisions severable.**

1 The several sections and provisions of this act are  
2 severable, and if any section or provision of this act is held  
3 unconstitutional, all the remaining sections and provisions of  
4 this act shall nevertheless remain valid.



# CHAPTER 205

## **(H. B. 4567 - By Delegates Iaquina, Miley and Fragale)**

[Passed March 8, 2012; in effect from passage.]

[Approved by the Governor on March 20, 2012.]

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.**

#### **§7-22-9. Authorization to levy special district excise tax.**

- 1 (a) *General.* -- County commissions have no inherent
- 2 authority to levy taxes and have only that authority expressly
- 3 granted to them by the Legislature. The Legislature is
- 4 specifically extended, and intends by this article, to exercise
- 5 certain relevant powers expressed in section six-a, article X
- 6 of the Constitution of this state as follows: (1) The
- 7 Legislature may appropriate state funds for use in matching
- 8 or maximizing grants-in-aid for public purposes from the
- 9 United States or any department, bureau, commission or
- 10 agency thereof, or any other source, to any county,
- 11 municipality or other political subdivision of the state, under
- 12 such circumstances and subject to such terms, conditions and
- 13 restrictions as the Legislature may prescribe by law; and (2)

14 the Legislature may impose a state tax or taxes or dedicate a  
15 state tax or taxes or any portion thereof for the benefit of and  
16 use by counties, municipalities or other political subdivisions  
17 of the state for public purposes, the proceeds of any such  
18 imposed or dedicated tax or taxes or portion thereof to be  
19 distributed to such counties, municipalities or other political  
20 subdivisions of the state under such circumstances and  
21 subject to such terms, conditions and restrictions as the  
22 Legislature may prescribe.

23 Because a special district excise tax would have the effect  
24 of diverting, for a specified period of years, tax dollars which  
25 to the extent, if any, are not essentially incremental to tax  
26 dollars currently paid into the General Revenue Fund of the  
27 state, the Legislature finds that in order to substantially  
28 ensure that such special district excise taxes will not  
29 adversely impact the current level of the General Revenue  
30 Fund of the state, it is necessary for the Legislature to  
31 separately consider and act upon each and every economic  
32 development district which is proposed, including the unique  
33 characteristics of location, current condition and activity of  
34 and within the area included in such proposed economic  
35 opportunity development district and that for such reasons a  
36 statute more general in ultimate application is not feasible for  
37 accomplishment of the intention and purpose of the  
38 Legislature in enacting this article. Therefore, no economic  
39 opportunity development district excise tax may be levied by  
40 a county commission until after the Legislature expressly  
41 authorizes the county commission to levy a special district  
42 excise tax on sales of tangible personal property and services  
43 made within district boundaries approved by the Legislature.

44 (b) *Authorizations.* -- The Legislature authorizes the  
45 following county commissions to levy special district excise  
46 taxes on sales of tangible personal property and services  
47 made from business locations in the following economic  
48 opportunity development districts.

49 The Ohio County Commission may levy a special district  
50 excise tax for the benefit of the “Fort Henry” economic  
51 opportunity development project district which comprises  
52 three hundred contiguous acres of land.

53 The Harrison County Commission may levy a special  
54 district excise tax for the benefit of the “Charles Pointe  
55 Economic Opportunity Development District” which  
56 comprises four hundred thirty-seven acres of land.

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## 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  
2 Virginia, will be the primary stop for Boy Scouts riding trains

3 to attend the Bechtel Family Summit Scout Reserve in  
4 Fayette County, and since the railroad station located in  
5 Prince is a vital transportation facility for many residents in  
6 the area, and since the railroad station located in Prince has  
7 potential for passenger inter-modal operations, and since the  
8 railroad station located in Prince is rich in railroad history  
9 and has architectural significance, the Legislature finds that  
10 creating and empowering a statutory corporation to work  
11 with railroad officials to acquire, renovate and maintain the  
12 railroad station building and the appurtenances thereto  
13 located in Prince, West Virginia, would be in the public  
14 interest and would result in a better travel experience for all  
15 persons coming to and leaving southern West Virginia.

**§2. Prince Railroad Station Authority authorized.**

1 The Fayette County Commission and the Raleigh County  
2 commission are hereby authorized to create and establish the  
3 Prince Railroad Station Authority for the purpose of  
4 acquiring, establishing, renovating, constructing, equipping,  
5 improving, financing, maintaining, operating and leasing the  
6 railroad station building and the appurtenances thereto  
7 located in Prince, West Virginia.

**§3. The authority to be a public corporation.**

1 The Prince Railroad Station Authority when created and  
2 established, and the members thereof, shall constitute a public  
3 corporation and as such, shall have perpetual succession, may  
4 contract and be contracted with, sue and be sued, and have  
5 and use a common seal.

**§4. Appointment of board; terms.**

1 (a) The authority shall be governed by a nine-member  
2 board which shall consist of the following members:



3 (1) A member of the Fayette County commission or a  
4 designee;

5 (2) A member of the Raleigh County commission or a  
6 designee;

7 (3) A member of the Southern West Virginia Convention  
8 and Visitors Bureau or a designee;

9 (4) A member of the State Rail Authority or a designee;

10 (5) A member of the Fayette County Chamber of  
11 Commerce or a designee;

12 (6) A member of the Raleigh County Chamber of  
13 Commerce or a designee;

14 (7) The director of the Historic Preservation Section of the  
15 West Virginia Division of Culture and History or a designee;

16 (8) One professional member of the Boy Scouts of  
17 America representing the Bechtel Family Summit Scout  
18 Reserve, appointed by the Fayette County commission; and

19 (9) One citizen member, appointed by the Raleigh County  
20 commission, who has a knowledge of and demonstrates an  
21 interest in passenger railroads and is from southern West  
22 Virginia.

23 (b) The initial appointment terms for the appointed  
24 members of the board shall be staggered. After the initial  
25 terms, the terms for the appointed members of the board shall  
26 be five years and they may be reappointed.

#### **§5. Compensation of board members.**

1 Each member of the board shall serve without  
2 compensation, but each member shall be entitled to  
3 reimbursement by the authority for all reasonable and

4 necessary expenses actually incurred in the performance of  
5 his or her duties as a board member.

**§6. Board; quorum; bylaws.**

1 (a) The board is the governing body of the authority and  
2 the board shall exercise all the powers given to the authority.  
3 The board shall meet at least quarterly and may meet on the  
4 call of the chairperson.

5 (b) A majority of the members of the board constitutes a  
6 quorum and a quorum must be present for the board to  
7 conduct business. Unless the bylaws require a larger number,  
8 action may be taken by majority vote of the members present.

9 (c) The board shall adopt bylaws and rules, as may be  
10 necessary for its operation and management, governing the  
11 manner in which the business of the authority is conducted  
12 and shall develop and approve an annual budget.

**§7. Powers of the authority.**

1 The authority shall have the following powers:

2 (1) To make and adopt all necessary bylaws and rules for  
3 its organization and operations not inconsistent with law;

4 (2) To elect its own officers, to appoint committees and  
5 to employ and fix the compensation for personnel necessary  
6 for its operation;

7 (3) To sue and be sued, implead and be impleaded and  
8 complain and defend in any court;

9 (4) To execute contracts with any person, firm,  
10 corporation or governmental agency;

- 11 (5) To obtain and maintain all necessary insurance;
- 12 (6) To insure that lessees maintain all necessary  
13 insurance;
- 14 (7) To delegate any authority given to it by law to any of  
15 its officers, committees, agents or employees;
- 16 (8) To purchase, acquire, own, hold, sell, convey, lease  
17 and dispose of property;
- 18 (9) To borrow money and execute negotiable notes and  
19 deeds of trust;
- 20 (10) To expend its funds in the execution of its powers;
- 21 (11) To apply for, accept, receive and use loans, grants,  
22 gifts, donations, contributions, technical assistance from any  
23 source;
- 24 (12) To insure that all applicable laws, rules and  
25 regulations are followed; and
- 26 (13) To do any and all things necessary or convenient for  
27 the purpose of acquiring, establishing, renovating,  
28 constructing, equipping, improving, financing, maintaining,  
29 operating and leasing the railroad station building and the  
30 appurtenances thereto located in Prince, West Virginia.

**§8. Exemption from taxation.**

- 1 The property, operations and activities of the authority  
2 are exempt from the payment of any taxes or fees to the state  
3 or any of its political subdivisions.

**§9. Dissolution of authority.**

1           When the railroad station building and the appurtenances  
2 thereto located in Prince, West Virginia, are no longer being  
3 used for the purpose of a railroad station, then the authority  
4 shall perform all its duties set out in the Deed in which it  
5 acquired the railroad station building and the appurtenances  
6 thereto and also all the duties set out in the authority's bylaws  
7 to dispose of the railroad station building and the  
8 appurtenances thereto. At the conclusion of all of its duties,  
9 the authority shall dissolve.

# LEGISLATURE OF WEST VIRGINIA

# ACTS

FIRST EXTRAORDINARY SESSION, 2012

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## CHAPTER 1

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**(S. B. 1002 - By Senators Kessler,  
Mr. President and Hall)  
[By Request of the Executive]**

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[Passed March 16, 2012; in effect from passage.]  
[Approved by the Governor on March 21, 2012.]

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



6 (WV Code Chapter 5)

7 Fund 0105 FY 2012 Org 0100

8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
			1													
			2012 Natural Disasters -													
			Surplus (R). . . . .	135		\$10,000,000										

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
- 2 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  
3 advantage among the states attributable to relatively low-cost  
4 electric power due in considerable measure to an abundance  
5 of coal resources, production from which powers electric  
6 generation in the state.

7           (b) As a consequence, a number of energy intensive  
8 industrial consumers of electric power have located in the  
9 state and have provided jobs for its citizens and an increased  
10 tax base that contributes to the support of schools, other  
11 institutions, and programs that benefit all West Virginians.

12           (c) As the result of competitive disadvantages emanating  
13 from outside the state and the current state of the national  
14 economy, some energy intensive industrial consumers of  
15 electric power have had to cease doing business in the state  
16 or are experiencing or may experience strains that could  
17 threaten their viability and continued operation.

18           (d) Conversely, coal production in the state is relatively  
19 stable and is benefitting from demand from coal purchasers  
20 inside the state, outside the state, and outside the country,  
21 which demand has increasingly benefitted the state in terms  
22 of its coal severance tax revenues.

23           (e) It is in the public interest for the state to assist eligible  
24 energy intensive industrial consumers of electric power  
25 determined to be in need of special rate assistance pursuant  
26 to subsection (g), section one-j, article two, chapter  
27 twenty-four of this code, in order to encourage them to  
28 locate, to remain in operation, or to resume operation, in  
29 West Virginia on a long-term basis, by employing a portion  
30 of the coal severance tax revenues to reduce such industrial

31 consumers' electric power costs without imposing an undue  
32 burden on electric utilities or their other customers.

33 (f) In furtherance of its findings, the Legislature's  
34 purpose in this article is to create a credit, as provided in  
35 section three of this article, against the coal severance tax  
36 imposed and levied under the provisions of subsections (a)  
37 and (b), section three, article thirteen-a of this chapter, of  
38 which the primary ultimate economic beneficiary shall be  
39 eligible energy intensive industrial consumers of electric  
40 power determined to be in need of special rate assistance  
41 pursuant to subsection (g), section one-j, article two, chapter  
42 twenty-four of this code.

### **§11-13CC-3. Amounts of credits; limitations.**

1 (a) Every taxpayer which is a supplier of coal to a West  
2 Virginia electric utility providing a special rate to one or  
3 more eligible energy intensive industrial consumers of  
4 electric power pursuant to subsection (g), section one-j,  
5 article two, chapter twenty-four of this code and which is  
6 subject to paying the tax on the privilege of severing coal  
7 levied and imposed by subsections (a) and (b), section three,  
8 article thirteen-a of this chapter, prior to the application of  
9 any other credits against the tax, shall be entitled to a credit  
10 against that tax in an amount determined by the Public  
11 Service Commission pursuant to subsection (g), section one-j,  
12 article two, chapter twenty-four of this code, subject to the  
13 following limitations:

14 (1) The tax credits authorized by this article shall only be  
15 available when the eligible energy intensive industrial  
16 consumer of electric power receives a special rate from a  
17 West Virginia electric utility pursuant to subsection (g),  
18 section one-j, article two, chapter twenty-four of this code;

19 (2) The total aggregate credits available to all taxpayers  
20 under this section shall not exceed \$20 million in any  
21 calendar year; and

22           (3) The total credits available to any taxpayer in a given  
23 calendar year shall not exceed ninety-three percent of that  
24 taxpayer's tax liability imposed and levied under subsections  
25 (a) and (b), section three, article thirteen-a of this chapter, so  
26 as to preserve undiminished the seven percent of total coal  
27 severance tax revenues that is apportioned among counties  
28 and municipalities pursuant to section six, article thirteen-a  
29 of this chapter.

30           (b) If the full amount of the \$20 million in credits  
31 authorized by this article is not allocated and claimed in any  
32 calendar year, during all periods when a special rate is in  
33 effect for any one or more eligible energy intensive industrial  
34 consumers, the unused credits may be carried forward to  
35 future years: *Provided*, That the maximum aggregate amount  
36 of unused credits that may be carried forward to future years  
37 shall not exceed \$15 million at any time. In no event may the  
38 amount of credits allocated and claimed in any single year,  
39 including unused credits that have been carried forward,  
40 exceed \$35 million.

41           (c) If in any year the taxpayers that are suppliers of coal  
42 to a West Virginia electric utility providing a special rate to  
43 one or more eligible energy intensive industrial consumers of  
44 electric power entitled to receive credits pursuant to this  
45 section cannot or do not claim credits in an amount equal to  
46 the amount of tax credits designated by the commission, then  
47 the affected public utility may allocate the unclaimed tax  
48 credits, with such allocated amounts subject to the approval  
49 of the Public Service Commission, to and the tax credits may  
50 be claimed by any taxpayer that is subject to paying the tax  
51 on the privilege of severing coal levied and imposed by  
52 subsections (a) and (b), section three, article thirteen-a of this  
53 chapter: *Provided*, That taxpayers receiving the reallocation  
54 shall comply with the requirements and procedures set forth  
55 in this article.

56 (d) All unused credits authorized under this article expire  
57 and cease to be usable for tax years beginning on or after  
58 December 31, 2021.

59 (e) The credits authorized in this article shall not become  
60 available for any purpose prior to the Public Service  
61 Commission's first approval of a special rate for an eligible  
62 energy intensive industrial consumer. The credits provided  
63 in this article may be claimed by taxpayers against periodic  
64 installment payments of severance tax paid under the  
65 provisions of section nine, article thirteen-a of this chapter.

**§11-13CC-3a. Applicability to minimum severance tax credit.**

1 Every taxpayer which applies the tax credit allowed  
2 under section three of this article for a tax year shall also be  
3 entitled to apply the tax credit against the minimum coal  
4 severance tax imposed by article twelve-b of this chapter for  
5 the same tax year in an amount up to the amount of the tax  
6 credit applied for the tax year under the provisions of section  
7 three of this article.

**§11-13CC-4. Required payments to public utilities.**

1 (a) Each person claiming any tax credit pursuant to section  
2 three of this article shall, as a condition of receiving that tax  
3 credit, make payment equal to ninety-seven percent of the  
4 amount of that credit to the public utility providing electric  
5 power to the special rate customer whose special rate required  
6 the funding generated by that tax credit, as determined by the  
7 Public Service Commission pursuant to subsection (g), section  
8 one-j, article two, chapter twenty-four of this code. Any  
9 payment made to the public utility providing electric power to  
10 the special rate customer shall be treated in the same manner  
11 as the payment of taxes under section three, article thirteen-a  
12 of the chapter, and shall not be treated as an adjustment to the  
13 price of coal sold to the public utility.

14 (b) Each taxpayer that elects to participate in this tax credit  
15 and required payment program shall notify the State Tax  
16 Department of its election to participate at the time and in such  
17 form of notification as prescribed by the State Tax  
18 Department. Notwithstanding the provisions of section five-d,  
19 article ten of this chapter or any other provision of this code,  
20 the State Tax Department shall provide updated notification to  
21 the Public Service Commission of the identity of taxpayers  
22 from which it has received notification of voluntary  
23 participation, and other information necessary for the efficient  
24 and accurate administration of this article. Notwithstanding  
25 any provision of this code to the contrary, the Public Service  
26 Commission shall disclose to the State Tax Department  
27 information necessary for the efficient and accurate  
28 administration of this article. This information may be  
29 provided to the electric utilities by the Public Service  
30 Commission for purpose of calculating, pursuant to subsection  
31 (g), section one-j, article two, chapter twenty-four of this code,  
32 the allocated share of tax credits that are available to each  
33 taxpayer, and payments that are required to be made to the  
34 public utility in order to qualify for the tax credit. Information  
35 disclosure to electric utilities by the Public Service  
36 Commission is limited to that information necessary for the  
37 calculations. Payment to the public utility shall be made no  
38 later than the time at which the tax against which the credit is  
39 taken would have been due and payable to the state under the  
40 provisions of section nine, article thirteen-a of this chapter.

41 (c) The three percent differential between a taxpayer's tax  
42 credit and its required payment to the public utility is  
43 intended as an inducement to the taxpayer to participate in  
44 the tax credit and required payment mechanism provided in  
45 this article and may be retained by the taxpayer as  
46 compensation for the costs of participation.

#### **§11-13CC-5. Expiration.**

1 The provisions of this article shall be effective for tax  
2 years beginning on or after January 1, 2012. No new tax

3 credits may be created for any tax year beginning on or after  
4 December 31, 2021. All unused tax credits expire and cease  
5 to be useable in tax years beginning on or after December 31,  
6 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.**

1 (a) The Legislature hereby finds that:

2 (1) West Virginia enjoys relatively low cost electric  
3 power rates for residential customers, business and industry  
4 and these relatively low rates constitute a competitive  
5 economic advantage for West Virginia;

6 (2) West Virginia has many energy intensive industrial  
7 consumers of electric power, and has the ability to retain its  
8 existing energy intensive industrial consumers of electric  
9 power and attract additional energy intensive industrial  
10 consumers of electric power in the future, through the  
11 adoption of policies and the establishment of rates that  
12 enhance and preserve the attractiveness of West Virginia as  
13 a place for energy intensive industrial consumers to do  
14 business;

15 (3) Energy intensive industrial consumers of electric  
16 power create jobs, provide a substantial tax base and enhance  
17 the productive capacity, competitiveness and economic  
18 opportunities of West Virginia and all of its citizens;

19 (4) Energy intensive industrial consumers of electric  
20 power help keep power rates low for all consumers of electric

21 power, including residential customers, by providing a large  
22 consumption base over which the cost of producing electric  
23 power may be spread from time to time;

24 (5) It is in the best interests of West Virginia, the citizens  
25 of West Virginia, electric public utilities in West Virginia,  
26 and all consumers of electric power in West Virginia,  
27 including residential customers, to encourage the continued  
28 development, construction, operation, maintenance and  
29 expansion in West Virginia of industrial plants and facilities  
30 which are energy intensive consumers of electric power,  
31 thereby increasing the creation, preservation and retention of  
32 jobs, expanding the tax base, helping keep power rates low  
33 for all consumers of electric power, and enhancing the  
34 productive capacity, competitiveness and economic  
35 opportunities of all citizens of West Virginia;

36 (6) To encourage the continued development,  
37 construction, operation, maintenance and expansion in West  
38 Virginia of industrial plants and facilities which are energy  
39 intensive consumers of electric power, the commission may  
40 establish special rates under this section that in its judgment  
41 are necessary or appropriate for the continued, new or  
42 expanded operation of energy intensive industrial consumers  
43 and that can reasonably be expected to support the long-term  
44 operation of energy intensive industrial consumers, and that  
45 do not impose an unreasonable burden upon electric public  
46 utilities or their other customers; and

47 (7) To assist the commission in the exercise of its  
48 authority to establish special rates under this section, the  
49 Legislature creates in article thirteen-cc, chapter eleven of  
50 this code a tax credit mechanism to provide a source of  
51 funding to support special rates of which the commission  
52 may avail itself in exercising said authority in certain  
53 circumstances.

54 (b) As used in this section:

55 (1) “Energy intensive industrial consumer” means an  
56 industrial facility, plant or enterprise that has a contract demand  
57 of at least fifty thousand kilowatts of electric power at its West  
58 Virginia facilities under normal operating conditions.

59 (2) “Special rate” means a rate set for an energy intensive  
60 industrial consumer pursuant to this section.

61 (c) In addition to any authority of the commission to  
62 allow special rates or contracts under any other provision of  
63 the code or rule, and in addition to all other factors which the  
64 commission may consider in setting rates for consumers of  
65 electric power, including, but not limited to, the  
66 commission’s responsibilities under subsection (b), section  
67 one, article one of this chapter, and notwithstanding any other  
68 provisions of this code to the contrary, in setting a special  
69 rate the commission may take into consideration fluctuations  
70 in market prices for the goods or products produced by the  
71 energy intensive industrial consumer of electric power, or  
72 other variables or factors which may be relevant to or affect  
73 the continuing vitality of the energy intensive industrial  
74 consumer of electric power in dynamic markets. In setting a  
75 special rate by reference to fluctuations in market prices for  
76 the goods and products produced by an energy intensive  
77 industrial consumer of electric power, the commission may  
78 establish variable rates including, but not limited to, ceilings  
79 and floors on the special rate, banking or crediting  
80 mechanisms, caps, limits or other similar types of safeguards  
81 that are intended by the commission, in its reasonable  
82 judgment, to provide appropriate flexibility and predictability  
83 in the special rate over time, to permit the energy intensive  
84 industrial customer the ability to make the capital investments  
85 and other commitments necessary to support the continued  
86 operation of the facility.



87           (d) An energy intensive industrial consumer wishing to  
88   apply for a special rate shall first enter into negotiations with  
89   the utility that provides it with electric power, regarding the  
90   terms and conditions of a mutually agreeable special rate. If  
91   the negotiations result in an agreement between the energy  
92   intensive industrial consumer and the utility, the energy  
93   intensive industrial consumer and the utility shall make a  
94   joint filing with the commission seeking approval of the  
95   proposed special rate. If the negotiations are unsuccessful,  
96   the energy intensive industrial consumer may file a petition  
97   with the commission to consider establishing a special rate.  
98   The commission shall have the authority to establish a special  
99   rate upon the filing of either a joint filing or a petition  
100   pursuant to this section.

101           (e) In order to qualify for a special rate, an energy  
102   intensive industrial consumer shall:

103           (1) Have a contract demand of at least fifty thousand  
104   kilowatts of electric power at its West Virginia facilities  
105   under normal operating conditions;

106           (2) Create or retain at least twenty-five full-time jobs in  
107   West Virginia;

108           (3) Have invested not less than \$500,000 in fixed assets,  
109   including machinery and equipment, in West Virginia;

110           (4) Provide reasonable evidence that due to market  
111   conditions in the industry in which the energy intensive  
112   industrial consumer operates, or other factors bearing on  
113   investment in and operation of the industrial facility or  
114   facilities, without the special rate the operation or continued  
115   operation of the industrial facility or facilities is threatened or  
116   not economically viable under reasonable assumptions and  
117   projections regarding the market and the operation of the  
118   industrial facility or facilities;

119           (5) Provide reasonable evidence that, with the special  
120 rate, the energy intensive industrial consumer intends to  
121 operate the industrial facility or facilities in West Virginia for  
122 an extended period of time, and that the operation or  
123 continued operation of the industrial facility or facilities for  
124 an extended period of time appears economically viable,  
125 under reasonable assumptions and projections regarding the  
126 market in which the energy intensive industrial consumer  
127 operates and regarding the operation of the industrial facility  
128 or facilities; and

129           (6) Provide information and data setting forth how the  
130 energy intensive industrial consumer meets the qualifications  
131 of this section, and how the special rate advances the policy  
132 goals set forth in subsection (a) of this section.

133           (f) The commission shall determine whether any excess  
134 revenue or revenue shortfall created by a special rate  
135 authorized pursuant to this section should be allocated among  
136 any other customers of the utility. In making that  
137 determination, the commission shall consider all relevant  
138 factors, including whether such allocation is just, reasonable,  
139 and fairly balances the interests of other customers, the  
140 utility, and the customer receiving the special rate.

141           (g) If the commission determines that: (1) A special rate  
142 is necessary for the creation, preservation or retention of jobs  
143 by the energy intensive industrial consumer; (2) in  
144 connection with the initial special rate that is authorized by  
145 the commission for an energy intensive industrial consumer,  
146 the energy intensive industrial consumer will increase the  
147 number of persons it employs, including both persons who  
148 have been previously employed by the energy intensive  
149 industrial consumer and persons not previously employed by  
150 the energy intensive industrial consumer, by at least one  
151 hundred fifty persons as a result of the special rate; (3) the  
152 energy intensive industrial consumer will employ no fewer

153 than three hundred persons, which number may include, but  
154 is not limited to, the persons newly hired or rehired pursuant  
155 to the preceding clause in this subsection; (4) the energy  
156 intensive industrial consumer has a contract demand of at  
157 least two hundred fifty thousand kilowatts of electric power  
158 at its West Virginia facilities under normal operating  
159 conditions; and (5) a special rate for an energy intensive  
160 industrial consumer of electric power would create a revenue  
161 shortfall, the commission shall, prior to determining whether  
162 it is reasonable to allocate all or a portion of the revenue  
163 shortfall amount among a public utility's other customers,  
164 first consider the availability of tax credits and payments  
165 required to be made to public utilities pursuant to article  
166 thirteen-cc, chapter eleven of this code to reduce or eliminate  
167 a revenue shortfall. The commission shall identify in each  
168 proceeding in which it establishes a special rate for an  
169 eligible energy intensive industrial consumer the amount of  
170 any unallocated revenue shortfall in need of funding pursuant  
171 to article thirteen-cc, chapter eleven of this code to defray it  
172 and shall project the amount of the gross tax credits needed  
173 for that purpose after taking into consideration the net  
174 amounts of credits that are required to be paid to utilities  
175 pursuant to subsection (a), section four, article thirteen-cc,  
176 chapter eleven of this code and the limits specified in section  
177 three, article thirteen-cc, chapter eleven of this code. Tax  
178 credits authorized under this section may be designated by  
179 the commission only in respect of periods of time during  
180 which the eligible energy intensive industrial consumer  
181 employs at least three hundred persons. The commission's  
182 determination as to the amount of tax credits on which it  
183 relies in establishing a given special rate, shall constitute an  
184 authorization for each supplier of West Virginia coal to the  
185 utility offering that special rate to claim its allocated share of  
186 the total amount of tax credits. The allocated share shall be  
187 calculated by the affected public utility, subject to the  
188 approval of the commission.

189           (h) The commission shall include in the annual report to the  
190   Legislature which it makes pursuant to subsection (d), section  
191   one, article one of this chapter a report on the tax credits being  
192   employed pursuant to article thirteen-cc, chapter eleven of this  
193   code to help fund special rates created under this section.

# LEGISLATURE OF WEST VIRGINIA

# ACTS

FOURTH EXTRAORDINARY SESSION, 2011

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## CHAPTER 1

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**(H. B. 401 - By Mr. Speaker, Mr. Thompson)**  
**[By Request of the Executive]**

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[Passed December 14, 2011; in effect from passage.]

[Approved by the Governor on December 22, 2011.]

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.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new technologies in  
3 horizontal drilling and the production of horizontal wells  
4 defined in article six-a, chapter twenty-two of this code has  
5 created thousands and has the potential to create thousands of  
6 additional drilling, production, construction, manufacturing,  
7 and related jobs in West Virginia and in the Appalachian  
8 Basin;

9 (2) This economic opportunity presents new and exciting  
10 opportunities for jobs for West Virginians;

11 (3) The state needs to take all necessary steps to retain,  
12 educate and train West Virginians to have the skills necessary to  
13 compete for job opportunities resulting from horizontal drilling;  
14 and

15 (4) Specific attention shall be made by the state of West  
16 Virginia to train and educate West Virginia citizens that have  
17 not historically or traditionally been exposed to the oil and  
18 gas industry through training programs offered by community  
19 colleges, technical schools and institutions and small business  
20 owners. Small business owners shall be made aware by the  
21 State of West Virginia of any and all programs and grants  
22 available to assist them in training said individuals.

23 (b) To assist in maximizing the economic opportunities  
24 available with horizontal drilling, the council shall make a  
25 report to the Joint Committee on Government and Finance

26 and the Legislative Oversight Commission on Education  
27 Accountability on or before November 1 of each year  
28 through 2016, detailing a comprehensive review of the direct  
29 and indirect economic impact of employers engaged in the  
30 production of horizontal wells in the State of West Virginia,  
31 as more specifically defined in article six-a, chapter twenty-  
32 two of this code, which shall include:

33 (1) A review of the total number of jobs created;

34 (2) A review of total payroll of all jobs created;

35 (3) The average salary per job type;

36 (4) A review of the number of employees domiciled in the  
37 State of West Virginia;

38 (5) A review of total economic impact;

39 (6) The council's recommendations for the establishment of  
40 an overall workforce investment public education agenda with  
41 goals and benchmarks toward maximizing job creation  
42 opportunities in the State of West Virginia;

43 (7) A review of number of jobs created for minorities based  
44 on race, ethnicity and gender;

45 (8) A review of number of jobs created for individuals re-  
46 employed from the state of West Virginia's unemployment  
47 rosters;

48 (9) A review of number of jobs created for returning veterans;  
49 and

50 (10) A review of number of jobs created for legal West  
51 Virginia residents and non-West Virginia residents.

52 (c) To the extent permitted by federal law, and to the extent  
53 necessary for the council to comply with this section, the council,  
54 Workforce West Virginia, the Division of Labor, and the Office  
55 of the Insurance Commissioner may enter into agreements  
56 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.**

1 As used in this article:

2 (a) “Casing” means a string or strings of pipe commonly  
3 placed in wells drilled for natural gas or petroleum or both;

4 (b) “Cement” means hydraulic cement properly mixed with  
5 water;

6 (c) “Chair” means the chair of the West Virginia shallow  
7 gas well review board as provided for in section four, article  
8 eight, chapter twenty-two-c of this code;

9 (d) “Coal operator” means any person or persons, firm,  
10 partnership, partnership association or corporation that  
11 proposes to or does operate a coal mine;

12 (e) “Coal seam” and “workable coal bed” are  
13 interchangeable terms and mean any seam of coal twenty  
14 inches or more in thickness, unless a seam of less thickness  
15 is being commercially worked, or can in the judgment of the  
16 department foreseeably be commercially worked and will  
17 require protection if wells are drilled through it;

18 (f) “Director” means the Secretary of the Department of  
19 Environmental Protection as established in article one of this

20 chapter or other person to whom the secretary has delegated  
21 authority or duties pursuant to sections six or eight, article  
22 one of this chapter.

23 (g) “Deep well” means any well other than a shallow well  
24 or coalbed methane well, drilled to a formation below the top  
25 of the uppermost member of the “Onondaga Group”;

26 (h) “Expanding cement” means any cement approved by  
27 the office of oil and gas which expands during the hardening  
28 process, including, but not limited to, regular oil field  
29 cements with the proper additives;

30 (i) “Facility” means any facility utilized in the oil and gas  
31 industry in this state and specifically named or referred to in this  
32 article or in article eight or nine of this chapter, other than a well  
33 or well site;

34 (j) “Gas” means all natural gas and all other fluid  
35 hydrocarbons not defined as oil in this section;

36 (k) “Oil” means natural crude oil or petroleum and other  
37 hydrocarbons, regardless of gravity, which are produced at  
38 the well in liquid form by ordinary production methods and  
39 which are not the result of condensation of gas after it leaves  
40 the underground reservoirs;

41 (l) “Owner” when used with reference to any well, shall  
42 include any person or persons, firm, partnership, partnership  
43 association or corporation that owns, manages, operates,  
44 controls or possesses such well as principal, or as lessee or  
45 contractor, employee or agent of such principal;

46 (m) “Owner” when used with reference to any coal seam,  
47 shall include any person or persons who own, lease or  
48 operate such coal seam;

49 (n) "Person" means any natural person, corporation, firm,  
50 partnership, partnership association, venture, receiver,  
51 trustee, executor, administrator, guardian, fiduciary or other  
52 representative of any kind, and includes any government or  
53 any political subdivision or any agency thereof;

54 (o) "Plat" means a map, drawing or print showing the  
55 location of a well or wells as herein defined;

56 (p) "Pollutant" has the same meaning as provided in  
57 section three, article eleven of this chapter;

58 (q) "Review board" means the West Virginia Shallow  
59 Gas Well Review Board as provided for in section four,  
60 article eight, chapter twenty-two-c of this code;

61 (r) "Safe mining through of a well" means the mining of  
62 coal in a workable coal bed up to a well which penetrates  
63 such workable coal bed and through such well so that the  
64 casing or plug in the well bore where the well penetrates the  
65 workable coal bed is severed;

66 (s) "Secretary" means the Secretary of the Department of  
67 Environmental Protection as established in article one of this  
68 chapter or other person to whom the secretary has delegated  
69 authority or duties pursuant to sections six or eight, article  
70 one of this chapter;

71 (t) "Shallow well" means any gas well, other than a  
72 coalbed methane well, drilled no deeper than one hundred  
73 feet below the top of the "Onondaga Group": *Provided*, That  
74 in no event may the "Onondaga Group" formation or any  
75 formation below the "Onondaga Group" be produced,  
76 perforated or stimulated in any manner;

77 (u) "Stimulate" means any action taken by a well operator  
78 to increase the inherent productivity of an oil or gas well,

79 including, but not limited to, fracturing, shooting or  
80 acidizing, but excluding cleaning out, bailing or workover  
81 operations;

82 (v) “Waste” means (i) physical waste, as the term is  
83 generally understood in the oil and gas industry; (ii) the  
84 locating, drilling, equipping, operating or producing of any  
85 oil or gas well in a manner that causes, or tends to cause a  
86 substantial reduction in the quantity of oil or gas ultimately  
87 recoverable from a pool under prudent and proper operations,  
88 or that causes or tends to cause a substantial or unnecessary  
89 or excessive surface loss of oil or gas; or (iii) the drilling of  
90 more deep wells than are reasonably required to recover  
91 efficiently and economically the maximum amount of oil and  
92 gas from a pool; (iv) substantially inefficient, excessive or  
93 improper use, or the substantially unnecessary dissipation of,  
94 reservoir energy, it being understood that nothing in this chapter  
95 authorizes any agency of the state to impose mandatory spacing  
96 of shallow wells except for the provisions of section eight,  
97 article nine, chapter twenty-two-c of this code and the provisions  
98 of article eight, chapter twenty-two-c of this code; (v) inefficient  
99 storing of oil or gas: *Provided*, That storage in accordance with  
100 a certificate of public convenience issued by the Federal Energy  
101 Regulatory Commission is conclusively presumed to be  
102 efficient; and (vi) other underground or surface waste in the  
103 production or storage of oil, gas or condensate, however caused.  
104 Waste does not include gas vented or released from any mine  
105 areas as defined in section two, article one, chapter twenty-two-a  
106 of this code, or from adjacent coal seams which are the subject  
107 of a current permit issued under article two of chapter twenty-  
108 two-a of this code: *Provided, however*, That nothing in this  
109 exclusion is intended to address ownership of the gas;

110 (w) “Waters of this state” has the same meaning as the term  
111 “waters” as provided in section three, article eleven of this  
112 chapter;

113 (x) “Well” means any shaft or hole sunk, drilled, bored or  
114 dug into the earth or into underground strata for the  
115 extraction or injection or placement of any liquid or gas, or  
116 any shaft or hole sunk or used in conjunction with such  
117 extraction or injection or placement. The term “well” does  
118 not include any shaft or hole sunk, drilled, bored or dug into  
119 the earth for the sole purpose of core drilling or pumping or  
120 extracting therefrom potable, fresh or usable water for  
121 household, domestic, industrial, agricultural or public use;

122 (y) “Well work” means the drilling, redrilling, deepening,  
123 stimulating, pressuring by injection of any fluid, converting  
124 from one type of well to another, combining or physically  
125 changing to allow the migration of fluid from one formation  
126 to another or plugging or replugging of any well; and

127 (z) “Well operator” or “operator” means any person or  
128 persons, firm, partnership, partnership association or  
129 corporation that proposes to or does locate, drill, operate or  
130 abandon any well as herein defined.

**§22-6-2. Secretary -- Powers and duties generally; department records open to public; inspectors.**

1 (a) The secretary shall have as his or her duty the  
2 supervision of the execution and enforcement of matters  
3 related to oil and gas set out in this article and in articles six-  
4 a, eight, nine, ten and twenty-one of this chapter.

5 (b) The secretary is authorized to propose rules for  
6 legislative approval in accordance with the provisions of  
7 article three, chapter twenty-nine-a of this code necessary to  
8 effectuate the above stated purposes.

9 (c) The secretary shall have full charge of the oil and gas  
10 matters set out in this article and in articles six-a, eight, nine,  
11 ten and twenty-one of this chapter. In addition to all other

12 powers and duties conferred upon him or her, the secretary  
13 shall have the power and duty to:

14 (1) Supervise and direct the activities of the office of oil  
15 and gas and see that the purposes set forth in subsections (a)  
16 and (b) of this section are carried out;

17 (2) Determine the number of supervising oil and gas  
18 inspectors and oil and gas inspectors needed to carry out the  
19 purposes of this article and articles six-a, eight, nine, ten, and  
20 twenty-one of this chapter and appoint them as such. All  
21 appointees must be qualified civil service employees, but no  
22 person is eligible for appointment until he or she has served  
23 in a probationary status for a period of six months to the  
24 satisfaction of the secretary;

25 (3) Supervise and direct such oil and gas inspectors and  
26 supervising inspectors in the performance of their duties;

27 (4) Make investigations or inspections necessary to  
28 ensure compliance with and to enforce the provisions of this  
29 article and articles six-a, eight, nine, ten, and twenty-one of  
30 this chapter;

31 (5) Prepare report forms to be used by oil and gas  
32 inspectors or the supervising inspector in making their  
33 findings, orders and notices, upon inspections made in  
34 accordance with this article and articles six-a, eight, nine, ten  
35 and twenty-one of this chapter;

36 (6) Employ a hearing officer and such clerks,  
37 stenographers and other employees, as may be necessary to  
38 carry out his or her duties and the purposes of the office of oil  
39 and gas and fix their compensation;

40 (7) Hear and determine applications made by owners,  
41 well operators and coal operators for the annulment or



42 revision of orders made by oil and gas inspectors or the  
43 supervising inspector, and to make inspections, in accordance  
44 with the provisions of this article and articles eight and nine  
45 of this chapter;

46 (8) Cause a properly indexed permanent and public  
47 record to be kept of all inspections made by the secretary or  
48 by oil and gas inspectors or the supervising inspector;

49 (9) Conduct research and studies as the secretary shall  
50 deem necessary to aid in protecting the health and safety of  
51 persons employed within or at potential or existing oil or gas  
52 production fields within this state, to improve drilling and  
53 production methods and to provide for the more efficient  
54 protection and preservation of oil and gas-bearing rock strata  
55 and property used in connection therewith;

56 (10) Collect a permit fee of \$400 for each permit  
57 application filed other than an application for a deep well,  
58 horizontal wells regulated pursuant to article six-a of this  
59 chapter, or a coalbed methane well; and collect a permit fee  
60 of \$650 for each permit application filed for a deep well:  
61 *Provided*, That no permit application fee is required when an  
62 application is submitted solely for the plugging or replugging  
63 of a well, or to modify an existing application for which the  
64 operator previously has submitted a permit fee under this  
65 section. All application fees required hereunder are in lieu of  
66 and not in addition to any fees imposed under article eleven  
67 of this chapter relating to discharges of stormwater but are in  
68 addition to any other fees required by the provisions of this  
69 article: *Provided, however*, That upon a final determination  
70 by the United States Environmental Protection Agency  
71 regarding the scope of the exemption under section 402(1)(2)  
72 of the federal Clean Water Act (33 U.S.C. 1342(1)(2)), which  
73 determination requires a “national pollutant discharge  
74 elimination system” permit for stormwater discharges from  
75 the oil and gas operations described therein, any permit fees

76 for stormwater permits required under article eleven of this  
77 chapter for such operations may not exceed \$100.

78 (11) Perform all other duties which are expressly imposed  
79 upon the secretary by the provisions of this chapter;

80 (12) Perform all duties as the permit issuing authority for  
81 the state in all matters pertaining to the exploration,  
82 development, production, storage and recovery of this state's  
83 oil and gas;

84 (13) Adopt rules with respect to the issuance, denial,  
85 retention, suspension or revocation of permits, authorizations  
86 and requirements of this chapter, which rules shall assure that  
87 the rules, permits and authorizations issued by the secretary  
88 are adequate to satisfy the purposes of this article and articles  
89 six-a, seven, eight, nine, ten and twenty-one of this chapter  
90 particularly with respect to the consolidation of the various  
91 state and federal programs which place permitting  
92 requirements on the exploration, development, production,  
93 storage and recovery of this state's oil and gas; and

94 (14) Perform such acts as may be necessary or  
95 appropriate to secure to this state the benefits of federal  
96 legislation establishing programs relating to the exploration,  
97 development, production, storage and recovery of this state's  
98 oil and gas, which programs are assumable by the state.

99 (d) The secretary shall have authority to visit and inspect  
100 any well or well site and any other oil or gas facility in this  
101 state and may call for the assistance of any oil and gas  
102 inspector or inspectors or supervising inspector whenever  
103 such assistance is necessary in the inspection of any such  
104 well or well site or any other oil or gas facility. Similarly, all  
105 oil and gas inspectors and supervising inspectors shall have  
106 authority to visit and inspect any well or well site and any  
107 other oil or gas facility in this state. Such inspectors shall

108 make all necessary inspections of oil and gas operations  
109 required by this article and articles six-a, eight, nine, ten and  
110 twenty-one of this chapter; administer and enforce all oil and  
111 gas laws and rules; and perform other duties and services as  
112 may be prescribed by the secretary. The inspectors shall note  
113 and describe all violations of this article and articles six-a,  
114 eight, nine, ten or twenty-one of this chapter and promptly  
115 report those violations to the secretary in writing, furnishing  
116 at the same time a copy of the report to the operator  
117 concerned. Any well operator, coal operator operating coal  
118 seams beneath the tract of land, or the coal seam owner or  
119 lessee, if any, if said owner or lessee is not yet operating said  
120 coal seams beneath said tract of land may request the  
121 secretary to have an immediate inspection made. The  
122 operator or owner of every well or well site or any other oil  
123 or gas facility shall cooperate with the secretary, all oil and  
124 gas inspectors and the supervising inspector in making  
125 inspections or obtaining information.

126 (e) Subject to the provisions of article one, chapter  
127 twenty-nine-b of this code, all records of the office shall be  
128 open to the public.

**§22-6-2a. Oil and gas inspectors qualifications and salary.**

1 (a) No person is eligible for appointment as an oil and gas  
2 inspector or supervising inspector unless, at the time of  
3 probationary appointment, the person: (1) is a citizen of  
4 West Virginia, in good health and of good character,  
5 reputation and temperate habits; (2) has had at least two years  
6 actual relevant experience in the oil and gas industry:  
7 *Provided*, That no more than one year of the experience  
8 requirement may be satisfied by any of following: (i) A  
9 bachelor of science degree in science or engineering; (ii) an  
10 associate degree in petroleum technology; or (iii) actual  
11 relevant environmental experience including, without  
12 limitation, experience in wastewater, solid waste or

13 reclamation, each full year of which shall be considered as a  
14 year of actual relevant experience in the oil and gas industry;  
15 and (3) has good theoretical and practical knowledge of oil  
16 and gas drilling and production methods, practices and  
17 techniques, sound safety practices and applicable water and  
18 mining laws.

19 (b) In order to qualify for appointment as an oil and gas  
20 inspector or supervising inspector by the secretary, an  
21 eligible applicant shall submit to a written and oral  
22 examination by the Division of Personnel within the  
23 Department of Administration and shall furnish any evidence  
24 of good health, character and other facts establishing  
25 eligibility required by the Division of Personnel. The Office  
26 of Oil and Gas shall determine the substance of the  
27 examinations administered to candidates for the positions of  
28 oil and gas inspector and supervising oil and gas inspector by  
29 the Division of Personnel. If the Division of Personnel finds  
30 after investigation and examination that an applicant: (1) is  
31 eligible for appointment; and (2) has passed all written and  
32 oral examinations, the division shall add the applicant's name  
33 and grade to the register of qualified eligible candidates and  
34 certify its action to the secretary. No candidate's name may  
35 remain on the register for more than three years without  
36 requalifying.

37 (c) Every supervising oil and gas inspector shall be paid  
38 not less than \$40,000 per year. Every oil and gas inspector  
39 shall be paid not less than \$35,000 per year.

## **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

### **§22-6A-1. Short title.**

1 This article shall be known and cited as the "Horizontal  
2 Well Act".

**§22-6A-2. Legislative findings; declaration of public policy.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing  
3 technologies and drilling practices have created the  
4 opportunity for the efficient development of natural gas  
5 contained in underground shales and other geologic  
6 formations;

7 (2) These practices have resulted in a new type and scale  
8 of natural gas development that utilize horizontal drilling  
9 techniques, allow the development of multiple wells from a  
10 single surface location, and may involve fracturing processes  
11 that use and produce large amounts of water;

12 (3) In some instances these practices may require the  
13 construction of large impoundments or pits for the storage of  
14 water or wastewater;

15 (4) Existing laws and regulations developed for  
16 conventional oil and gas operations do not adequately  
17 address these new technologies and practices;

18 (5) The secretary should have broad authority to  
19 condition the issuance of well work permits when, in the  
20 secretary's discretion, it is necessary to protect the safety of  
21 persons, to prevent inadequate or ineffective erosion and  
22 sediment control plans, to prevent damage to publicly owned  
23 lands or resources, to protect fresh water sources or supplies  
24 or to otherwise protect the environment;

25 (6) Concomitant with the broad powers to condition the  
26 issuance of well work permits, the secretary should also have  
27 broad authority to waive certain minimum requirements of  
28 this article when, in his or her discretion, such waiver is  
29 appropriate: *Provided*, That the secretary shall submit a

30 written report of the number of waivers granted to the  
31 Legislature commencing January 1, 2013, and each year  
32 thereafter;

33 (7) Practices involving reuse of water in the fracturing  
34 and stimulating of horizontal wells should be considered and  
35 encouraged by the department, as appropriate; and

36 (8) Allowing the responsible development of our state's  
37 natural gas resources will enhance the economy of our state  
38 and the quality of life for our citizens while assuring the long  
39 term protection of the environment.

40 (b) The Legislature declares that the establishment of a  
41 new regulatory scheme to address new and advanced natural  
42 gas development technologies and drilling practices is in the  
43 public interest and should be done in a manner that protects  
44 the environment and our economy for current and future  
45 generations.

46 (c) The Legislature declares that in view of the urgent  
47 need for prompt decision of matters submitted to the secretary  
48 under this article, all actions which the secretary or oil and  
49 gas inspectors are required to take under this article shall be  
50 taken as rapidly as practicable, consistent with adequate  
51 consideration of the issues involved.

### **§22-6A-3. Applicability; exceptions.**

1 Notwithstanding any other provision of this code to the  
2 contrary, the provisions of this article shall apply to any  
3 natural gas well, other than a coalbed methane well, drilled  
4 using a horizontal drilling method, and which disturbs three  
5 acres or more of surface, excluding pipelines, gathering lines  
6 and roads, or utilizes more than two hundred ten thousand  
7 gallons of water in any thirty-day period: *Provided*, That this  
8 article does not apply to or affect any well work permitted for

9 a horizontal well or orders issued regarding horizontal wells  
10 or permit applications pending prior to the effective date of  
11 this article: *Provided, further*, That this article shall not apply  
12 to or affect any rights bargained for in any agreement  
13 between a surface owner and operator made prior to the  
14 effective date of this article.

**§22-6A-3a. Karst terrain; rulemaking.**

1 (a) Because drilling horizontal wells in naturally  
2 occurring karst terrain may require precautions not necessary  
3 in other parts of the state, the secretary may require  
4 additional safeguards to protect this geological formation.  
5 When drilling horizontal wells in naturally occurring karst  
6 terrain, such additional safeguards may include changing  
7 proposed well locations to avoid damage to water resources,  
8 special casing programs, and additional or special review of  
9 drilling procedures.

10 (b) In order to carry out the purposes of this section, the  
11 secretary, in consultation with the state geologist, shall  
12 propose emergency and legislative rules in accordance with  
13 the provisions of chapter twenty-nine-a of this code to  
14 establish designated geographic regions of the state where the  
15 provisions of this section are applicable and to establish  
16 standards for drilling horizontal wells in naturally occurring  
17 karst terrain. For horizontal wells drilled into naturally  
18 occurring karst terrain in such designated geographic regions,  
19 the rules shall, at a minimum:

20 (1) Require operators to perform certain predrilling  
21 testing to identify the location of caves and other voids, faults  
22 and relevant features in the strata and the location of surface  
23 features prevalent in naturally occurring karst terrain such as  
24 sink holes; and

25 (2) Provide any other requirements deemed necessary by  
26 the secretary to protect the unique characteristics of naturally

27 occurring karst terrain, which requirements may include  
28 baseline water testing within an established distance from a  
29 drilling site.

30 (c) Nothing in this section allows the department to  
31 prevent drilling in naturally occurring karst terrain.

#### **§22-6A-4. Definitions.**

1 (a) All definitions set forth in article six of this chapter  
2 apply when those defined terms are used in this article, unless  
3 the context in which the term is used clearly requires a  
4 different meaning.

5 (b) Unless the context in which the term used clearly  
6 requires a different meaning, as used in this article:

7 (1) “Best management practices” means schedules of  
8 activities, prohibitions of practices, maintenance procedures  
9 and other management practices established by the  
10 department to prevent or reduce pollution of waters of this  
11 state. For purposes of this article, best management practices  
12 also includes those practices and procedures set out in the  
13 Erosion and Sediment Control Manual of the Office of Oil  
14 and Gas;

15 (2) “Department” means the Department of  
16 Environmental Protection;

17 (3) “Flowback Recycle Pit” means a pit used for the  
18 retention of flowback and freshwater and into which no other  
19 wastes of any kind are placed;

20 (4) “Freshwater Impoundment” means an impoundment  
21 used for the retention of fresh water and into which no wastes  
22 of any kind are placed;



23           (5) “Horizontal drilling” means a method of drilling a  
24 well for the production of natural gas that is intended to  
25 maximize the length of wellbore that is exposed to the  
26 formation and in which the wellbore is initially vertical but  
27 is eventually curved to become horizontal, or nearly  
28 horizontal, to parallel a particular geologic formation;

29           (6) “Horizontal well” means any well site, other than a  
30 coalbed methane well, drilled using a horizontal drilling  
31 method, and which disturbs three acres or more of surface,  
32 excluding pipelines, gathering lines and roads, or utilizes  
33 more than two hundred ten thousand gallons of water in any  
34 thirty-day period;

35           (7) “Impoundment” means a man-made excavation or  
36 diked area for the retention of fluids;

37           (8) “Karst terrain” means a terrain, generally underlain by  
38 limestone or dolomite, in which the topography is formed  
39 chiefly by the dissolving of rock, and which may be  
40 characterized by sinkholes, sinking streams, closed  
41 depressions, subterranean drainage and caves;

42           (9) “Perennial stream” means a stream or portion of a  
43 stream that flows year-round, is considered a permanent  
44 stream and for which base flow is maintained by ground-  
45 water discharge to the streambed due to the ground-water  
46 elevation adjacent to the stream being higher than the  
47 elevation of the streambed;

48           (10) “Pit” means a man-made excavation or diked area  
49 that contains or is intended to contain an accumulation of  
50 process waste fluids, drill cuttings or any other liquid  
51 substance generated in the development of a horizontal well  
52 and which could impact surface or groundwater;

53           (11) “Secretary” means the Secretary of the Department  
54 of Environmental Protection as established in article one of

55 this chapter or other person to whom the secretary has  
56 delegated authority or duties pursuant to sections six or eight,  
57 article one of this chapter; and

58 (12) “Water purveyor” means any person engaged in the  
59 business of selling water to another and who is regulated by  
60 the Bureau for Public Health pursuant to title sixty-four,  
61 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.**

1 (a) To the extent that horizontal wells governed by this  
2 article are similar to conventional oil and gas wells regulated  
3 under article six of this chapter, the following sections of  
4 article six of this chapter are hereby incorporated by  
5 reference in this article:

6 (1) The provisions of section three, article six of this  
7 chapter relating to the findings and orders of inspectors  
8 concerning violations, the determination of reasonable time  
9 for abatement, extensions of time for abatement, special  
10 inspections and notice of findings and orders;

11 (2) The provisions of section four, article six of this  
12 chapter providing for the review of findings and orders by the  
13 secretary, special inspections and applications for annulment  
14 or revision of orders by the secretary;

15 (3) The provisions of section five, article six of this  
16 chapter relating to the requirements for findings, orders and  
17 notices, notice to the operator of findings and orders and  
18 judicial review of final orders of the secretary;

19 (4) The provisions of section seven, article six of this  
20 chapter relating to the issuance of water pollution control

21 permits, the powers and duties of the secretary related thereto  
22 and penalties for violations of the same;

23 (5) The provisions of section eight, article six of this  
24 chapter relating to the prohibition of permits for wells on flat  
25 well royalty leases and requirements for permits;

26 (6) The provisions of section twelve, article six of this  
27 chapter pertaining to plats prerequisite to drilling or  
28 fracturing wells, the preparation and contents thereof, notice  
29 furnished to coal operators, owners or lessees, the issuance of  
30 permits and required performance bonds, with the following  
31 exceptions:

32 (A) Under subsection (a), section twelve, article six of  
33 this chapter, the plat also shall identify all surface tract  
34 boundaries within the scope of the plat proposed to be  
35 crossed by the horizontal lateral of the horizontal well and the  
36 proposed path of such horizontal lateral, and

37 (B) Under subsection (b), section twelve, article six of  
38 this chapter, any reference to a time period shall be thirty  
39 days in lieu of fifteen days;

40 (7) The provisions of section thirteen, article six of this  
41 chapter providing for notice of the operator's intention to  
42 fracture wells, with the exception that under the third  
43 paragraph of section thirteen, article six of this chapter, the  
44 applicable periods shall be thirty days in lieu of fifteen days;

45 (8) The provisions of section fifteen, article six of this  
46 chapter pertaining to objections to proposed deep well  
47 drilling sites above seam or seams of coal, with the exception  
48 that the applicable time for filing objections is within thirty  
49 days of receipt by the secretary of the required plat and/or  
50 notice in lieu of fifteen days;

51           (9) The provisions of section seventeen, article six of this  
52 chapter pertaining to drilling of shallow gas wells, notice to  
53 be provided to the chair of the review board, orders issued by  
54 the review board and permits issued for such drilling, with  
55 the exception that the applicable time for filing objections is  
56 thirty days from the date of receipt by the secretary of the  
57 required plat and notice in lieu of fifteen days;

58           (10) The provisions of section eighteen, article six of this  
59 chapter providing for protective devices for when a well  
60 penetrates one or more workable coal beds and when gas is  
61 found beneath or between workable coal beds;

62           (11) The provisions of section nineteen, article six of this  
63 chapter providing for protective devices during the life of the  
64 well and for dry or abandoned wells;

65           (12) The provisions of section twenty, article six of this  
66 chapter providing for protective devices when a well is  
67 drilled through the horizon of a coalbed from which the coal  
68 has been removed;

69           (13) The provisions of section twenty-one, article six of  
70 this chapter requiring the installation of fresh water casings;

71           (14) The provisions of section twenty-two, article six of  
72 this chapter relating to the filing of a well completion log and  
73 the contents thereof, confidentiality and permitted use and the  
74 secretary's authority to promulgate rules;

75           (15) The provisions of section twenty-seven, article six  
76 of this chapter regarding a cause of action for damages  
77 caused by an explosion;

78           (16) The provisions of section twenty-eight, article six of  
79 this chapter relating to supervision by the secretary over

80 drilling and reclamation operations, the filing of complaints,  
81 hearings on the same and appeals;

82 (17) The provisions of section twenty-nine, article six of  
83 this chapter providing for the Operating Permit and  
84 Processing Fund, the oil and gas reclamation fund and  
85 associated fees, with the exception that in the first paragraph  
86 of subsection (a), section twenty-nine, article six of this  
87 chapter, the fees to be credited to the Oil and Gas Operating  
88 Permit and Processing Fund are the permit fees collected  
89 pursuant to section seven of this article;

90 (18) The provisions of section thirty-one, article six of  
91 this chapter providing for preventing waste of gas, plans of  
92 operation for wasting gas in the process of producing oil and  
93 the secretary's rejection thereof;

94 (19) The provisions of section thirty-two, article six of  
95 this chapter pertaining to the right of an adjacent owner or  
96 operator to prevent waste of gas and the recovery of costs;

97 (20) The provisions of section thirty-three, article six of  
98 this chapter relating to circuit court actions to restrain waste;

99 (21) The provisions of section thirty-six, article six of this  
100 chapter providing for the declaration of oil and gas notice by  
101 owners and lessees of coal seams and setting out the form of  
102 such notice;

103 (22) The provisions of section thirty-nine, article six of  
104 this chapter relating to petitions for injunctive relief; and

105 (23) The provisions of section forty, article six of this  
106 chapter relating to appeals from orders issuing or refusing to  
107 issue a permit to drill or fracture, and the procedure therefore.

108 (b) Notwithstanding any other provision of this code to  
109 the contrary, no provision of article six of this chapter shall

110 apply to horizontal wells subject to this article except as  
111 expressly incorporated by reference in this article. Any  
112 conflict between the provisions of article six and the  
113 provisions of this article shall be resolved in favor of this  
114 article.

**§22-6A-6. Secretary of Department of Environmental  
Protection; powers and duties.**

1 (a) The secretary is vested with jurisdiction over all  
2 aspects of this article, including, but not limited to, the  
3 following powers and duties:

4 (1) All powers and duties conferred upon the secretary  
5 pursuant to article six, chapter twenty-two of this code;

6 (2) To control and exercise regulatory authority over all  
7 gas operations regulated by this article;

8 (3) To utilize any oil and gas inspectors or other  
9 employees of the department in the enforcement of the  
10 provisions of this article;

11 (4) To propose any necessary legislative rules, in  
12 accordance with the provisions of chapter twenty-nine-a of  
13 this code to implement the provisions of this article;

14 (5) To make investigations and inspections necessary to  
15 ensure compliance with the provisions of this article;

16 (b) Except for the duties and obligations conferred by  
17 statute upon the shallow gas well review board pursuant to  
18 article eight, chapter twenty-two-c of this code, the coalbed  
19 methane review board pursuant to article twenty-one of this  
20 chapter, and the oil and gas conservation commission  
21 pursuant to article nine, chapter twenty-two-c of this code,  
22 the secretary has sole and exclusive authority to regulate the

23 permitting, location, spacing, drilling, fracturing, stimulation,  
24 well completion activities, operation, any and all other  
25 drilling and production processes, plugging and reclamation  
26 of oil and gas wells and production operations within the  
27 state.

28 (c) The secretary shall, on a monthly basis, make a  
29 written report to the Governor disclosing, for all well work  
30 permits issued in a particular month, the average number of  
31 days elapsed between the date on which a complete  
32 application for a well work permit was filed and the date on  
33 which such well work permit was issued. This report shall be  
34 posted to the website required to be established and  
35 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.**

1 (a) It is unlawful for any person to commence any well  
2 work, including site preparation work which involves any  
3 disturbance of land, for a horizontal well without first  
4 securing from the secretary a well work permit pursuant to  
5 this article.

6 (b) Every permit application filed under this section shall  
7 be on a form as may be prescribed by the secretary, shall be  
8 verified and shall contain the following information:

9 (1) The names and addresses of (i) the well operator, (ii)  
10 the agent required to be designated under subsection (h) of  
11 this section and (iii) every person whom the applicant shall  
12 notify under any section of this article, together with a  
13 certification and evidence that a copy of the application and

14 all other required documentation has been delivered to all  
15 such persons;

16 (2) The names and addresses of every coal operator  
17 operating coal seams under the tract of land on which the  
18 well is or may be located, and the coal seam owner of record  
19 and lessee of record required to be given notice by  
20 subdivision (6), subsection (a), section five of this article, if  
21 any, if said owner or lessee is not yet operating said coal  
22 seams;

23 (3) The number of the well or such other identification as  
24 the secretary may require;

25 (4) The well work for which a permit is requested;

26 (5) The approximate total depth to which the well is to be  
27 drilled or deepened, or the actual depth if the well has been  
28 drilled; the proposed angle and direction of the well; the  
29 actual depth or the approximate depth at which the well to be  
30 drilled deviates from vertical, the angle and direction of the  
31 nonvertical well bore until the well reaches its total target  
32 depth or its actual final depth and the length and direction of  
33 any actual or proposed horizontal lateral or well bore;

34 (6) Each formation in which the well will be completed  
35 if applicable;

36 (7) A description of any means used to stimulate the well;

37 (8) If the proposed well work will require casing or  
38 tubing to be set, the entire casing program for the well,  
39 including the size of each string of pipe, the starting point and  
40 depth to which each string is to be set and the extent to which  
41 each such string is to be cemented;

42 (9) If the proposed well work is to convert an existing  
43 well, all information required by this section, all formations



44 from which production is anticipated and any plans to plug  
45 any portion of the well;

46 (10) If the proposed well work is to plug or replug the  
47 well, all information necessary to demonstrate compliance  
48 with the legislative rules promulgated by the secretary in  
49 accordance with section thirteen of this article;

50 (11) If the proposed well work is to stimulate a horizontal  
51 well, all information necessary to demonstrate compliance  
52 with the requirements of subdivision (7), subsection (a),  
53 section five of this article;

54 (12) The erosion and sediment control plan required  
55 under subsection (c) of this section for applications for  
56 permits to drill;

57 (13) A well site safety plan to address proper safety  
58 measures to be employed for the protection of persons on the  
59 site as well as the general public. The plan shall encompass all  
60 aspects of the operation, including the actual well work for  
61 which the permit was obtained, completion activities and  
62 production activities, and shall provide an emergency point of  
63 contact for the well operator. The well operator shall provide a  
64 copy of the well site safety plan to the local emergency planning  
65 committee established pursuant to section seven, article five-a,  
66 chapter fifteen of this code, for the emergency planning district  
67 in which the well work will occur at least seven days before  
68 commencement of well work or site preparation work that  
69 involves any disturbance of land;

70 (14) A certification from the operator that (i) it has  
71 provided the owners of the surface described in subdivisions  
72 (1), (2) and (4), subsection (b), section ten of this article, the  
73 information required by subsections (b) and (c), section  
74 sixteen of this article; (ii) that the requirement was deemed  
75 satisfied as a result of giving the surface owner notice of

76 entry to survey pursuant to subsection (a), section ten of this  
77 article; or (iii) the notice requirements of subsection (b),  
78 section sixteen of this article were waived in writing by the  
79 surface owner; and

80 (15) Any other relevant information which the secretary  
81 may reasonably require.

82 (c)(1) An erosion and sediment control plan shall  
83 accompany each application for a well work permit under this  
84 article. The plan shall contain methods of stabilization and  
85 drainage, including a map of the project area indicating the  
86 amount of acreage disturbed. The erosion and sediment  
87 control plan shall meet the minimum requirements of the  
88 West Virginia Erosion and Sediment Control Manual as  
89 adopted and from time to time amended by the department.  
90 The erosion and sediment control plan shall become part of  
91 the terms and conditions of any well work permit that is  
92 issued pursuant to this article and the provisions of the plan  
93 shall be carried out where applicable in the operation. The  
94 erosion and sediment control plan shall set out the proposed  
95 method of reclamation which shall comply with the  
96 requirements of section fourteen of this article.

97 (2) For well sites that disturb three acres or more of  
98 surface, excluding pipelines, gathering lines and roads, the  
99 erosion and sediment control plan submitted in accordance  
100 with this section shall be certified by a registered professional  
101 engineer.

102 (d) For well sites that disturb three acres or more of  
103 surface, excluding pipelines, gathering lines and roads, the  
104 operator shall submit a site construction plan that shall be  
105 certified by a registered professional engineer and contains  
106 information that the secretary may require by rule.

107 (e) In addition to the other requirements of this section,  
108 if the drilling, fracturing or stimulating of the horizontal well

109 requires the use of water obtained by withdrawals from  
110 waters of this state in amounts that exceed two hundred ten  
111 thousand gallons during any thirty day period, the application  
112 for a well work permit shall include a water management  
113 plan, which may be submitted on an individual well basis or  
114 on a watershed basis, and which shall include the following  
115 information:

116 (1) The type of water source, such as surface or  
117 groundwater, the county of each source to be used by the  
118 operation for water withdrawals, and the latitude and  
119 longitude of each anticipated withdrawal location;

120 (2) The anticipated volume of each water withdrawal;

121 (3) The anticipated months when water withdrawals will  
122 be made;

123 (4) The planned management and disposition of  
124 wastewater after completion from fracturing, refracturing,  
125 stimulation and production activities;

126 (5) A listing of the anticipated additives that may be used  
127 in water utilized for fracturing or stimulating the well. Upon  
128 well completion, a listing of the additives that were actually  
129 used in the fracturing or stimulating of the well shall be  
130 submitted as part of the completion log or report required by  
131 subdivision (14), subsection (a), section five of this article;

132 (6) For all surface water withdrawals, a water  
133 management plan that includes the information requested in  
134 subdivisions (1) through (5) of this subsection and the  
135 following:

136 (A) Identification of the current designated and existing  
137 water uses, including any public water intakes within one  
138 mile downstream of the withdrawal location;

139 (B) For surface waters, a demonstration, using methods  
140 acceptable to the secretary, that sufficient in-stream flow will  
141 be available immediately downstream of the point of  
142 withdrawal. A sufficient in-stream flow is maintained when  
143 a pass-by flow that is protective of the identified use of the  
144 stream is preserved immediately downstream of the point of  
145 withdrawal; and

146 (C) Methods to be used for surface water withdrawal to  
147 minimize adverse impact to aquatic life; and

148 (7) This subsection is intended to be consistent with and  
149 does not supersede, revise, repeal or otherwise modify  
150 articles eleven, twelve or twenty-six of this chapter and does  
151 not revise, repeal or otherwise modify the common law  
152 doctrine of riparian rights in West Virginia law.

153 (f) An application may propose and a permit may approve  
154 two or more activities defined as well work, however, a  
155 separate permit shall be obtained for each horizontal well  
156 drilled.

157 (g) The application for a permit under this section shall  
158 be accompanied by the applicable bond as required by  
159 section fifteen of this article, the applicable plat required by  
160 subdivision (6), subsection (a), section five of this article and  
161 a permit fee of \$10,000 for the initial horizontal well drilled  
162 at a location and a permit fee of \$5,000 for each additional  
163 horizontal well drilled on a single well pad at the same  
164 location.

165 (h) The well operator named in the application shall  
166 designate the name and address of an agent for the operator  
167 who is the attorney-in-fact for the operator and who is a  
168 resident of the State of West Virginia upon whom notices,  
169 orders or other communications issued pursuant to this article  
170 or article eleven of this chapter may be served, and upon

171 whom process may be served. Every well operator required  
172 to designate an agent under this section shall, within five  
173 days after the termination of the designation, notify the  
174 secretary of the termination and designate a new agent.

175 (i) The well owner or operator shall install the permit  
176 number as issued by the secretary and a contact telephone  
177 number for the operator in a legible and permanent manner  
178 to the well upon completion of any permitted work. The  
179 dimensions, specifications, and manner of installation shall  
180 be in accordance with the rules of the secretary.

181 (j) The secretary may waive the requirements of this  
182 section and sections eight, ten, eleven and twenty-four of this  
183 article in any emergency situation, if the secretary deems the  
184 action necessary. In such case the secretary may issue an  
185 emergency permit which is effective for not more than thirty  
186 days, unless reissued by the secretary.

187 (k) The secretary shall deny the issuance of a permit if  
188 the secretary determines that the applicant has committed a  
189 substantial violation of a previously issued permit for a  
190 horizontal well, including the applicable erosion and  
191 sediment control plan associated with the previously issued  
192 permit, or a substantial violation of one or more of the rules  
193 promulgated under this article, and in each instance has failed  
194 to abate or seek review of the violation within the time  
195 prescribed by the secretary pursuant to the provisions of  
196 subdivisions (1) and (2), subsection (a), section five of this  
197 article and the rules promulgated hereunder, which time may  
198 not be unreasonable.

199 (l) In the event the secretary finds that a substantial  
200 violation has occurred and that the operator has failed to  
201 abate or seek review of the violation in the time prescribed,  
202 the secretary may suspend the permit on which said violation  
203 exists, after which suspension the operator shall forthwith

204 cease all well work being conducted under the permit.  
205 However, the secretary may reinstate the permit without  
206 further notice, at which time the well work may be continued.  
207 The secretary shall make written findings of any such  
208 suspension and may enforce the same in the circuit courts of  
209 this state. The operator may appeal a suspension pursuant to  
210 the provisions of subdivision (23), subsection (a), section five  
211 of this article. The secretary shall make a written finding of  
212 any such determination.

**§22-6A-8. Review of application; issuance of permit;  
performance standards; copy of permits to  
county assessor.**

1 (a) The secretary shall review each application for a well  
2 work permit and shall determine whether or not a permit is  
3 issued.

4 (b) No permit may be issued less than thirty days after the  
5 filing date of the application for any well work except  
6 plugging or replugging; and no permit for plugging or  
7 replugging may be issued less than five days after the filing  
8 date of the application except a permit for plugging or  
9 replugging a dry hole: *Provided*, That if the applicant  
10 certifies that all persons entitled to notice of the application  
11 under the provisions of subsection (b), section ten of this  
12 article have been served in person or by certified mail, return  
13 receipt requested, with a copy of the well work application,  
14 including the erosion and sediment control plan, if required,  
15 and the well plat, and further files written statements of no  
16 objection by all such persons, the secretary may issue the  
17 well work permit at any time.

18 (c) Prior to the issuance of any permit, the secretary shall  
19 ascertain from the Executive Director of Workforce West  
20 Virginia and the Insurance Commissioner whether the  
21 applicant is in default pursuant to the provisions of section

22 six-c, article two, chapter twenty-one-a of this code, and in  
23 compliance with section five, article two, chapter twenty-  
24 three of this code, with regard to any required subscription to  
25 the Unemployment Compensation Fund or mandatory  
26 Workers' Compensation insurance, the payment of premiums  
27 and other charges to the fund, the timely filing of payroll  
28 reports and the maintenance of adequate deposits. If the  
29 applicant is delinquent or defaulted, or has been terminated  
30 by the executive director or the Insurance Commissioner, the  
31 permit may not be issued until the applicant returns to  
32 compliance or is restored by the executive director or the  
33 Insurance Commissioner under a reinstatement agreement:  
34 *Provided*, That in all inquiries the Executive Director of  
35 Workforce West Virginia and the Insurance Commissioner  
36 shall make response to the Department of Environmental  
37 Protection within fifteen calendar days; otherwise, failure to  
38 respond timely is considered to indicate the applicant is in  
39 compliance and the failure will not be used to preclude  
40 issuance of the permit.

41 (d) The secretary may cause such inspections to be made  
42 of the proposed well work location as necessary to assure  
43 adequate review of the application. The permit may not be  
44 issued, or may be conditioned including conditions with  
45 respect to the location of the well and access roads prior to  
46 issuance if the director determines that:

47 (1) The proposed well work will constitute a hazard to  
48 the safety of persons;

49 (2) The plan for soil erosion and sediment control is not  
50 adequate or effective;

51 (3) Damage would occur to publicly owned lands or  
52 resources; or

53 (4) The proposed well work fails to protect fresh water  
54 sources or supplies.

55 (e) In addition to the considerations set forth in  
56 subsection (d) of this section, in determining whether a  
57 permit should be issued, issued with conditions, or denied,  
58 the secretary shall determine that:

59 (1) The well location restrictions of section twelve of this  
60 article have been satisfied, unless the requirements have been  
61 waived by written consent of the surface owner or the  
62 secretary has granted a variance to the restrictions, each in  
63 accordance with section twelve of this article;

64 (2) The water management plan submitted to the  
65 secretary, if required by subdivision (e), section seven of this  
66 article, has been received and approved.

67 (f) The secretary shall promptly review all written  
68 comments filed by persons entitled to notice pursuant to  
69 subsection (b), section ten of this article. If after review of  
70 the application and all written comments received from  
71 persons entitled to notice pursuant to subsection (b), section  
72 ten of this article, the application for a well work permit is  
73 approved, and no timely objection has been filed with the  
74 secretary by the coal operator operating coal seams beneath  
75 the tract of land, or the coal seam owner or lessee, if any, if  
76 said owner or lessee is not yet operating said coal seams, or  
77 made by the secretary under the provisions of section ten and  
78 eleven of this article, the permit shall be issued, with  
79 conditions, if any. This section does not supersede the  
80 provisions of section seven or subdivisions (6) through (9),  
81 subsection (a), section five of this article.

82 (g) Each permit issued by the secretary pursuant to this  
83 article shall require the operator at a minimum to:

84 (1) Plug all wells in accordance with the requirements of  
85 this article and the rules promulgated pursuant thereto when  
86 the wells become abandoned;



87           (2) With respect to disposal of cuttings at the well site, all  
88 drill cuttings and associated drilling mud generated from  
89 horizontal well sites shall be disposed of in an approved solid  
90 waste facility, or if the surface owner consents, the drill  
91 cuttings and associated drilling mud may be managed on-site  
92 in a manner approved by the secretary;

93           (3) Grade, terrace and plant, seed or sod the area  
94 disturbed that is not required in production of the horizontal  
95 well where necessary to bind the soil and prevent substantial  
96 erosion and sedimentation;

97           (4) Take action in accordance with industry standards to  
98 minimize fire hazards and other conditions which constitute  
99 a hazard to health and safety of the public;

100           (5) Protect the quantity and the quality of water in surface  
101 and groundwater systems both during and after drilling  
102 operations and during reclamation by: (A) Withdrawing  
103 water from surface waters of the state by methods deemed  
104 appropriate by the secretary, so as to maintain sufficient in-  
105 stream flow immediately downstream of the withdrawal  
106 location. In no case shall an operator withdraw water from  
107 ground or surface waters at volumes beyond which the waters  
108 can sustain; (B) Casing, sealing or otherwise managing wells  
109 to keep returned fluids from entering ground and surface  
110 waters; (C) Conducting oil and gas operations so as to  
111 prevent, to the extent possible using the best management  
112 practices, additional contributions of suspended or dissolved  
113 solids to streamflow or runoff outside the permit area, but in  
114 no event shall the contributions be in excess of requirements  
115 set by applicable state or federal law; and (D) Registering all  
116 water supply wells drilled and operated by the operator with  
117 the Office of Oil and Gas. All drinking water wells within  
118 one thousand five hundred feet of a water supply well shall  
119 be flow and quality tested by the operator upon request of the  
120 drinking well owner prior to operating the water supply well.

121 The secretary shall propose legislative rules to identify  
122 appropriate methods for testing water flow and quality.

123 (6) In addition to the other requirements of this  
124 subsection, an operator proposing to drill any horizontal well  
125 requiring the withdrawal of more than two hundred ten  
126 thousand gallons in a thirty-day period shall have the  
127 following requirements added to its permit:

128 (A) Identification of water withdrawal locations. Within  
129 forty-eight hours prior to the withdrawal of water, the  
130 operator shall identify to the department the location of  
131 withdrawal by latitude and longitude and verify that  
132 sufficient flow exists to protect designated uses of the stream.  
133 The operator shall use methods deemed appropriate by the  
134 secretary to determine if sufficient flow exists to protect  
135 designated uses of the stream.

136 (B) Signage for water withdrawal locations. All water  
137 withdrawal locations and facilities identified in the water  
138 management plan shall be identified with a sign that  
139 identifies that the location is a water withdrawal point, the  
140 name and telephone number of the operator and the permit  
141 numbers(s) for which the water withdrawn will be utilized.

142 (C) Recordkeeping and reporting. For all water used for  
143 hydraulic fracturing of horizontal wells and for flowback  
144 water from hydraulic fracturing activities and produced water  
145 from production activities from horizontal wells, an operator  
146 shall comply with the following record keeping and reporting  
147 requirements:

148 (i) For production activities, the following information  
149 shall be recorded and retained by the well operator:

150 (I) The quantity of flowback water from hydraulic  
151 fracturing the well;

- 152           (II) The quantity of produced water from the well; and
- 153           (III) The method of management or disposal of the  
154 flowback and produced water.
- 155           (ii) For transportation activities, the following  
156 information shall be recorded and maintained by the operator:
- 157           (I) The quantity of water transported;
- 158           (II) The collection and delivery or disposal locations of water;  
159 and
- 160           (III) The name of the water hauling company.
- 161           (iii) The information maintained pursuant to this  
162 subdivision shall be available for inspection by the  
163 department along with other required permits and records and  
164 maintained for three years after the water withdrawal activity.
- 165           (iv) This subdivision is intended to be consistent with and  
166 does not supersede, revise, repeal or otherwise modify  
167 articles eleven, twelve or twenty-six of this chapter and does  
168 not revise, repeal or otherwise modify the common law  
169 doctrine of riparian rights in West Virginia law.
- 170           (h) The secretary shall mail a copy of the permit as issued  
171 or a copy of the order denying a permit to any person entitled  
172 to submit written comments pursuant to subsection (a),  
173 section eleven of this article and who requested a copy.
- 174           (i) Upon the issuance of any permit pursuant to the  
175 provisions of this article, the secretary shall transmit a copy  
176 of the permit to the office of the assessor for the county in  
177 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.**

1           (a) The Legislature finds that large impoundments and  
2 pits (i.e. impoundments or pits with a capacity of two  
3 hundred ten thousand gallons or more) not associated with a  
4 specific well work permit must be properly regulated and  
5 controlled. It is the intent of the Legislature by this section  
6 to provide for the regulation and supervision of large  
7 impoundments or pits not associated with a well work permit.  
8 This section does not apply to large pits or impoundments  
9 authorized under a well work permit.

10           (b) It is unlawful for any person to place, construct,  
11 enlarge, alter, repair, remove or abandon any freshwater  
12 impoundment or pit with capacity of two hundred ten  
13 thousand gallons or more used in association with any  
14 horizontal well operation until he or she has first secured  
15 from the secretary a certificate of approval for the same:  
16 *Provided*, That routine repairs that do not affect the safety of  
17 the impoundment are not subject to the application and  
18 approval requirements. A separate application for a certificate  
19 of approval shall be submitted by a person for each  
20 impoundment he or she desires to place, construct, enlarge,  
21 alter, repair, remove or abandon, but one application may be  
22 valid for more than one impoundment that supports one or  
23 more well pads.

24           (c) The application fee for placement, construction,  
25 enlargement, alteration, repair or removal of an impoundment  
26 pursuant to this section is \$300, and the fee shall accompany  
27 the application for certificate of approval. Operators holding  
28 certificates of approval shall be assessed an annual

29 registration fee of \$100, which is valid for more than one  
30 impoundment that supports one or more well pads.

31 (d) Any certificate of approval required by this section  
32 shall be issued or denied no later than sixty days from the  
33 submission of an application containing the information  
34 required by this section. However, if the application for a  
35 certificate of approval is submitted with the application for a  
36 horizontal well permit, the certificate shall be issued or  
37 denied no later than thirty days from the submission of the  
38 permit application.

39 (e) The initial term of a certificate of approval issued  
40 pursuant to this section is one year. Existing certificates of  
41 approval shall be extended for one year upon receipt of the  
42 annual registration fee, an inspection report, a monitoring and  
43 emergency action plan, and a maintenance plan: *Provided,*  
44 That where an approved, up-to-date inspection report,  
45 monitoring and emergency action plan, and maintenance plan  
46 are on file with the department, and where no outstanding  
47 violation of the requirements of the certificate of approval or  
48 any plan submitted pursuant to this article related to the  
49 impoundment exist, then the certificate of approval shall be  
50 extended without resubmission of the foregoing documents  
51 upon receipt of the annual registration fee.

52 (f) Every application for a certificate of approval shall be  
53 made in writing on a form prescribed by the secretary and  
54 shall be signed and verified by the applicant. The application  
55 shall include a monitoring and emergency action plan and a  
56 maintenance plan, the required contents of which shall be  
57 established by the secretary by legislative rule. The  
58 application shall contain and provide information that may  
59 reasonably be required by the secretary to administer the  
60 provisions of this article.

61 (g) Plans and specifications for the placement,  
62 construction, erosion and sediment control, enlargement,

63 alteration, repair or removal and reclamation of  
64 impoundments shall be the charge of a registered professional  
65 engineer licensed to practice in West Virginia. Any plans or  
66 specifications submitted to the department shall bear the seal  
67 of a registered professional engineer.

68 (h) Each certificate of approval issued by the secretary  
69 pursuant to the provisions of this article may contain other  
70 terms and conditions the secretary prescribes.

71 (i) The secretary may revoke or suspend any certificate  
72 of approval whenever the secretary determines that the  
73 impoundment for which the certificate was issued constitutes  
74 an imminent danger to human life or property. If necessary to  
75 safeguard human life or property, the secretary may also  
76 amend the terms and conditions of any certificate by issuing  
77 a new certificate containing the revised terms and conditions.

78 (1) Before any certificate of approval is amended,  
79 suspended or revoked by the secretary without the consent of  
80 the operator holding the certificate, the secretary shall hold a  
81 hearing in accordance with the provisions of article five,  
82 chapter twenty-nine-a of this code.

83 (2) Any person adversely affected by an order entered  
84 following this hearing has the right to appeal to the  
85 Environmental Quality Board pursuant to the provisions of  
86 article one, chapter twenty-two-b of this code.

87 (j) Upon expiration of the certificate of approval, the  
88 operator shall within six months, or upon its revocation by the  
89 secretary, the operator shall within sixty days, fill all  
90 impoundments that are not required or allowed by state or  
91 federal law or rule or agreement between the operator and the  
92 surface owner allowing the impoundment to remain open for  
93 the use and benefit of the surface owner and reclaim the site in  
94 accordance with the approved erosion and sediment control  
95 plan.

96 (k) This section does not apply to:

97 (1) Farm ponds constructed by the operator with the  
98 written consent of the surface owner, which will be used after  
99 completion of the drilling activity primarily for agricultural  
100 purposes, including without limitation livestock watering,  
101 irrigation, retention of animal wastes and fish culture. Any  
102 impoundment that is intended to be left permanent as a farm  
103 pond under this subdivision shall meet the requirements set  
104 forth by the United States Department of Agriculture's  
105 Natural Resources Conservation Service "Conservation  
106 Practice Standard - Ponds" (Code 378).

107 (2) Farm ponds subject to certificates of approval under  
108 article fourteen of this chapter.

109 (l) The secretary is authorized to propose rules for  
110 legislative approval in accordance with the provisions of  
111 article three, chapter twenty-nine-a of this code, necessary to  
112 effectuate the provisions of this section.

#### **§22-6A-10. Notice to property owners.**

1 (a) Prior to filing a permit application, the operator shall  
2 provide notice of planned entry on to the surface tract to conduct  
3 any plat surveys required pursuant to this article. Such notice  
4 shall be provided at least seven days but no more than forty-five  
5 days prior to such entry to: (1) The surface owner of such tract;  
6 (2) to any owner or lessee of coal seams beneath such tract that  
7 has filed a declaration pursuant to section thirty-six, article six,  
8 chapter twenty-two of this code; and (3) any owner of minerals  
9 underlying such tract in the county tax records. The notice shall  
10 include a statement that copies of the state Erosion and Sediment  
11 Control Manual and the statutes and rules related to oil and gas  
12 exploration and production may be obtained from the Secretary,  
13 which statement shall include contact information, including the  
14 address for a web page on the Secretary's website, to enable the  
15 surface owner to obtain copies from the secretary.

16           (b) No later than the filing date of the application, the  
17 applicant for a permit for any well work or for a certificate of  
18 approval for the construction of an impoundment or pit as  
19 required by this article shall deliver, by personal service or by  
20 registered mail or by any method of delivery that requires a  
21 receipt or signature confirmation, copies of the application,  
22 the erosion and sediment control plan required by section  
23 seven of this article, and the well plat to each of the following  
24 persons:

25           (1) The owners of record of the surface of the tract on  
26 which the well is or is proposed to be located;

27           (2) The owners of record of the surface tract or tracts  
28 overlying the oil and gas leasehold being developed by the  
29 proposed well work, if the surface tract is to be used for roads  
30 or other land disturbance as described in the erosion and  
31 sediment control plan submitted pursuant to subsection (c),  
32 section seven of this article;

33           (3) The coal owner, operator or lessee, in the event the  
34 tract of land on which the well proposed to be drilled is  
35 located is known to be underlain by one or more coal seams;

36           (4) The owners of record of the surface tract or tracts  
37 overlying the oil and gas leasehold being developed by the  
38 proposed well work, if the surface tract is to be used for the  
39 placement, construction, enlargement, alteration, repair,  
40 removal or abandonment of any impoundment or pit as  
41 described in section nine of this article;

42           (5) Any surface owner or water purveyor who is known  
43 to the applicant to have a water well, spring or water supply  
44 source located within one thousand five hundred feet of the  
45 center of the well pad which is used to provide water for  
46 consumption by humans or domestic animals; and



47           (6) The operator of any natural gas storage field within  
48           which the proposed well work activity is to take place.

49           (c)(1) If more than three tenants in common or other co-  
50           owners of interests described in subsection (b) of this section  
51           hold interests in the lands, the applicant may serve the  
52           documents required upon the person described in the records  
53           of the sheriff required to be maintained pursuant to section  
54           eight, article one, chapter eleven-a of this code.

55           (2) Notwithstanding any provision of this article to the  
56           contrary, notice to a lien holder is not notice to a landowner,  
57           unless the lien holder is the landowner.

58           (d) With respect to surface landowners identified in  
59           subsection (b) or water purveyors identified in subdivision  
60           (5), subsection (b) of this section, notification shall be made  
61           on forms and in a manner prescribed by the secretary  
62           sufficient to identify, for those persons, the rights afforded  
63           them under sections eleven and twelve of this article, and the  
64           opportunity for testing their water well.

65           (e) Prior to filing an application for a permit for a  
66           horizontal well under this article, the applicant shall publish  
67           in the county in which the well is located or is proposed to  
68           be located a Class II legal advertisement as described in  
69           section two, article three, chapter fifty-nine of this code,  
70           containing notice of the public website required to be  
71           established and maintained pursuant to section twenty-one  
72           of this article and language indicating the ability of the  
73           public to submit written comments on the proposed permit,  
74           with the first publication date being at least ten days prior  
75           to the filing of the permit application. The secretary shall  
76           consider, in the same manner required by subsection (f),  
77           section eight of this article and subdivision one, subsection  
78           (c), section eleven of this article, written comments

79 submitted in response to the legal advertisement received by  
80 the secretary within thirty days following the last required  
81 publication date: *Provided*, That such parties submitting  
82 written comments pursuant to this subsection are not  
83 entitled to participate in the processes and proceedings that  
84 exist under sections fifteen, seventeen or forty, article six of  
85 this chapter, as applicable and incorporated into this article  
86 by section five of this article.

87 (f) Materials served upon persons described in subsection  
88 (b) of this section shall contain a statement of the time limits  
89 for filing written comments, who may file written comments,  
90 the name and address of the secretary for the purpose of  
91 filing the comments and obtaining additional information,  
92 and a statement that the persons may request, at the time of  
93 submitting written comments, notice of the permit decision  
94 and a list of persons qualified to test water.

95 (g) Any person entitled to submit written comments to the  
96 secretary pursuant to subsection (a), section eleven of this  
97 article, shall also be entitled to receive from the secretary a  
98 copy of the permit as issued or a copy of the order modifying  
99 or denying the permit if the person requests receipt of them  
100 as a part of the written comments submitted concerning the  
101 permit application.

102 (h) The surface owners described in subdivisions (1), (2)  
103 and (4), subsection (b) of this section, and the coal owner,  
104 operator or lessee described in subdivision (3) of that  
105 subsection is also entitled to receive notice within seven days  
106 but no less than two days before commencement that well  
107 work or site preparation work that involves any disturbance  
108 of land is expected to commence.

109 (i) Persons entitled to notice pursuant to subsection (b) of  
110 this section may contact the department to ascertain the

111 names and locations of water testing laboratories in the  
112 subject area capable and qualified to test water supplies in  
113 accordance with standard accepted methods. In compiling  
114 that list of names the department shall consult with the state  
115 Bureau for Public Health and local health departments.

116 (j) (1) Prior to conducting any seismic activity for seismic  
117 exploration for natural gas to be extracted using horizontal  
118 drilling methods, the company or person performing the  
119 activity shall provide notice to Miss Utility of West Virginia  
120 Inc. and to all surface owners, coal owners and lessees, and  
121 natural gas storage field operators on whose property blasting,  
122 percussion or other seismic-related activities will occur.

123 (2) The notice shall be provided at least three days prior  
124 to commencement of the seismic activity.

125 (3) The notice shall also include a reclamation plan in  
126 accordance with the erosion and sediment control manual that  
127 provides for the reclamation of any areas disturbed as a result  
128 of the seismic activity, including filling of shotholes used for  
129 blasting.

130 (4) Nothing in this subsection decides questions as to  
131 whether seismic activity may be secured by mineral owners,  
132 surface owners or other ownership interests.

#### **§22-6A-10a. Method of Delivery of Notice.**

1 Notwithstanding any provision of this article to the  
2 contrary, all notices required by this article shall be delivered  
3 by the method set forth in subsection (b), section ten of this  
4 article, which notice shall provide that further information  
5 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.**

1           (a) All persons described in subsection (b), section ten of  
2 this article may file written comments with the secretary as to  
3 the location or construction of the applicant's proposed well  
4 work within thirty days after the application is filed with the  
5 secretary.

6           (b) The applicant shall tender proof of and certify to the  
7 secretary that the notice requirements of section ten of this  
8 article have been completed by the applicant. The  
9 certification of notice to the person may be made by affidavit  
10 of personal service, the return receipt card or other postal  
11 receipt for certified mailing.

12           (c) (1) The secretary shall promptly review all written  
13 comments filed by the persons entitled to notice under  
14 subsection (b), section ten of this article. The secretary shall  
15 notify the applicant of the character of the written comments  
16 submitted no later than fifteen days after the close of the  
17 comment period.

18           (2) Any objections of the affected coal operators and coal  
19 seam owners and lessees shall be addressed through the  
20 processes and procedures that exist under sections fifteen,  
21 seventeen and forty, article six of this chapter, as applicable  
22 and as incorporated into this article by section five of this  
23 article. The written comments filed by the parties entitled to  
24 notice under subdivisions (1), (2), (4), (5) and (6), subsection  
25 (b), section ten of this article shall be considered by the  
26 secretary in the permit issuance process, but the parties are  
27 not entitled to participate in the processes and proceedings  
28 that exist under sections fifteen, seventeen or forty, article six  
29 of this chapter, as applicable and as incorporated into this  
30 article by section five of this article.

31           (3) The secretary shall retain all applications, plats and  
32 other documents filed with the secretary, any proposed  
33 revisions thereto, all notices given and proof of service  
34 thereof and all orders issued and all permits issued. Subject  
35 to the provisions of article one, chapter twenty-nine-b of this  
36 code, the record prepared by the secretary is open to  
37 inspection by the public.

**§22-6A-12. Well location restrictions.**

1           (a) Wells may not be drilled within two hundred fifty feet  
2 measured horizontally from any existing water well or  
3 developed spring used for human or domestic animal  
4 consumption. The center of well pads may not be located  
5 within six hundred twenty-five feet of an occupied dwelling  
6 structure, or a building two thousand five hundred square feet  
7 or larger used to house or shelter dairy cattle or poultry  
8 husbandry. This limitation is applicable to those wells,  
9 developed springs, dwellings or agricultural buildings that  
10 existed on the date a notice to the surface owner of planned  
11 entry for surveying or staking as provided in section ten of  
12 this article or a notice of intent to drill a horizontal well as  
13 provided in subsection (b), section sixteen of this article was  
14 provided, whichever occurs first, and to any dwelling under  
15 construction prior to that date. This limitation may be waived  
16 by written consent of the surface owner transmitted to the  
17 department and recorded in the real property records  
18 maintained by the clerk of the county commission for the  
19 county in which such property is located. Furthermore, the  
20 well operator may be granted a variance by the secretary  
21 from these distance restrictions upon submission of a plan  
22 which identifies the sufficient measures, facilities or practices  
23 to be employed during well site construction, drilling and  
24 operations. The variance, if granted, shall include terms and  
25 conditions the department requires to ensure the safety and  
26 protection of affected persons and property. The terms and  
27 conditions may include insurance, bonding and  
28 indemnification, as well as technical requirements.

29           (b) No well pad may be prepared or well drilled within  
30 one hundred feet measured horizontally from any perennial  
31 stream, natural or artificial lake, pond or reservoir, or a  
32 wetland, or within three hundred feet of a naturally  
33 reproducing trout stream. No wellpad may be located within  
34 one thousand feet of a surface or ground water intake of a  
35 public water supply. The distance from the public water  
36 supply as identified by the department shall be measured as  
37 follows:

38           (1) For a surface water intake on a lake or reservoir, the  
39 distance shall be measured from the boundary of the lake or  
40 reservoir.

41           (2) For a surface water intake on a flowing stream, the  
42 distance shall be measured from a semicircular radius  
43 extending upstream of the surface water intake.

44           (3) For a groundwater source, the distance shall be  
45 measured from the wellhead or spring. The department may,  
46 in its discretion, waive these distance restrictions upon  
47 submission of a plan identifying sufficient measures, facilities  
48 or practices to be employed during well site construction,  
49 drilling and operations to protect the waters of the state. A  
50 waiver, if granted, shall impose any permit conditions as the  
51 secretary considers necessary.

52           (c) Notwithstanding the foregoing provisions of this  
53 section, nothing contained in this section prevents an operator  
54 from conducting the activities permitted or authorized by a  
55 Clean Water Act Section 404 permit or other approval from  
56 the United States Army Corps of Engineers within any waters  
57 of the state or within the restricted areas referenced in this  
58 section.

59           (d) The well location restrictions set forth in this section  
60 shall not apply to any well on a multiple well pad if at least

61 one of the wells was permitted or has an application pending  
62 prior to the effective date of this article.

63 (e) The secretary shall, by December 31, 2012, report to  
64 the Legislature on the noise, light, dust and volatile organic  
65 compounds generated by the drilling of horizontal wells as  
66 they relate to the well location restrictions regarding occupied  
67 dwelling structures pursuant to this section. Upon a finding,  
68 if any, by the secretary that the well location restrictions  
69 regarding occupied dwelling structures are inadequate or  
70 otherwise require alteration to address the items examined in  
71 the study required by this subsection, the secretary shall have  
72 the authority to propose for promulgation legislative rules  
73 establishing guidelines and procedures regarding reasonable  
74 levels of noise, light, dust and volatile organic compounds  
75 relating to drilling horizontal wells, including reasonable  
76 means of mitigating such factors, if necessary.

#### **§22-6A-13. Plugging of horizontal wells.**

1 The secretary shall propose legislative rules for  
2 promulgation to govern the procedures for plugging  
3 horizontal wells, including rules relating to the methods of  
4 plugging the wells and the notices required to be provided in  
5 connection with plugging the wells.

#### **§22-6A-14. Reclamation requirements.**

1 (a) The operator of a horizontal well shall reclaim the  
2 land surface within the area disturbed in siting, drilling,  
3 completing or producing the well in accordance with the  
4 following requirements:

5 (1) Except as provided elsewhere in this article, within  
6 six months after a horizontal well is drilled and completed on  
7 a well pad designed for a single horizontal well, the operator  
8 shall fill all the pits and impoundments that are not required

9 or allowed by state or federal law or rule or agreement  
10 between the operator and the surface owner that allows the  
11 impoundment to remain open for the use and benefit of the  
12 surface owner (i.e. a farm pond as described in section nine  
13 of this article) and remove all concrete bases, drilling  
14 supplies and drilling equipment: *Provided*, That  
15 impoundments or pits for which certificates have been  
16 approved pursuant to section nine of this article shall be  
17 reclaimed at a time and in a manner as provided in the  
18 applicable certificate and section nine. Within that six-month  
19 period, the operator shall grade or terrace and plant, seed or  
20 sod the area disturbed that is not required in production of the  
21 horizontal well in accordance with the erosion and sediment  
22 control plan. No pit may be used for the ultimate disposal of  
23 salt water. Salt water and oil shall be periodically drained or  
24 removed and properly disposed of from any pit that is  
25 retained so the pit is kept reasonably free of salt water and  
26 oil. Pits may not be left open permanently.

27 (2) For well pads designed to contain multiple horizontal  
28 wells, partial reclamation shall begin upon completion of the  
29 construction of the well pad. For purposes of this section, the  
30 term partial reclamation means grading or terracing and  
31 planting, or seeding the area disturbed that is not required in  
32 drilling, completing or producing any of the horizontal wells  
33 on the well pad in accordance with the erosion and sediment  
34 control plan. This partial reclamation satisfies the reclamation  
35 requirements of this section for a maximum of twenty-four  
36 months between the drilling of horizontal wells on a well pad  
37 designed to contain multiple horizontal wells: *Provided*,  
38 That the maximum aggregate period in which partial  
39 reclamation satisfies the reclamation requirements of this  
40 section is five years from completion of the construction of  
41 the well pad. Within six months after the completion of the  
42 final horizontal well on the pad or the expiration of the five-  
43 year maximum aggregate partial reclamation period,  
44 whichever occurs first, the operator shall complete final  
45 reclamation of the well pad as set forth in this subsection.



46           (3) Within six months after a horizontal well that has  
47 produced oil or gas is plugged or after the plugging of a dry  
48 hole, the operator shall remove all production and storage  
49 structures, supplies and equipment and any oil, salt water and  
50 debris and fill any remaining excavations. Within that six-  
51 month period, the operator shall grade or terrace and plant,  
52 seed or sod the area disturbed where necessary to bind the  
53 soil and prevent substantial erosion and sedimentation.

54           (4) The operator shall reclaim the area of land disturbed  
55 in siting, drilling, completing or producing the horizontal  
56 well in accordance with the erosion and sediment control  
57 plans approved by the secretary or the secretary's designee  
58 pursuant to this article.

59           (b) The secretary, upon written application by an operator  
60 showing reasonable cause, may extend the period within  
61 which reclamation must be completed, but not to exceed a  
62 further six-month period. If the secretary refuses to approve  
63 a request for extension, the refusal shall be by order, which  
64 may be appealed pursuant to the provisions of subdivision  
65 twenty-three, subsection (a), section five of this article.

**§22-6A-15. Performance bonds; corporate surety or other security.**

1           (a) No permit may be issued pursuant to this article  
2 unless a bond as described in subsection (d) of this section  
3 which is required for a particular activity by this article is or  
4 has been furnished as provided in this section.

5           (b) A separate bond as described in subsection (d) of this  
6 section may be furnished for each horizontal well drilled.  
7 Each of these bonds shall be in the sum of \$50,000 payable  
8 to the State of West Virginia, conditioned on full compliance  
9 with all laws, rules relating to the drilling, redrilling,  
10 deepening, casing and stimulating of horizontal wells and to

11 the plugging, abandonment and reclamation of horizontal  
12 wells and for furnishing reports and information required by  
13 the secretary.

14 (c) When an operator makes or has made application for  
15 permits to drill or stimulate a number of horizontal wells, the  
16 operator may, in lieu of furnishing a separate bond, furnish a  
17 blanket bond in the sum of \$250,000 payable to the State of  
18 West Virginia, and conditioned as provided in subsection (b)  
19 of this section.

20 (d) The form of the bond required by this article shall be  
21 approved by the secretary and may include, at the option of  
22 the operator, surety bonding, collateral bonding, including  
23 cash and securities, letters of credit, establishment of an  
24 escrow account, self-bonding or a combination of these  
25 methods. If collateral bonding is used, the operator may elect  
26 to deposit cash, or collateral securities or certificates as  
27 follows: Bonds of the United States or its possessions, of the  
28 federal land bank, or of the homeowners' loan corporation;  
29 full faith and credit general obligation bonds of the State of  
30 West Virginia or other states or of any county, district or  
31 municipality of the State of West Virginia or other states; or  
32 certificates of deposit in a bank in this state, which  
33 certificates shall be in favor of the department. The cash  
34 deposit or market value of the securities or certificates shall  
35 be equal to or greater than the amount of the bond. The  
36 secretary shall, upon receipt of any deposit of cash, securities  
37 or certificates, promptly place the same with the Treasurer of  
38 the State of West Virginia whose duty it is to receive and  
39 hold them in the name of the state in trust for the purpose of  
40 which the deposit is made when the permit is issued. The  
41 operator is entitled to all interest and income earned on the  
42 collateral securities filed by the operator. The operator  
43 making the deposit is entitled from time to time to receive  
44 from the State Treasurer, upon the written approval of the

45 secretary, the whole or any portion of any cash, securities or  
46 certificates so deposited, upon depositing with the State  
47 Treasurer in lieu thereof, cash or other securities or  
48 certificates of the classes herein specified having value equal  
49 to or greater than the amount of the bond.

50 (e) When an operator has furnished a separate bond from a  
51 corporate bonding or surety company to drill, fracture or  
52 stimulate a horizontal well and the well produces oil or gas or  
53 both, its operator may deposit with the secretary cash from the  
54 sale of the oil or gas or both until the total deposited is \$50,000.  
55 When the sum of the cash deposited is \$50,000, the separate  
56 bond for the well shall be released by the secretary. Upon receipt  
57 of that cash, the secretary shall immediately deliver that amount  
58 to the State Treasurer, who shall hold the cash in the name of the  
59 state in trust for the purpose for which the bond was furnished  
60 and the deposit was made. The operator is entitled to all interest  
61 and income which may be earned on the cash deposited so long  
62 as the operator is in full compliance with all laws and rules  
63 relating to the drilling, redrilling, deepening, casing, plugging,  
64 abandonment and reclamation of the well for which the cash was  
65 deposited and so long as the operator has furnished all reports  
66 and information required by the secretary. The secretary may  
67 establish procedures under which an operator may substitute a  
68 new bond for an existing bond or provide a new bond under  
69 certain circumstances specified in a legislative rule promulgated  
70 in accordance with chapter twenty-nine-a of this code.

71 (f) Any separate bond furnished for a particular well prior  
72 to the effective date of this article continues to be valid for all  
73 work on the well permitted prior to the effective date of this  
74 article; but no permit may be issued on such a particular well  
75 without a bond complying with the provisions of this section.  
76 Any blanket bond furnished prior to the effective date of this  
77 article shall be replaced with a new blanket bond conforming  
78 to the requirements of this section, at which time the prior  
79 bond is discharged by operation of law; and if the secretary

80 determines that any operator has not furnished a new blanket  
81 bond, the secretary shall notify the operator by registered  
82 mail or by any method of delivery that requires a receipt or  
83 signature confirmation of the requirement for a new blanket  
84 bond, and failure to submit a new blanket bond within sixty  
85 days after receipt of the notice from the secretary works a  
86 forfeiture under subsection (i) of this section of the blanket  
87 bond furnished prior to the effective date of this article.

88 (g) Any such bond shall remain in force until released by  
89 the secretary, and the secretary shall release the same upon  
90 satisfaction that the conditions thereof have been fully  
91 performed. Upon the release of that bond, any cash or  
92 collateral securities deposited shall be returned by the  
93 secretary to the operator who deposited it.

94 (h) (1) Whenever the right to operate a well is assigned  
95 or otherwise transferred, the assignor or transferor shall  
96 notify the department of the name and address of the assignee  
97 or transferee by registered mail or by any method of delivery  
98 that requires a receipt or signature confirmation not later than  
99 thirty days after the date of the assignment or transfer. No  
100 assignment or transfer by the owner relieves the assignor or  
101 transferor of the obligations and liabilities unless and until  
102 the assignee or transferee files with the department the well  
103 name and the permit number of the subject well, the county  
104 and district in which the subject well is located, the names  
105 and addresses of the assignor or transferor, and assignee or  
106 transferee, a copy of the instrument of assignment or transfer  
107 accompanied by the applicable bond, cash, collateral security  
108 or other forms of security described in this section, and the  
109 name and address of the assignee's or transferee's designated  
110 agent if the assignee or transferee would be required to  
111 designate an agent under this article if the assignee or  
112 transferee were an applicant for a permit under this article.  
113 Every well operator required to designate an agent under this  
114 section shall, within five days after the termination of the

115 designation, notify the department of the termination and  
116 designate a new agent.

117 (2) Upon compliance with the requirements of this  
118 section by the assignor or transferor and assignee or  
119 transferee, the secretary shall release the assignor or  
120 transferor from all duties and requirements of this article and  
121 shall give written notice of release to the assignor or  
122 transferor of any bond and return to the assignor or transferor  
123 any cash or collateral securities deposited pursuant to this  
124 section.

125 (i) If any of the requirements of this article or rules  
126 promulgated pursuant thereto or the orders of the secretary  
127 has not been complied with within the time limit set by any  
128 notice of violation issued pursuant to this article, the  
129 performance bond shall then be forfeited.

130 (j) When any bond is forfeited pursuant to the provisions  
131 of this article or rules promulgated pursuant thereto, the  
132 secretary shall collect the forfeiture without delay.

133 (k) All forfeitures shall be deposited in the Treasury of  
134 the State of West Virginia in the Oil and Gas Reclamation  
135 Fund as defined in section twenty-nine, article six of this  
136 chapter.

**§22-6A-16. Compensation of surface owners for drilling  
operations.**

1 (a) The provisions of article seven of this chapter do not  
2 apply to horizontal wells governed by this article. In lieu  
3 thereof, the provisions of article six-b of this chapter shall  
4 provide for the compensation of surface owners for damage  
5 caused by drilling horizontal wells.

6 (b) At least ten days prior to filing a permit application,  
7 an operator shall, by certified mail return receipt requested or  
8 hand delivery, give the surface owner notice of its intent to  
9 enter upon the surface owner's land for the purpose of  
10 drilling a horizontal well: *Provided*, That notice given  
11 pursuant to subsection (a), section ten of this article satisfies  
12 the requirements of this subsection as of the date the notice  
13 was provided to the surface owner: *Provided, however*, That  
14 the notice requirements of this subsection may be waived in  
15 writing by the surface owner. The notice, if required, shall  
16 include the name, address, telephone number, and if  
17 available, facsimile number and electronic mail address of the  
18 operator and the operator's authorized representative.

19 (c) No later than the date for filing the permit application, an  
20 operator shall, by certified mail return receipt requested or hand  
21 delivery, give the surface owner whose land will be used for the  
22 drilling of a horizontal well notice of the planned operation. The  
23 notice required by this subsection shall include:

24 (1) A copy of this code section;

25 (2) The information required to be provided by  
26 subsection (b), section ten of this article to a surface owner  
27 whose land will be used in conjunction with the drilling of a  
28 horizontal well; and

29 (3) A proposed surface use and compensation agreement  
30 containing an offer of compensation for damages to the  
31 surface affected by oil and gas operations to the extent the  
32 damages are compensable under article six-b of this chapter.

33 (d) The notices required by this section shall be given to  
34 the surface owner at the address listed in the records of the  
35 sheriff at the time of notice.

**§22-6A-17. Reimbursement of property taxes of encumbered properties.**

1           In addition to any compensation owed by the operator to  
2 the surface owner pursuant to the provisions of article six-b of  
3 this chapter, the operator shall pay the surface owner a one-time  
4 payment of \$2,500 to compensate for payment of real property  
5 taxes for surface lands and surrounding lands that are  
6 encumbered or disturbed by construction or operation of the  
7 horizontal well pad regardless of how many wells are drilled on  
8 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.**

1           (a) Nothing in this article affects in any way the rights of  
2 any person to enforce or protect, under applicable law, the  
3 person's interest in water resources affected by an oil or gas  
4 operation.

5           (b) Unless rebutted by one of the defenses established in  
6 subsection (c) of this section, in any action for contamination  
7 or deprivation of a fresh water source or supply within one  
8 thousand five hundred feet of the center of the well pad for  
9 horizontal well, there is a rebuttable presumption that the  
10 drilling and the oil or gas well or either was the proximate  
11 cause of the contamination or deprivation of the fresh water  
12 source or supply.

13           (c) In order to rebut the presumption of liability  
14 established in subsection (b) of this section, the operator must  
15 prove by a preponderance of the evidence one of the  
16 following defenses:

17           (1) The pollution existed prior to the drilling or alteration  
18 activity as determined by a predrilling or prealteration water  
19 well test.

20           (2) The landowner or water purveyor refused to allow the  
21 operator access to the property to conduct a predrilling or  
22 prealteration water well test.

23           (3) The water supply is not within one thousand five  
24 hundred feet of the well.

25           (4) The pollution occurred more than six months after  
26 completion of drilling or alteration activities.

27           (5) The pollution occurred as the result of some cause  
28 other than the drilling or alteration activity.

29           (d) Any operator electing to preserve its defenses under  
30 subdivision (1), subsection (c) of this section shall retain the  
31 services of an independent certified laboratory to conduct the  
32 predrilling or prealteration water well test. A copy of the  
33 results of the test shall be submitted to the department and the  
34 surface owner or water purveyor in a manner prescribed by the  
35 secretary.

36           (e) Any operator shall replace the water supply of an  
37 owner of interest in real property who obtains all or part of  
38 that owner's supply of water for domestic, agricultural,  
39 industrial or other legitimate use from an underground or  
40 surface source with a comparable water supply where the  
41 secretary determines that the water supply has been affected  
42 by contamination, diminution or interruption proximately  
43 caused by the oil or gas operation, unless waived in writing  
44 by that owner.

45           (f) The secretary may order the operator conducting the  
46 oil or gas operation to:



47 (1) Provide an emergency drinking water supply within  
48 twenty-four hours;

49 (2) Provide temporary water supply within seventy-two  
50 hours;

51 (3) Within thirty days begin activities to establish a  
52 permanent water supply or submit a proposal to the secretary  
53 outlining the measures and timetables to be used in establishing  
54 a permanent supply. The total time in providing a permanent  
55 water supply may not exceed two years. If the operator  
56 demonstrates that providing a permanent replacement water  
57 supply cannot be completed within two years, the secretary may  
58 extend the time frame on case-by-case basis; and

59 (4) Pay all reasonable costs incurred by the real property  
60 owner in securing a water supply.

61 (g) A person as described in subsection (b) of this section  
62 aggrieved under the provisions of subsections (b), (e) or (f) of  
63 this section may seek relief in court.

64 (h) The secretary shall propose rules for legislative approval  
65 in accordance with the provisions of article three, chapter  
66 twenty-nine-a of this code to implement the requirements of this  
67 section.

68 (i) Notwithstanding the denial of the operator of  
69 responsibility for the damage to the real property owner's water  
70 supply or the status of any appeal on determination of liability  
71 for the damage to the real property owner's water supply, the  
72 operator may not discontinue providing the required water  
73 service until authorized to do so by the secretary or a court of  
74 competent jurisdiction.

**§22-6A-19. Offenses; civil and criminal penalties.**

1 (a) Any person or persons, firm, partnership, partnership  
2 association or corporation who willfully violates any

3 provision of this article or any rule or order promulgated  
4 under this article or any permit issued pursuant to this article  
5 is subject to a civil penalty not exceeding \$5,000. Each day  
6 a violation continues after notice by the department  
7 constitutes a separate offense. The penalty shall be recovered  
8 by a civil action brought by the department, in the name of  
9 the state, before the circuit court of the county in which the  
10 subject well or facility is located. All the civil penalties  
11 collected shall be credited to the General Fund of the state.

12 (b) Notwithstanding the provisions of subsection (a) and  
13 (c) of this section, any person or persons, firm, partnership,  
14 partnership association or corporation who willfully disposes  
15 of waste fluids, drill cuttings or any other liquid substance  
16 generated in the development of a horizontal well in violation  
17 of this article or any rule or order promulgated under this  
18 article or in violation of any other state or federal statutes,  
19 rules or regulations, and which disposal was found to have  
20 had a significant adverse environmental impact on surface or  
21 groundwater by the secretary, is subject to a civil penalty not  
22 exceeding \$100,000. The penalty shall be recovered by a  
23 civil action brought by the department, in the name of the  
24 state, before the circuit court of the county in which the  
25 subject well or facility is located. All the civil penalties  
26 collected shall be credited to the General Fund of the state.

27 (c) Notwithstanding the provisions of subsections (a) and  
28 (b) of this section, any person or persons, firm, partnership,  
29 partnership association or corporation willfully violating any  
30 of the provisions of this article which prescribe the manner of  
31 drilling and casing or plugging and filling any well or which  
32 prescribe the methods of conserving gas from waste, shall be  
33 guilty of a misdemeanor, and, upon conviction thereof shall  
34 be punished by a fine not exceeding five thousand dollars, or  
35 imprisonment in jail not exceeding twelve months, or both,  
36 in the discretion of the court, and prosecution under this  
37 section may be brought in the name of the State of West

38 Virginia in the court exercising criminal jurisdiction in the  
39 county in which the violation of such provisions of the article  
40 or terms of such order was committed, and at the instance and  
41 upon the relation of any citizens of this state.

42 (d) Any person who intentionally misrepresents any  
43 material fact in an application, record, report, plan or other  
44 document filed or required to be maintained under the  
45 provisions of this article or any rules promulgated by the  
46 secretary under this article shall be fined not less than \$1,000  
47 nor more than \$10,000.

**§22-6A-20. Division of Highways certification.**

1 As part of the permit application for horizontal wells, the  
2 operator shall submit a letter of certification from the  
3 Division of Highways that the operator has, pursuant to the  
4 Division of Highways Oil and Gas Road Policy, entered into  
5 an agreement with the Division of Highways pertaining to the  
6 state local service roads associated with the proposed well  
7 work set forth in the permit application or has certified that  
8 no such agreement is required by the Oil and Gas Road  
9 Policy and the reasons therefor.

**§22-6A-21. Establishment of public website information and  
electronic notification registry regarding  
horizontal well permit applications.**

1 (a) No later than ninety days after the effective date of  
2 this article, the secretary shall establish resources on the  
3 department's public website which will list searchable  
4 information related to all horizontal well applications filed in  
5 this state, including information sufficient to identify the  
6 county and approximate location of each horizontal well for  
7 which a permit application is filed, the referenced well  
8 application number, date of application, name of the  
9 applicant, and any written comments submitted by the public.

10 (b) The secretary shall also establish a registration and e-  
11 notification process by which individuals, corporations and  
12 agencies may register to receive electronic notice of  
13 horizontal well applications filings and notices, by county of  
14 interest. Once established, individuals, agencies and  
15 corporations interested who are properly registered to receive  
16 e-notices of filings and actions on horizontal well permits  
17 shall receive electronic notifications of applications and  
18 notices of permits issued for horizontal drilling in their  
19 designated county or counties of interest.

**§22-6A-22. Air quality study and rulemaking.**

1 The secretary shall, by July 1, 2013, report to the  
2 Legislature on the need, if any, for further regulation of air  
3 pollution occurring from well sites, including the possible  
4 health impacts, the need for air quality inspections during  
5 drilling, the need for inspections of compressors, pits and  
6 impoundments, and any other potential air quality impacts  
7 that could be generated from this type of drilling activity that  
8 could harm human health or the environment. If he or she  
9 finds that specialized permit conditions are necessary, the  
10 secretary shall promulgate legislative rules establishing these  
11 new requirements.

**§22-6A-23. Impoundment and pit safety study; rulemaking.**

1 The secretary shall, by January 1, 2013, report to the  
2 Legislature on the safety of pits and impoundments utilized  
3 pursuant to section nine of this article including an evaluation  
4 of whether testing and special regulatory provision is needed  
5 for radioactivity or other toxins held in the pits and  
6 impoundments. Upon a finding that greater monitoring,  
7 safety and design requirements or other specialized permit  
8 conditions are necessary, the secretary shall propose for  
9 promulgation legislative rules establishing these new  
10 requirements.

**§22-6A-24. Casing and cement standards.**

1 (a) The operator may only drill through fresh  
2 groundwater zones in a manner that will minimize any  
3 disturbance of the zones. Further, the operator shall construct  
4 the well and conduct casing and cementing activities for all  
5 horizontal wells in a manner that will provide for control of  
6 the well at all times, prevent the migration of gas and other  
7 fluids into the fresh groundwater and coal seams, and prevent  
8 pollution of or diminution of fresh groundwater.

9 (b) The secretary shall propose legislative and emergency  
10 rules in accordance with the provisions of article three,  
11 chapter twenty-nine-a of this code to carry out the purposes  
12 of this section.

13 (c) Rules promulgated by the secretary pursuant to this  
14 section shall include provisions to accomplish the following:

15 (1) Effective control of the horizontal well by the  
16 operator;

17 (2) Prevention of the migration of gas or other fluids into  
18 sources of fresh groundwater or into coal seams;

19 (3) Prevention of pollution of or diminution of fresh  
20 groundwater;

21 (4) Prevention of blowouts, explosions, or fires; and

22 (5) Appropriate disposition of brines and discharges from  
23 the drilling or operation of horizontal well.

24 (d) Procedures for the filing, approval, and revision of  
25 casing program:

26 (1) The operator shall prepare a casing program  
27 demonstrating how the horizontal well is to be drilled, cased,  
28 and cemented. The program shall comply with rules  
29 promulgated by the secretary.

30 (2) The rules regarding the casing program shall require  
31 the following information:

32 (A) The anticipated depth and thickness of any producing  
33 formation, expected pressures, anticipated fresh groundwater  
34 zones, and the method or information by which the depth of  
35 the deepest fresh groundwater was determined;

36 (B) The diameter of the borehole;

37 (C) The casing type, whether the casing to be utilized is  
38 new or used, and the depth, diameter, wall thickness, and  
39 burst pressure rating for the casing;

40 (D) The cement type, yield, additives, and estimated  
41 amount of cement to be used;

42 (E) The estimated location of centralizers;

43 (F) The proposed borehole conditioning procedures; and

44 (G) Any alternative methods or materials required by the  
45 secretary as a condition of the well work permit.

46 (3) A copy of casing program shall be kept at the well  
47 site.

48 (4) Supervisory oil and gas inspectors and oil and gas  
49 inspectors may approve revisions to previously approved casing  
50 programs when conditions encountered during the drilling  
51 process so require: *Provided*, That any revisions to casing  
52 programs approved by inspectors as aforesaid shall ensure that

53 the revised casing programs are at least as protective of the  
54 environment as the casing and cementing standards required by  
55 this section. Any revisions to the casing program made as a  
56 result of on-site modifications shall be documented in the  
57 program by the inspector approving the modification. The  
58 person making any revisions to the program shall initial and date  
59 the revisions and make the revised program available for  
60 inspection by the department.

61 (e) The rules promulgated by the secretary shall provide  
62 procedures for the following:

63 (1) Appropriate installation and use of conductor pipe,  
64 which shall be installed in a manner that prevents the  
65 subsurface infiltration of surface water or fluids;

66 (2) Installation of the surface and coal protection casing  
67 including remedial procedures addressing lost circulation  
68 during surface or coal casing;

69 (3) Installation of intermediate production casing;

70 (4) Correction of defective casing and cementing,  
71 including requirements that the operator report the defect to  
72 the secretary within twenty-four hours of discovery by the  
73 operator;

74 (5) Investigation of natural gas migration, including  
75 requirements that the operator promptly notify the secretary  
76 and conduct an investigation of the incident; and

77 (6) Any other procedure or requirements considered  
78 necessary by the secretary.

79 (f) *Minimum casing standards.*

80 (1) All casing installed in the well, whether new or used,  
81 shall have a pressure rating that exceeds the anticipated  
82 maximum pressure to which the casing will be exposed and  
83 meet appropriate nationally recognized standards.

84 (2) The casing shall be of sufficient quality and condition  
85 to withstand the effects of tension and maintain its structural  
86 integrity during installation, cementing, and subsequent  
87 drilling and production operations.

88 (3) Centralizers shall be used, with the proper spacing for  
89 such well, during the casing installation to ensure that the  
90 casing is centered in the hole.

91 (4) Casing may not be disturbed for a period of at least  
92 eight hours after the completion of cementing operations.

93 (5) No gas or oil production or pressure may exist on the  
94 surface casing or the annulus or the coal protection casing  
95 annulus.

96 (g) *Minimum cement standards.*

97 (1) All cement used in the well must meet the appropriate  
98 nationally recognized standards and must secure the casing  
99 to the wellbore, isolate the wellbore from all fluids, contain  
100 all pressures during all phases of drilling and operation of the  
101 well, and protect the casing from corrosion and degradation.

102 (2) Cement used in conjunction with surface and coal  
103 protection casing must provide zonal isolation in the casing  
104 annulus.

105 (h) Notwithstanding the minimum casing and cementing  
106 standards set forth in subsections (f) and (g) of this section,  
107 the secretary may:



108           (1) Revise the casing and cementing standards applicable  
109 to horizontal wells from time to time through the legislative  
110 rulemaking process so long as the revised casing and  
111 cementing standards are at least as protective of the  
112 environment; and

113           (2) Approve alternative casing programs submitted with  
114 applications for well work permits so long as the secretary  
115 determines that the casing program submitted with the  
116 application is at least as protective of the environment as the  
117 casing and cementing standards required by this section.

**ARTICLE 6B. OIL AND GAS HORIZONTAL WELL  
P R O D U C T I O N   D A M A G E  
C O M P E N S A T I O N .**

**§22-6B-1. Legislative findings and purpose; applicability.**

1           (a) The Legislature finds the following:

2           (1) Exploration for and development of oil and gas  
3 reserves in this state must coexist with the use, agricultural or  
4 otherwise, of the surface of certain land and that each  
5 constitutes a right equal to the other.

6           (2) The surface owner of lands on which horizontal wells  
7 are drilled shall be compensated for damages to the surface  
8 of the land pursuant to the provisions of this article.

9           (b) The Legislature declares that the public policy of this  
10 state shall be that the compensation and damages provided in  
11 this article for surface owners may not be diminished by any  
12 provision in a deed, lease or other contract of conveyance  
13 entered into after December 31, 2011.

14           (c) It is the purpose of this article to provide  
15 Constitutionally permissible protection and compensation to

16 surface owners of lands on which horizontal wells are drilled  
17 from the burden resulting from drilling operations  
18 commenced after January 1, 2012. This article is to be  
19 interpreted in the light of the legislative intent expressed  
20 herein. This article shall be interpreted to benefit surface  
21 owners, regardless of whether the oil and gas mineral estate  
22 was separated from the surface estate and regardless of who  
23 executed the document which gave the oil and gas developer  
24 the right to conduct drilling operations on the land. Section  
25 four of this article shall be interpreted to benefit all persons.

26 (d) The provisions of this article apply to any natural gas  
27 well, other than a coalbed methane well, drilled using a  
28 horizontal drilling method, and which disturbs three acres or  
29 more of surface, excluding pipelines, gathering lines and  
30 roads or uses more than two hundred ten thousand gallons of  
31 water in any thirty-day period. Article seven of this chapter  
32 does not apply to any damages associated with the drilling of  
33 a horizontal well.

### **§22-6B-2. Definitions.**

1 In this article:

2 (1) “Drilling operations” means the actual drilling or  
3 redrilling of a horizontal well commenced subsequent to the  
4 effective date of this article, and the related preparation of the  
5 drilling site and access road, which requires entry, upon the  
6 surface estate;

7 (2) “Horizontal drilling” means a method of drilling a  
8 well for the production of natural gas that is intended to  
9 maximize the length of wellbore that is exposed to the  
10 formation and in which the wellbore is initially vertical but  
11 is eventually curved to become horizontal, or nearly  
12 horizontal, to parallel a particular geologic formation;

13           (3) “Horizontal well” means any well site, other than a  
14 coalbed methane well, drilled using a horizontal drilling  
15 method, and which disturbs three acres or more of surface,  
16 excluding pipelines, gathering lines and roads, or uses more  
17 than two hundred ten thousand gallons of water in any thirty-  
18 day period;

19           (4) “Oil and gas developer” means the person who secures  
20 the drilling permit required by article six-a of this chapter;

21           (5) “Person” means any natural person, corporation, firm,  
22 partnership, partnership association, venture, receiver,  
23 trustee, executor, administrator, guardian, fiduciary or other  
24 representative of any kind, and includes any government or  
25 any political subdivision or agency thereof;

26           (6) “Surface estate” means an estate in or ownership of  
27 the surface of a particular tract of land overlying the oil or  
28 gas leasehold being developed; and

29           (7) “Surface owner” means a person who owns an estate  
30 in fee in the surface of land, either solely or as a co-owner.

**§22-6B-3. Compensation of surface owners for drilling operations.**

1           (a) The oil and gas developer is obligated to pay the  
2 surface owner compensation for:

3           (1) Lost income or expenses incurred as a result of being  
4 unable to dedicate land actually occupied by the driller’s  
5 operation, or to which access is prevented by the drilling  
6 operation, to the uses to which it was dedicated prior to  
7 commencement of the activity for which a permit was  
8 obtained, measured from the date the operator enters upon the  
9 land and commences drilling operations until the date  
10 reclamation is completed;

11       (2) The market value of crops, including timber,  
12 destroyed, damaged or prevented from reaching market;

13       (3) Any damage to a water supply in use prior to the  
14 commencement of the permitted activity;

15       (4) The cost of repair of personal property up to the value  
16 of replacement by personal property of like age, wear and  
17 quality; and

18       (5) The diminution in value, if any, of the surface lands  
19 and other property after completion of the surface disturbance  
20 done pursuant to the activity for which the permit was issued  
21 determined according to the market value of the actual use  
22 made thereof by the surface owner immediately prior to the  
23 commencement of the permitted activity.

24       The amount of damages may be determined by any  
25 formula mutually agreeable between the surface owner and  
26 the oil and gas developer.

27       (b) Any reservation or assignment of the compensation  
28 provided in this section apart from the surface estate except  
29 to a tenant of the surface estate is prohibited.

30       (c) In the case of surface lands owned by more than one  
31 person as tenants in common, joint tenants or other co-  
32 ownership, any claim for compensation under this article  
33 shall be for the benefit of all co-owners. The resolution of a  
34 claim for compensation provided in this article operates as a  
35 bar to the assertion of additional claims under this section  
36 arising out of the same drilling operations.

**§22-6B-4. Common law right of action preserved; offsets.**

1       (a) Nothing in section three or elsewhere in this article  
2 diminishes in any way the common law remedies, including

3 damages, of a surface owner or any other person against the  
4 oil and gas developer for the unreasonable, negligent or  
5 otherwise wrongful exercise of the contractual right, whether  
6 express or implied, to use the surface of the land for the  
7 benefit of the developer's mineral interest.

8 (b) An oil and gas developer is entitled to offset  
9 compensation agreed to be paid or awarded to a surface  
10 owner under section three of this article against any damages  
11 sought by or awarded to the surface owner through the  
12 assertion of common law remedies respecting the surface  
13 land actually occupied by the same drilling operation.

14 (c) An oil and gas developer is entitled to offset damages  
15 agreed to be paid or awarded to a surface owner through the  
16 assertion of common-law remedies against compensation  
17 sought by or awarded to the surface owner under section  
18 three of this article respecting the surface land actually  
19 occupied by the same drilling operation.

#### **§22-6B-5. Notification of claim.**

1 Any surface owner, to receive compensation under  
2 section three of this article, shall notify the oil and gas  
3 developer of the damages sustained by the person within two  
4 years after the date that the oil and gas developer files notice  
5 that final reclamation is commencing under section fourteen,  
6 article six-a of this chapter. The notice of reclamation shall  
7 be given to surface owners by registered or certified mail,  
8 return receipt requested, and is complete upon mailing. If  
9 more than three tenants in common or other co-owners hold  
10 interests in the lands, the oil and gas developer may give the  
11 notice to the person described in the records of the sheriff  
12 required to be maintained pursuant to section eight, article  
13 one, chapter eleven-a of this code or publish in the county in  
14 which the well is located or to be located a Class II legal  
15 advertisement as described in section two, article three,

16 chapter fifty-nine of this code, containing the notice and  
17 information the secretary prescribes by rule.

**§22-6B-6. Agreement; offer of settlement.**

1 Unless the parties provide otherwise by written  
2 agreement, within sixty days after the oil and gas developer  
3 received the notification of claim specified in section five of  
4 this article, the oil and gas developer shall either make an  
5 offer of settlement to the surface owner seeking  
6 compensation, or reject the claim. The surface owner may  
7 accept or reject any offer so made: *Provided*, That the oil  
8 and gas developer may make a final offer within seventy-five  
9 days after receiving the notification of claim specified in  
10 section five of this article.

**§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

1 (a) (1) Unless the oil and gas developer has paid the  
2 surface owner a negotiated settlement of compensation within  
3 seventy-five days after the date the notification of claim was  
4 mailed under section five of this article, the surface owner  
5 may, within eighty days after the notification mail date, either  
6 (i) Bring an action for compensation in the circuit court of the  
7 county in which the well is located; or (ii) elect instead, by  
8 written notice delivered by personal service or by certified  
9 mail, return receipt requested, to the designated agent named  
10 by the oil and gas developer under the provisions of section  
11 seven, article six-a of this chapter, to have his, her or its  
12 compensation finally determined by binding arbitration  
13 pursuant to article ten, chapter fifty-five of this code.

14 (2) Settlement negotiations, offers and counter-offers  
15 between the surface owner and the oil and gas developer are  
16 not admissible as evidence in any arbitration or judicial  
17 proceeding authorized under this article, or in any proceeding  
18 resulting from the assertion of common law remedies.

19           (b) The compensation to be awarded to the surface owner  
20 shall be determined by a panel of three disinterested  
21 arbitrators. The first arbitrator shall be chosen by the surface  
22 owner in the party's notice of election under this section to  
23 the oil and gas developer; the second arbitrator shall be  
24 chosen by the oil and gas developer within ten days after  
25 receipt of the notice of election; and the third arbitrator shall  
26 be chosen jointly by the first two arbitrators within twenty  
27 days thereafter. If they are unable to agree upon the third  
28 arbitrator within twenty days, then the two arbitrators shall  
29 immediately submit the matter to the court under the  
30 provisions of section one, article ten, chapter fifty-five of this  
31 code, so that, among other things, the third arbitrator can be  
32 chosen by the judge of the circuit court of the county in  
33 which the surface estate lies.

34           (c) The following persons are considered interested and  
35 may not be appointed as arbitrators: Any person who is  
36 personally interested in the land on which horizontal drilling  
37 is being performed or has been performed, or in any interest  
38 or right therein, or in the compensation and any damages to  
39 be awarded therefor, or who is related by blood or marriage  
40 to any person having such personal interest, or who stands in  
41 the relation of guardian and ward, master and servant,  
42 principal and agent, or partner, real estate broker, or surety to  
43 any person having such personal interest, or who has enmity  
44 against or bias in favor of any person who has such personal  
45 interest or who is the owner of, or interested in, the land or  
46 the oil and gas development of the land. A person is not  
47 considered interested or incompetent to act as arbitrator by  
48 reason of being an inhabitant of the county, district or  
49 municipal corporation in which the land is located, or holding  
50 an interest in any other land therein.

51           (d) The panel of arbitrators shall hold hearings and take  
52 testimony and receive exhibits necessary to determine the  
53 amount of compensation to be paid to the surface owner.

54 However, no award of compensation may be made to the  
55 surface owner unless the panel of arbitrators has first viewed  
56 the surface estate in question. A transcript of the evidence  
57 may be made but is not required.

58 (e) Each party shall pay the compensation of the party's  
59 arbitrator and one half of the compensation of the third  
60 arbitrator, or each party's own court costs as the case may be.

**§22-6B-8. Application of article.**

1 The remedies provided by this article do not preclude any  
2 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.**

1 As used in this article:

2 (1) "Board" means the Shallow Gas Well Review Board  
3 provided for in section four of this article;

4 (2) "Chair" means the chair of the Shallow Gas Well  
5 Review Board provided for in section four of this article;

6 (3) "Coal operator" means any person who proposes to or  
7 does operate a coal mine;

8 (4) "Coal seam" and "workable coal bed" are  
9 interchangeable terms and mean any seam of coal twenty  
10 inches or more in thickness, unless a seam of less thickness  
11 is being commercially worked, or can in the judgment of the



12 division foreseeably be commercially worked and will  
13 require protection if wells are drilled through it;

14 (5) “Commission” means the Oil and Gas Conservation  
15 Commission provided for in section four, article nine of this  
16 chapter;

17 (6) “Commissioner” means the Oil and Gas Conservation  
18 Commissioner provided for in section four, article nine of this  
19 chapter;

20 (7) “Correlative rights” means the reasonable opportunity  
21 of each person entitled thereto to recover and receive without  
22 waste the gas in and under a tract or tracts, or the equivalent  
23 thereof;

24 (8) “Deep well” means any well other than a shallow well  
25 or coalbed methane well, drilled to a formation below the top  
26 of the uppermost member of the “Onondaga Group”;

27 (9) “Division” means the state Department of  
28 Environmental Protection provided for in chapter twenty-two  
29 of this code;

30 (10) “Director” means the Secretary of the Department of  
31 Environmental Protection as established in article one,  
32 chapter twenty-two of this code or other person to whom the  
33 secretary delegates authority or duties pursuant to sections six  
34 or eight, article one, chapter twenty-two of this code;

35 (11) “Drilling unit” means the acreage on which the  
36 board decides one well may be drilled under section ten of  
37 this article;

38 (12) “Gas” means all natural gas and all other fluid  
39 hydrocarbons not defined as oil in subdivision (15) of this  
40 section;

41 (13) “Gas operator” means any person who owns or has  
42 the right to develop, operate and produce gas from a pool and  
43 to appropriate the gas produced therefrom either for that  
44 person or for that person and others. In the event that there is  
45 no gas lease in existence with respect to the tract in question,  
46 the person who owns or has the gas rights therein is  
47 considered a “gas operator” to the extent of seven-eighths of  
48 the gas in that portion of the pool underlying the tract owned  
49 by such person, and a “royalty owner” to the extent of one-  
50 eighth of the gas;

51 (14) “Just and equitable share of production” means, as  
52 to each person, an amount of gas in the same proportion to  
53 the total gas production from a well as that person’s acreage  
54 bears to the total acreage in the drilling unit;

55 (15) “Oil” means natural crude oil or petroleum and other  
56 hydrocarbons, regardless of gravity, which are produced at  
57 the well in liquid form by ordinary production methods and  
58 which are not the result of condensation of gas after it leaves  
59 the underground reservoir;

60 (16) “Owner” when used with reference to any coal seam,  
61 includes any person or persons who own, lease or operate the  
62 coal seam;

63 (17) “Person” means any natural person, corporation,  
64 firm, partnership, partnership association, venture, receiver,  
65 trustee, executor, administrator, guardian, fiduciary or other  
66 representative of any kind, and includes any government or  
67 any political subdivision or any agency thereof;

68 (18) “Plat” means a map, drawing or print showing the  
69 location of one or more wells or a drilling unit;

70 (19) “Pool” means an underground accumulation of gas  
71 in a single and separate natural reservoir (ordinarily a porous

72 sandstone or limestone). It is characterized by a single  
73 natural-pressure system so that production of gas from one  
74 part of the pool tends to or does affect the reservoir pressure  
75 throughout its extent. A pool is bounded by geologic barriers  
76 in all directions, such as geologic structural conditions,  
77 impermeable strata, and water in the formation, so that it is  
78 effectively separated from any other pools which may be  
79 present in the same district or in the same geologic structure;

80 (20) “Royalty owner” means any owner of gas in place,  
81 or gas rights, to the extent that such owner is not a gas  
82 operator as defined in subdivision (13) of this section;

83 (21) “Shallow well” means any gas well other than a  
84 coalbed methane well, drilled no deeper than one hundred  
85 feet below the top of the “Onondaga Group”: *Provided*, That  
86 in no event may the “Onondaga Group” formation or any  
87 formation below the “Onondaga Group” be produced,  
88 perforated or stimulated in any manner;

89 (22) “Tracts comprising a drilling unit” means that all  
90 separately owned tracts or portions thereof which are  
91 included within the boundary of a drilling unit;

92 (23) “Well” means any shaft or hole sunk, drilled, bored  
93 or dug into the earth or into underground strata for the  
94 extraction, injection or placement of any liquid or gas, or any  
95 shaft or hole sunk or used in conjunction with the extraction,  
96 injection or placement. The term “well” does not include any  
97 shaft or hole sunk, drilled, bored or dug into the earth for the  
98 sole purpose of core drilling or pumping or extracting  
99 therefrom potable, fresh or usable water for household,  
100 domestic, industrial, agricultural or public use; and

101 (24) “Well operator” means any person who proposes to  
102 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

30 or natural gas whose allowance for depletion is determined  
31 under Section 613A of the federal Internal Revenue Code in  
32 effect on July 1, 1997;

33 (7) "Oil" means natural crude oil or petroleum and other  
34 hydrocarbons, regardless of gravity, which are produced at  
35 the well in liquid form by ordinary production methods and  
36 which are not the result of condensation of gas after it leaves  
37 the underground reservoir;

38 (8) "Gas" means all natural gas and all other fluid  
39 hydrocarbons not defined as oil in subdivision (7) of this section;

40 (9) "Pool" means an underground accumulation of  
41 petroleum or gas in a single and separate reservoir (ordinarily  
42 a porous sandstone or limestone). It is characterized by a  
43 single natural-pressure system so that production of  
44 petroleum or gas from one part of the pool affects the  
45 reservoir pressure throughout its extent. A pool is bounded  
46 by geologic barriers in all directions, such as geologic  
47 structural conditions, impermeable strata, and water in the  
48 formations, so that it is effectively separated from any other  
49 pools that may be present in the same district or on the same  
50 geologic structure;

51 (10) "Well" means any shaft or hole sunk, drilled, bored  
52 or dug into the earth or underground strata for the extraction  
53 of oil or gas;

54 (11) "Shallow well" means any well other than a coalbed  
55 methane well, drilled no deeper than one hundred feet below  
56 the top of the "Onondaga Group": *Provided*, That in no  
57 event may the "Onondaga Group" formation or any  
58 formation below the "Onondaga Group" be produced,  
59 perforated or stimulated in any manner;

60 (12) "Deep well" means any well, other than a shallow  
61 well or coalbed methane well, drilled to a formation below  
62 the top of the uppermost member of the "Onondaga Group;"

63           (13) “Drilling unit” means the acreage on which one well  
64 may be drilled;

65           (14) “Waste” means and includes:

66           (A) Physical waste, as that term is generally understood  
67 in the oil and gas industry;

68           (B) The locating, drilling, equipping, operating or  
69 producing of any oil or gas well in a manner that causes, or  
70 tends to cause, a reduction in the quantity of oil or gas  
71 ultimately recoverable from a pool under prudent and proper  
72 operations, or that causes or tends to cause unnecessary or  
73 excessive surface loss of oil or gas; or

74           (C) The drilling of more deep wells than are reasonably  
75 required to recover efficiently and economically the  
76 maximum amount of oil and gas from a pool. Waste does not  
77 include gas vented or released from any mine areas as  
78 defined in section two, article one, chapter twenty-two-a of  
79 this code or from adjacent coal seams which are the subject  
80 of a current permit issued under article two of chapter  
81 twenty-two-a of this code: *Provided*, That this exclusion  
82 does not address ownership of the gas;

83           (15) “Correlative rights” means the reasonable  
84 opportunity of each person entitled thereto to recover and  
85 receive without waste the oil and gas in and under his tract or  
86 tracts, or the equivalent thereof; and

87           (16) “Just and equitable share of production” means, as  
88 to each person, an amount of oil or gas or both substantially  
89 equal to the amount of recoverable oil and gas in that part of  
90 a pool underlying the person’s tract or tracts.

91           (b) Unless the context clearly indicates otherwise, the use  
92 of the word “and” and the word “or” are interchangeable, as,  
93 for example, “oil and gas” means oil or gas or both.

DISPOSITION OF BILLS

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