

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



**Regular Session, 2009
First Extraordinary Session, 2009
Second Extraordinary Session, 2009
Third Extraordinary Session, 2009**

**Volume I
Chapters 1 - 120**

WEST VIRGINIA HOUSE OF DELEGATES
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SPEAKER OF THE HOUSE

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



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FOREWORD

These volumes contain the Acts of the First Regular Session and the First and Second Extraordinary Sessions of the 79th Legislature, 2009.

First Regular Session, 2009

The First Regular Session of the 79th Legislature convened on January 14, 2009, and following the election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 4th day of November, 2008, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 11, 2009, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 11, 2009. The Legislature adopted Senate Concurrent Resolution 68, extending the regular session until and including June 6, 2009. Senate Concurrent Resolution 83 was then adopted, providing for an adjournment of the Legislature until May 26, 2009, and the Legislature adjourned *sine die* on May 31, 2009.

Bills totaling 2,113 were introduced in the two houses during the session (1,340 House and 773 Senate). The Legislature passed 227 bills, 110 House and 117 Senate.

The Governor vetoed twenty House bills (**Com. Sub. for H. B. 2423**, Relating to the Board of Medical Imaging and Radiation Therapy Technology; **Com. Sub. for H. B. 2535**, Creating a tax credit for certain solar energy systems; **Com. Sub. for H. B. 2701**, Relating to an escape of any person from the custody of the Division of Juvenile Services; **Com. Sub. for H. B. 2771**, Relating to the West Virginia Alcohol and Drug-Free Workplace Act; **H. B. 2920**,

Eliminating the felony conviction for a second or subsequent conviction of petit larceny; **Com. Sub. for H. B. 2926**, Establishing a procedure for challenging a candidate's qualifications for elected office; **Com. Sub. for H. B. 3120**, Increasing the WV Prosecuting Attorneys Institute's executive council's elected members from five to seven and permitting the appointment of special prosecutors in juvenile delinquency, child abuse or neglect proceedings; **H. B. 3170**, Relating to WV Guardianship and Conservatorship Act; **Com. Sub. for H. B. 3194**, Making it a misdemeanor to knowingly file false information with the Secretary of State; **H. B. 3197**, Authorizing municipalities to permit nonpolice officers to issue citations for littering; and **Com. Sub. for H. B. 3288**, Relating to mental health parity) and nine Senate bills (**Com. Sub. for S. B. 239**, Allowing majority vote for certain metro government approval; **Com. Sub. for S. B. 414**, Creating Governor's Office of Health Enhancement and Lifestyle Planning; **Com. Sub. for S. B. 484**, Relating to ad valorem property taxes; **Com. Sub. for S. B. 501**, Prohibiting animal gas chamber euthanasia; **S. B. 507**, Relating to Clean Coal Technology Council's powers and duties; **S. B. 528**, Relating to certain fees collected by county clerks; **Com. Sub. for S. B. 672**, Creating Mental Health Stabilization Act of 2009; **Com. Sub. for S. B. 695**, Relating to payment for certain state employees' unused sick leave; and **Com. Sub. for S. B. 715**, Establishing Chesapeake Bay Restoration Initiative). The Legislature amended and again passed 17 bills (**Com. Sub. for H. B. 2423**, **Com. Sub. for H. B. 2535**, **Com. Sub. for H. B. 2701**, **Com. Sub. for H. B. 2771**, **H. B. 2920**, **Com. Sub. for H. B. 2926**, **Com. Sub. for H. B. 3120**, **H. B. 3170**, **Com. Sub. for H. B. 3194**, **H. B. 3197**, **Com. Sub. for H. B. 3288**, **Com. Sub. for S. B. 239**, **Com. Sub. for S. B. 414**, **Com. Sub. for S. B. 501**, **S. B. 528**, **Com. Sub. for S. B. 695** and **Com. Sub. for S. B. 715**) leaving a net total of 224 bills, 110 House and 114 Senate, which became law.

There were 206 Concurrent Resolutions introduced during the session, 123 House and 83 Senate, of which 33 House and 16 Senate were adopted. There were 25 House Joint Resolutions and 13 Senate Joint Resolutions introduced, proposing amendments to the State

Constitution, none of which were adopted. The House introduced 51 House Resolutions, and the Senate introduced 60 Senate Resolutions, of which 43 House and 58 Senate were adopted.

The Senate failed to pass 60 House bills passed by the House, and 86 Senate bills failed passage by the House.

* * * * *

First Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on May 31, 2009, contained fifteen items for consideration.

The Legislature passed all 15 bills, 6 House and 9 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* June 2, 2009.

* * * * *

Second Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on June 15, 2009, contained nineteen items for consideration.

The Legislature passed 6 bills, all of which were Senate bills. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on June 17, 2009.

* * * * *

Third Extraordinary Session, 2009

The Proclamation calling the Legislature into Extraordinary Session on August 11, 2009, contained seven items for consideration.

The Legislature passed 2 bills, 1 House and 1 Senate. The Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on August 12, 2009.

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

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

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2009

OFFICERS

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

District	Name	Address	Legislative Service
First	Pat McGeehan (D)	Chester	79 th
	Randy Swartzmiller (D)	Chester	75 th - 79 th
Second	Timothy R. Ennis (D)	Wellsburg	72 nd - 79 th
	Roy E. Givens (D)	Wellsburg	64 th - 69 th ; 72 nd - 75 th ; 79 th
Third	Tal Hutchins (D)	Wheeling	72 nd - 74 th ; 78 th - 79 th
	Orphy Klempa (D)	Wheeling	78 th - 79 th
Fourth	Michael T. Ferro (D)	McMechen	79 th
	Scott G. Varner (D)	Moundsville	71 st - 79 th
Fifth	Dave Pettel (D)	Hundred	69 th - 71 st ; 74 th - 79 th
Sixth	William Roger Romine (R)	Sistersville	75 th - 79 th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78 th - 79 th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71 st - 79 th
Ninth	Larry W. Border (R)	Davisville	70 th - 79 th
Tenth	Tom Azinger (R)	Vienna	72 nd - 79 th
	John Ellem (R)	Parkersburg	75 th - 79 th
	Daniel Poling (D)	Parkersburg	Appt. 1/07, 78 th ; 79 th
Eleventh	Bob Ashley (R)	Spencer	67 th - 73 rd ; 75 th - 79 th
Twelfth	Mitch Carmichael (R)	Ripley	75 th - 79 th
Thirteenth	Dale Martin (D)	Poca	75 th - 79 th
	Bradly Paxton (D)	Liberty	71 st ; Appt. 4/22/99, 74 th ; 75 th - 79 th
Fourteenth	Troy Andes (R)	Hurricane	78 th - 79 th
	Patti Eagloski Schoen (R)	Scott Depot	76 th - 79 th
Fifteenth	Kevin J. Craig (D)	Huntington	75 th - 79 th
	Carol Miller (R)	Huntington	78 th - 79 th
	Jim Morgan (D)	Huntington	Appt. 201, 75 th ; 76 th - 79 th
Sixteenth	Doug Reynolds (D)	Huntington	78 th - 79 th
	Kelli Sobonya (R)	Huntington	76 th - 79 th
	Dale Stephens (D)	Huntington	75 th ; 77 th - 79 th
Seventeenth	Don C. Perdue (D)	Prichard	74 th - 79 th
	Richard Thompson (D)	Lavelette	65 th , Resigned 6/81; 76 th - 79 th
Eighteenth	Larry W. Barker (D)	Madison	77 th - 79 th
Nineteenth	Greg Butcher (D)	Chapmanville	73 rd - 77 th ; 79 th
	Jeff Eldridge (D)	Harts	77 th - 79 th
	Ralph Rodighiero (D)	Logan	78 th - 79 th
	Josh Stowers (D)	Alum Creek	79 th
Twentieth	K. Steven Kominar (D)	Kermitt	72 nd - 79 th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70 th ; 71 st - 79 th
	Daniel J. Hall (D)	Oceana	79 th
Twenty-second	Linda Goode Phillips (D)	Pineville	79 th
	Clif Moore (D)	Thorpe	77 th - 79 th
Twenty-third	John H. Shott (R)	Bluefield	79 th
Twenty-fourth	John R. Frazier (D)	Princeton	65 th ; 79 th
	Thomas Mike Porter (R)	Princeton	77 th - 79 th
Twenty-fifth	Gerald Crosier (D)	Union	76 th - 79 th
Twenty-sixth	Virginia Mahan (D)	Green Sulphur Springs	73 rd - 79 th
	Ricky Moye (D)	Crab Orchard	78 th - 79 th
	Linda Sumner (R)	Beckley	76 th - 79 th
	Sally Susman (D)	Beckley	74 th - 77 th ; 79 th
	William R. Wooton (D)	Beckley	63 rd - 67 th ; 69 th ; (Senate 70 th - 75 th); 79 th

MEMBERS OF THE HOUSE OF DELEGATES, Continued

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

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

(D) Democrats 71
(R) Republicans 29

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 2009

OFFICERS

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

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72 nd - 79 th
	Jack Yost (D)	Wellsburg	(House 76 th - 78 th); 79 th
Second	Larry J. Edgell (D)	New Martinsburg	74 th - 79 th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97, 73 rd ; 74 th - 79 th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67 th ; 68 th - 79 th
	J. Frank Deem (R)	Vienna	(House 52 nd -56 th); 57 th - 62 nd ; 64 th - 65 th ; (House 69 th); 72 nd - 79 th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71 st - 74 th); 75 th - 79 th
	Mike Hall (R)	Hurricane	(House 72 nd - 77 th); 78 th - 79 th
Fifth	Evan H. Jenkins (D)	Huntington	(House 72 nd - 74 th); 76 th - 79 th
	Robert H. Plymale (D)	Ceredo	71 st - 79 th
Sixth	H. Truman Chafin (D)	Williamson	66 th - 79 th
	John Pat Fanning (D)	Iaeger	58 th - 64 th ; 67 th -68 th ; 73 rd - 79 th
Seventh	Ron Stollings (D)	Madison	78 th - 79 th
	Earl Ray Tomblin (D)	Chapmanville	(House 62 nd -64 th); 65 th - 79 th
Eighth	Corey J. Palumbo (D)	Charleston	(House 76 th - 78 th); 79 th
	Erik P. Wells (D)	Charleston	78 th - 79 th
Ninth	D. Richard Browning (D)	Oceana	(House 69 th - 72 nd ; 75 th - 78 th); 79 th
	Mike Green (D)	Daniels	78 th - 79 th
Tenth	Donald T. Caruth (R)	Mercer	(House 76 th) 77 th - 79 th
	Jesse O. Guills (R)	Lewisburg	76 th - 79 th
Eleventh	William R. Laird, IV (D)	Oak Hill	(House 74 th); 79 th
	C. Randy White (D)	Webster Springs	(House 73 rd - 75 th); 76 th - 79 th
Twelfth	Douglas Eugene Facemire (D)	Sutton	79 th
	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/83, 66 th ; 67 th -69 th); 70 th - 71 st ; 75 th - 79 th
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71 st); 72 nd - 79 th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69 th - 72 nd); 73 rd -79 th
Fourteenth	Dave Sypolt (R)	Kingwood	78 th -79 th
	Bob Williams (D)	Grafton	79 th
Fifteenth	Clark Barnes (R)	Randolph	77 th - 79 th
	Walt Helmick (D)	Marlinton	(House 1 yr., 69 th); Appt. 9/89, 69 th ; 70 th - 79 th
Sixteenth	Herb Snyder (D)	Shenandoah Junction	73 rd - 76 th ; 79 th
	John R. Unger II (D)	Martinsburg	74 th - 79 th
Seventeenth	Dan Foster (D)	Charleston	(House 76 th); 77 th - 79 th
	Brooks F. McCabe, Jr. (D)	Charleston	74 th - 79 th

(D) Democrats 26
 (R) Republicans 8

TOTAL 34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2009

STANDING

AGRICULTURE

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

BANKING AND INSURANCE

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

CONSTITUTIONAL REVISION

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

EDUCATION

M. Poling (*Chair*), Paxton (*Vice Chair*), Beach, Crosier, Ennis, Fragale, Lawrence, Louisos, Moye, Perry, Pethel, Rodighiero,

HOUSE OF DELEGATES COMMITTEES

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

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

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

JUDICIARY

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

NATURAL RESOURCES

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

PENSIONS AND RETIREMENT

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

POLITICAL SUBDIVISIONS

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

HOUSE OF DELEGATES COMMITTEES

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

ROADS AND TRANSPORTATION

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

COMMITTEE ON SENIOR CITIZEN ISSUES

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

RULES

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

VETERANS' AFFAIRS AND HOMELAND SECURITY

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

HOUSE OF DELEGATES COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Wells (*Cochair*), Fragale, Staggers and Overington.

GOVERNMENT AND FINANCE

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

GOVERNMENT OPERATIONS

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

LEGISLATIVE RULE-MAKING REVIEW

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

PENSIONS AND RETIREMENT

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

STATUTORY LEGISLATIVE COMMITTEES

COMMISSION ON ECONOMIC DEVELOPMENT

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

HOUSE OF DELEGATES COMMITTEES

COMMISSION ON INTERSTATE COOPERATION

Doyle (*Cochair*), Guthrie (*Vice Cochair*).

COMMISSION ON SPECIAL INVESTIGATIONS

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

FOREST MANAGEMENT REVIEW COMMISSION

Michael (*Cochair*), Hartman, Williams and Romine.

**LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

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

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

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

**LEGISLATIVE OVERSIGHT COMMISSION ON
STATE WATER RESOURCES**

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

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

Kominar (*Cochair*), Barker, Klempa and Hamilton.

HOUSE OF DELEGATES COMMITTEES

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

Perry (*Cochair*), Boggs, Morgan, Ross and Ellem.

COMMITTEES OF THE SENATE
Regular Session, 2009

STANDING

AGRICULTURE

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

SENATE COMMITTEES

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

LABOR

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

SENATE COMMITTEES

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

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

JOINT COMMITTEES

ENROLLED BILLS

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

SENATE COMMITTEES

GOVERNMENT AND FINANCE

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

GOVERNMENT OPERATIONS

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

LEGISLATIVE RULE-MAKING REVIEW

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

PENSIONS AND RETIREMENT

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

RULES

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

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

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

COMMISSION ON INTERSTATE COOPERATION

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

SENATE COMMITTEES

COMMISSION ON SPECIAL INVESTIGATIONS

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

FOREST MANAGEMENT REVIEW COMMISSION

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

**LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATION ACCOUNTABILITY**

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

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

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

**LEGISLATIVE OVERSIGHT COMMISSION ON
STATE WATER RESOURCES**

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

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

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

SENATE COMMITTEES

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

Senators White (*Cochair*), Green, Laird, Yost and Barnes.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2009

CHAPTER 1

**(Com. Sub. for H.B. 2567 - By Delegates Miley, Webster,
Ellem, Hamilton, Mahan, Shook and Varner)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §29A-2-6 of the Code of West Virginia, 1931, as amended, relating to filing agency rules with the Secretary of State under the administrative procedures act; requiring all rules to be filed with the Secretary of State electronically beginning July 1, 2011; allowing for exemptions to the requirement; requiring legislative rules to implement the provisions of the requirement; and authorizing a voluntary pilot program to electronic filing of proposed rules.

Be it enacted by the Legislature of West Virginia:

That §29A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE REGISTER.

§29A-2-6. Format and numbering of agency rules filed in State Register; electronic filing required beginning July 1, 2011; pilot project.

1 (a) Each proposed rule filed by an agency requiring a
2 notice to be published in the State Register in accordance
3 with the provisions of section five, article three of this
4 chapter shall include as its initial provisions: (1) A statement
5 identifying such rule as a legislative rule, an interpretive rule
6 or a procedural rule, as the case may be; (2) a statement of
7 such section, article and chapter of this code to which such
8 rule or any part thereof relates; and (3) a statement of the
9 section, article and chapter of this code or any other provision
10 of law which provides authority for the promulgation of such
11 rule. The agency shall be estopped from relying on any
12 authority for the promulgation of such rule which is not
13 stated therein in accordance with the requirements of this
14 subdivision.

15 (b) Each rule when filed, to be finally effective, shall
16 have attached thereto an abstract of its promulgation history
17 prepared by the agency showing the date of the filing in the
18 State Register of the content of, or notice of any procedure
19 relating to, action necessary under this chapter to cause such
20 rules to be finally effective: *Provided*, That any error or
21 omission in such abstract shall not affect the validity of any
22 rule or action in respect thereto.

23 (c) The Secretary of State shall prescribe by legislative
24 rule a standard size, format, numbering and indexing for
25 rules to be filed in the State Register, and may prescribe
26 procedural or interpretive rules to clarify and interpret the
27 provisions in this section. The Secretary of State shall refuse
28 to accept for filing any rules which do not comply with the
29 specific provisions of this section. The Secretary of State
30 may also refuse to accept any rules which do not comply with
31 the rules issued pursuant to this section.

32 (d) Unless and until the Secretary of State prescribes
33 otherwise by rule issued and made effective under the
34 provisions of subsection (c) of this section, each rule filed in
35 paper form in the State Register shall be on white paper

36 measuring eight and one-half inches by eleven inches,
37 typewritten and single-spaced, with a one inch margin at the
38 top, bottom and each side of each page, and shall be
39 reproduced photographically, or by xerography or other
40 duplication process. The Secretary of State may grant
41 specific exceptions to such requirements in the case of maps,
42 diagrams and exhibits, if the same may not be conveniently
43 folded and fastened with the other pages of rules and in the
44 case of rules which incorporate a rule or regulation of a
45 federal agency or other organization which could not be
46 submitted in the standard size and format except at undue
47 expense. Materials submitted for inclusion in the State
48 Register shall be fastened on the left side by two or more
49 fasteners attached through holes suitable for insertion into
50 ring binders.

51 (e)(1) Beginning July 1, 2011, unless otherwise
52 authorized by the Secretary of State, all agencies, boards and
53 commissions having rulemaking authority, shall file the
54 provisions of and attachments to all proposed rules required
55 to be filed with the Secretary of State, and any associated
56 documents that are required to be published in the State
57 Register, exclusively in a electronic format. The Secretary of
58 State may exempt an agency, board or commission from this
59 requirement upon the Secretary of State's determination that
60 the filer is without the means to electronically file the
61 documents and to require electronic filing would place an
62 unreasonable burden on the agency, board or commission.

63 (2) On or before July 1, 2010, the Secretary of State shall
64 propose for promulgation legislative rules to establish a
65 uniform system for the electronic filing required by the
66 provisions of this section and to otherwise implement those
67 provisions.

68 (3) During the calendar year 2010, through procedural
69 rules, the Secretary of State may institute a limited pilot

70 project through which proposed new rules or amendments to
 71 existing rules may be filed electronically by any agency,
 72 board or commission under agreement with the Secretary of
 73 State. Participation by any agency, board or commission in
 74 the pilot project is voluntary.

CHAPTER 2

**(Com. Sub. for S.B. 472 - By Senators Unger,
 Green, Caruth and Stollings)**

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

AN ACT to amend and reenact §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, all relating to amending restrictions on outdoor advertising of businesses located on real property owned or leased by the business advertised.

Be it enacted by the Legislature of West Virginia:

That §17-22-1, §17-22-6, §17-22-7, §17-22-8, §17-22-9, §17-22-10, §17-22-11 and §17-22-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

- §17-22-1. Legislative finding.
- §17-22-6. Purchase or condemnation; powers of Commissioner of Highways; payment to claimants.
- §17-22-7. Exceptions to prohibited signs; standards for excepted signs.

- §17-22-8. Exempted areas; agreements between Commissioner of Highways and United States Secretary of Transportation.
- §17-22-9. Signs, displays and devices providing information for the traveling public; location.
- §17-22-10. Special fund.
- §17-22-11. Enforcement of provisions by commissioner; rules and regulations.
- §17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

§17-22-1. Legislative finding.

1 The Legislature hereby finds and declares: (a) That
2 outdoor advertising is a legitimate, commercial use of private
3 property adjacent to roads and highways; (b) that outdoor
4 advertising is an integral part of the business and marketing
5 function and an established segment of the national economy
6 which serves to promote and protect private investments in
7 commerce and industry; and (c) that the erection and
8 maintenance of outdoor advertising signs, displays and
9 devices in areas adjacent to federal-aid interstate and primary
10 highways should be regulated in order to protect the public
11 investment in such highways, to promote the recreational
12 value of public travel, to preserve natural beauty and to
13 promote the reasonable, orderly and effective display of such
14 signs, displays and devices.

15 The Legislature further finds and declares that fiscal
16 actualities reflect that the people of the State of West Virginia
17 would suffer economically if the state failed to participate
18 fully in the allocation and apportionment of federal-aid
19 highway funds, more specifically that a reduction in
20 federal-aid highway funds would necessitate increased local
21 taxation to support and maintain the highway program and
22 system, and that it is the intention of this bill, among other
23 things, to provide a statutory basis for regulation of outdoor
24 advertising consistent with the public policy relating to areas
25 adjacent to federal-aid interstate and primary highways
26 declared by the Congress of the United States, in Title 23,
27 United States Code, and that the economic benefit resulting

28 from full participation in the federal highway program would
 29 constitute a benefit to the community as a whole.

§17-22-6. Purchase or condemnation; powers of Commissioner of Highways; payment to claimants.

1 The Commissioner of Highways is hereby authorized and
 2 empowered to make acquisition of all of the property rights
 3 and interest specified in section five of this article by
 4 purchase at private sale or, in the event he is unable to do so,
 5 by proceeding in eminent domain. Upon any such taking or
 6 acquisition pursuant to the provisions of this article, just and
 7 full compensation for the sign and leasehold interest shall be
 8 paid directly to the owner thereof, and just and full
 9 compensation for the loss of the right to erect and maintain
 10 signs shall be paid directly to the owner of the affected real
 11 property. In any condemnation proceeding involving such
 12 taking or acquisition by the state, the commissioners or jury
 13 shall ascertain the compensation to which the owner of the
 14 sign and leasehold interest is entitled, separate and apart from
 15 the compensation to which the owner of the real property is
 16 entitled, as provided and authorized in section eighteen,
 17 article two, chapter fifty-four of this code.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

1 The provisions of section three of this article shall not
 2 apply to the following: (a) Directional and other official signs
 3 and notices required or authorized by law, including, but not
 4 limited to, signs and notices pertaining to natural wonders,
 5 farm wineries, mini-distilleries, scenic and historical
 6 attractions, which such signs and notices shall conform to
 7 standards respecting lighting, size, number, spacing and such
 8 other appropriate requirements as may be designated and
 9 specified by the Secretary of Transportation of the United
 10 States: *Provided*, That the Commissioner of Highways shall

11 not establish any standards respecting lighting, size, number,
12 spacing and other appropriate requirements which are stricter
13 than such standards designated and specified by the Secretary
14 of Transportation of the United States; (b) signs, displays and
15 devices advertising the sale or lease of property upon which
16 they are located; and (c) signs, displays and devices
17 advertising activities conducted on the property on which
18 they are located, including markers of underground utility
19 facilities.

**§17-22-8. Exempted areas; agreements between Commissioner
of Highways and United States Secretary of
Transportation.**

1 In order to promote the reasonable, orderly and effective
2 display of outdoor advertising while remaining consistent
3 with the purposes of this article, signs, displays and devices,
4 whose size, lighting and spacing shall be determined by
5 agreement between the Commissioner of Highways of West
6 Virginia and the Secretary of Transportation of the United
7 States, may be erected and maintained within six hundred
8 sixty feet of the nearest edge of the right-of-way of
9 federal-aid interstate or primary roads, within areas zoned
10 industrial or commercial, or in unzoned commercial or
11 industrial areas, as may be determined by agreement between
12 the Commissioner of Highways of West Virginia and the
13 Secretary of Transportation of the United States: *Provided,*
14 That any such agreement shall contain a definition of
15 unzoned commercial or industrial areas which reflects
16 existing conditions in this state, such as, without limiting the
17 foregoing, existing land use, availability of land for urban
18 development, topography and accepted zoning practices now
19 prevailing in this state. Any agreement between the
20 Commissioner of Highways and the Secretary of
21 Transportation relating to size, lighting and spacing shall
22 reflect customary usage in this state. Any agreement
23 between the Commissioner of Highways and the Secretary of

24 Transportation defining unzoned commercial or industrial
25 areas, or relating to size, lighting and spacing, shall be no
26 more restrictive than necessary to secure to this state any
27 federal aid contingent upon compliance with federal laws, or
28 federal rules and regulations relating to outdoor advertising,
29 and shall be subject to amendment or rejection by the
30 Legislature of West Virginia: *Provided, however,* That the
31 terms of any such agreement shall be no more restrictive than
32 those included in any other similar agreement made by the
33 Secretary of Transportation and other states: *Provided*
34 *further,* That such agreement shall provide for its
35 modification and amendment in the event and to the extent
36 that the Secretary of Transportation and any other state shall
37 thereafter agree to any provisions which shall be less
38 restrictive. The provisions of this section shall not apply to
39 signs, displays and devices referred to in clauses (b) and (c),
40 section seven of this article.

**§17-22-9. Signs, displays and devices providing information for
the traveling public; location.**

1 Signs, displays and devices giving specific information
2 in the interest of the traveling public may be erected and
3 maintained, pursuant to agreement between the
4 Commissioner of Highways and the Secretary of
5 Transportation, within the rights-of-way of highways within
6 the federal-aid interstate system, at appropriate distances
7 from interchanges on such interstate system.

§17-22-10. Special fund.

1 There is hereby created a special fund, to the credit of
2 which shall be paid such funds as, from time to time, may be
3 appropriated by the Legislature and all federal funds
4 allocated and distributed to the State of West Virginia in
5 implementation of the provisions of Title 23, United States
6 Code, relating to outdoor advertising, to be administered by

7 the Commissioner of Highways in the enforcement and
8 carrying out of the provisions of this article.

§17-22-11. Enforcement of provisions by commissioner; rules and regulations.

1 It shall be the function and duty of the Commissioner of
2 Highways to administer and enforce the provisions of this
3 article, and in the performance of his or her duties hereunder,
4 he or she may assign to division engineers, and other
5 employees in his or her department, such duties as he or she
6 may deem proper. The commissioner is hereby authorized
7 and empowered to promulgate rules and regulations
8 implementing the provisions of this article, including rules
9 and regulations permitting the state of West Virginia to
10 comply with the provisions of Title 23, United States Code,
11 relating to the payment of bonuses for the regulation of
12 outdoor advertising adjacent to the interstate system and the
13 terms and provisions of any agreement heretofore entered
14 into pursuant to law by and between the Commissioner of
15 Highways of West Virginia and the Secretary of Commerce
16 of the United States relating to the payment of such bonuses,
17 any provisions of this article to the contrary notwithstanding.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

1 No person shall engage or continue in the business of
2 outdoor advertising in this state without first obtaining a
3 license for outdoor advertising from the commissioner; and
4 no person shall construct, erect, operate, use, maintain, lease
5 or sell any outdoor advertising sign, display or device in this
6 state without first obtaining a license from the commissioner.
7 The commissioner shall charge an annual license fee in the
8 amount of \$125, payable in advance, for licensees obtaining
9 up to twenty permits. Licensees, including subsidiaries and
10 affiliates, obtaining twenty-one or more permits shall pay an

11 annual fee of \$1,000, payable in advance. Applications for
12 licenses, or renewal of licenses, shall be made on forms
13 furnished by the commissioner and shall contain any
14 pertinent information required by the commissioner and shall
15 be accompanied by the annual fee. Licenses granted under
16 this section expire on June 30 of each year and shall not be
17 prorated. Applications for the renewal of licenses shall be
18 made not less than thirty days prior to the date of expiration.
19 Nothing in this section shall be construed to require any
20 person to obtain a license who constructs, erects, operates,
21 uses or maintains an on-premise sign, display or device
22 solely on his or her own property at the location of the
23 advertised business and within limitations established in rules
24 authorized by section eleven of this article and promulgated
25 in accordance with state law. The Commissioner of
26 Highways, in his or her discretion, may propose for
27 promulgation an emergency rule as provided in article three,
28 chapter twenty-nine-a of this code that clarifies, explains or
29 implements limitations or restrictions on the construction,
30 erection, operation, use and maintenance of outdoor
31 advertising signs, displays and devices. With the prior
32 written approval of the Commissioner of Highways, a county
33 commission may enact and enforce outdoor advertising
34 ordinances which place limitations or restrictions on outdoor
35 advertising signs, displays or devices which are in addition
36 to or more restrictive than the limitations or restrictions
37 provided by the Commissioner of Highways in the
38 emergency rule on this subject.

39 The commissioner may, after thirty days' notice in
40 writing to the licensee, make and enter an order revoking any
41 license granted by him or her upon repayment of a
42 proportionate part of the license fee, in any case where he or
43 she finds that any material information required to be given
44 in the application for the license is knowingly false or
45 misleading or that the licensee has violated any of the
46 provisions of this article, unless the licensee, before the

47 expiration of said thirty days, corrects the false or misleading
48 information and complies with the provisions of this article.
49 The order shall be accompanied by findings of fact and
50 conclusions of law upon which the order was made and
51 entered. Any person adversely affected by an order made
52 and entered by the commissioner is entitled to judicial review
53 of the order. The judicial review shall be in the circuit court
54 for the county in which the owner of the sign has his or her
55 principal place of business in this state, or in the circuit court
56 of Kanawha County if all parties agree. The judgment of the
57 circuit court is final unless reversed, vacated or modified on
58 appeal to the Supreme Court of Appeals of West Virginia.
59 Legal counsel and services for the commissioner in appeal
60 proceedings in any circuit court and the Supreme Court of
61 Appeals shall be provided by the Attorney General or his or
62 her assistants, and in appeal proceedings in any circuit court
63 by the prosecuting attorney of the county as well, all without
64 additional compensation. The commissioner may employ
65 special counsel to represent the commissioner in a particular
66 proceeding.

CHAPTER 3

**(Com. Sub. for H.B. 2690 - By Delegates Talbott, Argento,
Pethtel, Swartzmiller, Tabb, Beach, Williams,
Anderson, Evans, Schoen and C. Miller)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §19-9-28, §19-9-29, §19-9-30,
§19-9-31, §19-9-32, §19-9-33, §19-9-34, §19-9-34a, §19-9-35
and §19-9-36 of the Code of West Virginia, 1931, as amended,

all relating to updating language pertaining to the death of diseased or infected animals; indemnity for the death of diseased or infected animals; deleting outdated amounts paid to appraisers and arbitrators for services rendered; and disposing of dead domesticated animals.

Be it enacted by the Legislature of West Virginia:

That §19-9-28, §19-9-29, §19-9-30, §19-9-31, §19-9-32, §19-9-33, §19-9-34, §19-9-34a, §19-9-35 and §19-9-36 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS
AND EUTHANASIA OF DISEASED
ANIMALS.**

- §19-9-28. Indemnity for euthanizing infected or exposed animals; agreement.
- §19-9-29. When right of indemnity does not exist.
- §19-9-30. Appraisal of infected or exposed animals; amount; arbitration; fees of arbitrators.
- §19-9-31. Certificate of appraisal.
- §19-9-32. Euthanasia of diseased animals; supervision; certificate of euthanasia.
- §19-9-33. Payment of indemnity.
- §19-9-34. Disposal of carcass of diseased animal.
- §19-9-34a. Authority of commissioner to promulgate rules regulating disposal of dead animals.
- §19-9-35. Tests for bovine tuberculosis; disposition of infected bovine animals.
- §19-9-36. Rules for determining amount of indemnity.

§19-9-28. Indemnity for euthanizing infected or exposed animals; agreement.

1 Whenever, to prevent the spread of any communicable
2 disease which cannot be cured or controlled by isolation and
3 adequate or proper veterinary treatment, the commissioner or
4 any of the commissioner's agents find it necessary to
5 euthanize any animal infected with or directly exposed to any
6 infectious, contagious or communicable disease, which
7 cannot be cured or controlled by isolation and adequate or
8 proper veterinary treatment, and if the owner of the animal

9 elects to receive indemnity for it, the commissioner shall
10 require the owner, before the appraisal and death of the
11 animal, to execute an agreement that the owner will
12 thoroughly clean and disinfect all premises that may have
13 been infected by the animal in the manner the commissioner
14 prescribes. If the animal has tuberculosis, the agreement will
15 require the owner to have the entire herd of bovine animals
16 tested with tuberculin by the commissioner or the
17 commissioner's agent, at times the commissioner designates,
18 and the agreement will require that the owner not admit to the
19 herd any bovine animal that has not had a negative reaction
20 to the test. The agreement shall be in duplicate, one copy to
21 be retained by the signer, on a form prescribed by the
22 commissioner, and shall be signed by the owner or the
23 owner's agent. The agreement shall be effective for a period
24 of two years from the date it is executed. All animals for
25 which the owner claims indemnity shall be appraised before
26 being euthanized, and the owner shall be indemnified as
27 hereinafter provided: *Provided*, That any animal infected
28 with rabies may be euthanized by the owner or any person
29 authorized to do so without an agreement or appraisal, and if
30 the disease is caused by a dog bite, the animal shall be
31 appraised and the owner shall be compensated as provided in
32 article twenty of this chapter.

§19-9-29. When right of indemnity does not exist.

1 The right of indemnity shall not exist nor shall payment
2 be made in any of the following cases:

3 (a) For animals owned by the United States, this state, or
4 any county, city, town or village in this state;

5 (b) For animals brought into this state contrary to the
6 provisions of this article, or where the owner of the animals
7 or person claiming compensation has failed to comply with
8 the provisions of this article;

9 (c) When the owner or claimant at the time of coming
10 into possession of the animal knew or had reason to believe
11 it to be afflicted with a communicable disease;

12 (d) When the owner has been guilty of negligence or
13 carelessly exposed such animals to a communicable disease;
14 and

15 (e) When the owner has refused or neglected to comply
16 with the sanitary requirements of the Commissioner of
17 Agriculture or the commissioner's agents.

**§19-9-30. Appraisal of infected or exposed animals; amount;
arbitration; fees of arbitrators.**

1 The commissioner or the commissioner's agent shall act
2 as appraiser and shall appraise each infected or directly
3 exposed animal within five days before euthanizing the
4 animal, basing the amount upon the class and market value
5 of the animal at the time of the appraisal, whether for
6 breeding purposes or for milk or meat production. Animals
7 reacting to any approved test, but not exhibiting any physical
8 evidence of disease, shall be appraised without considering
9 the presence of a diseased condition, but animals exhibiting
10 any physical evidence of disease shall be appraised as
11 infected animals: *Provided*, That where indemnities are
12 claimed for directly exposed animals euthanized on account
13 of rabies infection, appraisal shall be based on the value of
14 the animal before it became infected. If the amount of
15 appraisal of any animal, as determined by the appraiser, is
16 not satisfactory to the owner of the animal, the owner shall
17 immediately notify the appraiser of this fact, setting forth the
18 reason for complaint. The amount of the appraisal shall then
19 be determined by arbitrators, one to be appointed by the
20 appraiser and one by the owner of the animal. If these
21 arbitrators are not able to agree on the amount of appraisal,
22 a third arbitrator shall be appointed by them, whose decision

23 shall be final. Compensation for the arbitrators appointed by
24 the owner and the appraiser shall be paid by the party
25 appointing the arbitrator, and in case a third arbitrator is
26 chosen, the third arbitrator shall be paid by the party against
27 whom the decision is made.

§19-9-31. Certificate of appraisal.

1 When the animal is to be euthanized, the commissioner
2 or the commissioner's agent shall deliver to the owner a
3 certificate of appraisal which may cover any number of
4 animals belonging to the same owner, showing the age and
5 description of each animal found to be infected or directly
6 exposed; the name and place of test, if any; the mark or brand
7 signifying an animal with tuberculosis; any other mark or
8 brand which the animal may bear; the date when and the
9 place where the animal is to be euthanized by the
10 veterinarian; the designation of the officer who is to
11 supervise the euthanasia; the appraised value of each animal;
12 the name and address of the owner of the animal; and the fact
13 that the owner has executed the agreement as provided in
14 section twenty-eight of this article.

**§19-9-32. Euthanasia of diseased animals; supervision;
certificate of euthanasia.**

1 After the agreement described in section twenty-eight of
2 this article has been executed, the appraisal has been made
3 and the certificate of appraisal issued, the commissioner or
4 the commissioner's agent shall have the animal euthanized
5 and the carcass disposed of in accordance with the meat
6 inspection regulations of the United States Department of
7 Agriculture, or in such manner as the commissioner
8 prescribes. The officer supervising the euthanasia shall
9 immediately include in the certificate of appraisal provided
10 for in section thirty-one of this article a certificate of
11 euthanasia stating that the officer has witnessed the

12 euthanasia of each of the animals; identifying the place and
13 date of the euthanasia; certifying that the number, age,
14 description and brand or mark correspond to those in the
15 certificate of appraisal; stating the result of the post-mortem
16 examination; the disposition made of the carcass; and the
17 amount paid to the veterinarian, which amount shall be paid
18 to the owner and credited on the amount of appraisal:
19 *Provided*, That in case animals are euthanized as having
20 tuberculosis, the appraisal certificate shall be credited in the
21 manner provided in section thirty-six of this article.

22 The euthanasia may be supervised and certified by the
23 commissioner; any of the commissioner's agents; or any person
24 with the authority of an agent or officer of the United States
25 Department of Agriculture. The commissioner may prescribe
26 other requirements for the certificates or the affidavits required
27 by this article, and may make and enforce rules governing the
28 handling, shipping and euthanasia of such animals.

§19-9-33. Payment of indemnity.

1 All claims for indemnity for animals euthanized as
2 having tuberculosis shall be paid in the manner prescribed in
3 section thirty-seven of this article. In all other cases when
4 animals are euthanized as provided in this article the
5 veterinarian shall forthwith forward to the commissioner the
6 certificates of appraisal and euthanasia, together with the
7 owner's claim for indemnity, and the owner's affidavit that
8 the owner has in all respects complied with the agreement
9 provided for in section twenty-eight of this article, and with
10 any other requirements prescribed by the commissioner. If
11 the certificates, claim and affidavit are correct and the claim
12 is not barred by section twenty-nine of this article, the
13 commissioner shall approve and file them. The commissioner
14 shall, at the end of each fiscal year, issue a requisition to the
15 State Auditor for two thirds of the value of the approved

16 certificates: *Provided*, That in case of an outbreak of
17 foot-and-mouth disease, or any other dangerously contagious
18 or infectious disease among bovine animals, ovine animals,
19 or swine, on account of which such animals are being
20 euthanized by cooperative order of federal and state
21 authority, and for which euthanized animals the federal
22 government pays one half of the indemnity, this state shall
23 pay one half, and only one half, of such indemnity. The State
24 Auditor shall issue a warrant on the State Treasurer, in favor
25 of the claimant, for the amount ordered by the commissioner,
26 which shall be paid out of the current appropriation for
27 administering this article: *Provided, however*, That in case
28 the amount of the certificates of appraisal, and of those
29 described in section thirty-seven of this article, in any one
30 year, exceeds the current appropriation therefor, the
31 certificates shall be paid pro rata at the end of each fiscal
32 year.

§19-9-34. Disposal of carcass of diseased animal.

1 Whenever it is necessary to destroy or dispose of the
2 carcass of any animal to prevent the spread of disease, the
3 destruction or disposal shall be made by one of the following
4 methods designed to be protective of human health and the
5 environment: (a) Complete cremation of the entire carcass
6 with all its parts and products; (b) boiling the carcass and all
7 its parts and products in water or heating the same with steam
8 at the temperature of boiling water, continuously during at
9 least two hours; (c) disposing of the carcass and all its parts
10 and products in a solid waste landfill permitted and approved
11 by the Department of Environmental Protection; (d) burial of
12 the carcass and all its parts and products in a place that will
13 not be subjected to overflow from ponds or streams, and
14 which is not less than one hundred feet from any
15 watercourse, well, spring, public highway, house or stable.
16 If buried, the carcass shall be covered with quicklime to a
17 depth of not less than three inches, and the top of such

18 carcass shall not be within two feet of the surface of the
19 ground when the grave is filled and smoothed to the level of
20 the surrounding surface; (e) rendering by a licensed facility;
21 (f) composting; and (g) such other method as the
22 commissioner may prescribe. When an animal infected with
23 a communicable disease dies or is euthanized, the owner of
24 the animal shall destroy or dispose of the carcass in the
25 manner provided in this section. It shall be unlawful to sell
26 any such carcass, any part of it, or any hide or offal from it.
27 If the owner of such animal does not dispose of the carcass
28 within twenty-four hours as provided by law, the
29 commissioner or the commissioner's agent shall destroy or
30 dispose of the carcass according to law, at the cost of the
31 owner. The expense of destruction or disposal may be
32 collected from the owner as debts of like amount are by law
33 collectible.

**§19-9-34a. Authority of commissioner to promulgate rules
regulating disposal of dead animals.**

1 Notwithstanding any other provision of law to the
2 contrary, the Commissioner of Agriculture is authorized to
3 promulgate rules to regulate the disposal of dead animals.

**§19-9-35. Tests for bovine tuberculosis; disposition of infected
bovine animals.**

1 The commissioner or the commissioner's agent is
2 authorized to test with tuberculin any bovine animal kept
3 within the state, subject to rules prescribed by the
4 commissioner. The tuberculin test shall be applied to bovine
5 animals at times designated by the commissioner for the
6 control and eradication of bovine tuberculosis, and all cows
7 whose milk is sold for human consumption or manufacture,
8 and all uncastrated beef animals, shall be tested with
9 tuberculin to the greatest extent possible.

10 When a bovine animal has a clearly defined reaction to
11 such test, as prescribed by the commissioner's rules, the
12 animal shall be considered infected with bovine tuberculosis
13 and shall be marked or branded upon the left jaw with a
14 capital "T" not less than two inches high, one and one-half
15 inches wide, with a mark one fourth of an inch wide. Such
16 branding shall not constitute cruelty to animals within the
17 meaning of the penal laws of the state.

18 All bovine animals within the state which are deemed to
19 have tuberculosis, either as a result of a physical examination
20 or the tuberculin test, shall be euthanized, and if the owner of
21 any such animal demands indemnity, the owner shall execute
22 the agreement provided for in section twenty-eight of this
23 article; such animal shall be appraised as provided in section
24 thirty of this article; an appraisal certificate shall be issued as
25 provided in section thirty-one of this article; and the
26 euthanasia shall be supervised and the certificate shall be
27 issued as provided in section thirty-two of this article.

§19-9-36. Rules for determining amount of indemnity.

1 The owners of animals euthanized as having tuberculosis
2 shall be indemnified in an amount determined by the results
3 of post-mortem inspection by the officer supervising the
4 euthanasia, and the certificate of appraisal shall be credited
5 according to the following rules: (a) If an animal is found
6 upon post-mortem inspection not to show lesions of
7 tuberculosis, the carcass and other edible portions shall be
8 passed as food, and the veterinarian shall sell them, including
9 all accompanying parts, for the best price obtainable, which
10 shall be paid to the owner and deducted from the amount of
11 appraisal, and any remaining balance shall be paid to the
12 owner; (b) if an animal is found upon post-mortem inspection
13 to be infected with tuberculosis, and the lesions are such that
14 the carcass and parts of the carcass are passed for food, the
15 veterinarian shall sell them, including all accompanying

16 parts, for the best price obtainable, which shall be paid to the
17 owner and deducted from eighty percent of the amount of the
18 appraisal, and any remaining balance shall be paid the owner;
19 (c) if an animal upon post-mortem inspection is condemned
20 for offal, the veterinarian shall sell the hide and offal for the
21 best price obtainable, which price shall be paid to the owner
22 and deducted from forty percent of the appraisal, and any
23 remaining balance shall be paid to the owner.

CHAPTER 4

**(H.B. 2541 - By Delegates Hamilton, Argento, Ireland,
Evans, Eldridge, Guthrie, Webster and Schadler)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §19-18-1 of the Code of West Virginia, 1931, as amended, relating to including poultry among those domesticated farm animals or stock for which the owner shall be liable for damages caused by those animals when they enter on the property of another.

Be it enacted by the Legislature of West Virginia:

That §19-18-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. GENERAL STOCK LAW.

§19-18-1. Stock trespassing on grounds of another; damages.

1 If any horse, mule, ass, jennet, cattle, sheep, swine,
2 poultry as defined in section two, article two-b of this chapter
3 or goat shall enter into any grounds, the owner or manager of
4 any such stock shall be liable to the owner or tenant of such
5 grounds for any damage he or she may sustain thereby, and
6 the party so injured may, if he or she find such stock on his
7 or her premises, impound them, or a sufficient number
8 thereof, subject to the provisions of sections eight, nine and
9 ten of this article, until such damages and costs of keeping
10 have been paid.

CHAPTER 5**(S.B. 445 - By Senators Kessler and Williams)**

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

AN ACT to amend and reenact §19-21A-6 of the Code of West Virginia, 1931, as amended, relating to removing the certification requirements for election of conservation supervisors.

Be it enacted by the Legislature of West Virginia:

That §19-21A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-6. Election of supervisors for each district; filling vacancies.

1 (a) Each county in a district shall elect two nonpartisan
2 supervisors: *Provided*, That any county with a population of
3 one hundred thousand based on the most recent decennial
4 census shall elect one additional supervisor and any county
5 with a population over one hundred thousand based on the
6 most recent decennial census shall elect one additional
7 supervisor for each fifty thousand residents over one hundred
8 thousand.

9 (b) A candidate for supervisor must be a landowner and
10 an active farmer with a minimum of five years' experience or
11 a retired farmer who has had a minimum of five years'
12 experience and must have the education, training and
13 experience necessary to carry out the duties required by this
14 article. The State Conservation Committee shall propose for
15 promulgation in accordance with the requirements of article
16 three-a, chapter twenty-nine of this code legislative rules to
17 establish criteria for the necessary education, training and
18 experience.

19 (c) All registered voters in the district are eligible to vote
20 in the election for candidates from the county within the
21 boundaries of the district in which the voter resides. The
22 candidates in each county who receive the largest number of
23 votes cast in the election shall be elected supervisors for that
24 county.

25 (d) Supervisors shall be elected in the general election to
26 be conducted in the year 2008 as nonpartisan candidates.
27 After that, supervisors shall be elected in the primary
28 election. The term of office for the candidate for supervisor
29 receiving the highest number of votes in the general election
30 of 2008 is four years; the candidate for supervisor receiving
31 the second highest number of votes in the general election of
32 2008 is two years. In counties where more than two
33 supervisors are elected in the general election of 2008, the

34 two supervisors receiving the highest number of votes serve
35 for four years and the remaining supervisor or supervisors
36 serve for two years. Terms of office for supervisors elected
37 after that are four years. The provisions of chapter three of
38 this code apply to election of supervisors.

39 (e) Persons holding the position of supervisor, regardless of
40 the expiration of the designated term of office, continue to serve
41 until the election and qualification of his or her successor.

42 (f) Any vacancy occurring in the office of supervisor shall
43 be filled by the committee by appointment of a person from the
44 county in which the vacancy occurs. Within fifteen days after
45 the vacancy occurs, the district shall submit a list of names of
46 persons qualified to be a supervisor. If the unexpired term is for
47 less than two years and two months, the appointed person holds
48 office until the expiration of the term. If the unexpired term is
49 for more than two years and two months, the appointed person
50 holds the office until a successor is elected in the next primary
51 or general election and qualified.

CHAPTER 6

**(H.B. 2474 - By Delegates Argento, Talbott, Martin, Staggers,
Evans, Williams, Tabb, C. Miller and Beach)**

[Passed April 7, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 11, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §19-29-6; and to
amend and reenact §22-15-22 of said code, all relating to the
regulation of land-based aquaculture facilities; exempting

aquaculture facilities from certain sludge management requirements; and providing the Commissioner of Agriculture rule-making authority to promulgate rules after consultation with the Department of Environmental Protection, concerning the disposal or application of waste produced from an aquaculture facility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-29-6; and that §22-15-22 of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

22. Environmental Resources.

CHAPTER 19. AGRICULTURE.

ARTICLE 29. PRODUCTION OF NONTRADITIONAL AGRICULTURE PRODUCTS.

§19-29-6. Waste disposal from an aquaculture facility.

1 After consultation with the Department of Environmental
2 Protection, the commissioner shall propose rules for
3 legislative approval in accordance with article three, chapter
4 twenty-nine-a of this code, to include the disposal or
5 application of waste produced from an aquaculture facility.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-22. Sludge management.

1 (a) Any sludge or other material determined by the
2 secretary to have beneficial properties similar to sewage

3 sludge may be beneficially used in accordance with the
4 applicable requirements governing sewage sludge, and any
5 other requirements determined to be necessary by the
6 secretary to protect human health and the environment.
7 Persons seeking to beneficially use sludge must meet the
8 requirements of this article and the rules promulgated under
9 this article.

10 (b) In order to enhance the resource recovery and
11 recycling goals of this act and to encourage the beneficial use
12 of sludge or other materials, the secretary shall propose for
13 promulgation in accordance with the provisions of article
14 three, chapter twenty-nine-a of this code, emergency and
15 legislative rules to effectuate the purposes of this section.
16 The secretary shall at a minimum include the following in the
17 proposed rules:

18 (1) A mechanism to determine beneficial use
19 characteristics;

20 (2) A method to determine pollutant content of the
21 material proposed for beneficial use;

22 (3) A method to determine that the beneficial properties
23 of the material are derived from the raw material rather than
24 additives;

25 (4) Buffer zones or other criteria necessary to adequately
26 protect ground and surface water;

27 (5) Necessary restrictions of pollutant levels in the
28 material;

29 (6) Analytical methods, loading rates and storage
30 requirements for the material;

31 (7) Permit requirements; and

32 (8) Appropriate fees.

33 (c) These rules do not apply to land-based aquaculture
34 facilities.

CHAPTER 7

**(Com. Sub. for H.B. 2771 - By Delegates D. Poling, Hamilton,
Ellem, Shook, Klempa, Hatfield and Miley)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §21-1D-2 and §21-1D-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1D-5a and §21-1D-7b, all relating to West Virginia Alcohol and Drug-Free Workplace Act; applying the provisions of the Act only to contracts valued in excess of \$100,000; clarifying the definitions of the phrases “drug test”, “drug of abuse” and “reasonable cause”; including a new definition for the phrase “preemployment drug test”; requiring drug and alcohol testing for employees of contractors who perform work for counties, municipalities and political subdivisions; providing an exemption for workers covered by United States Department of Transportation drug testing guidelines; requiring contractors to provide an annual certified drug-free workplace report to public authorities; and limiting the application of the offense for a third or subsequent violation of the Act to violations occurring within the previous five years.

Be it enacted by the Legislature of West Virginia:

That §21-1D-2 and §21-1D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21-1D-5a and §21-1D-7b, all to read as follows:

ARTICLE 1D. WEST VIRGINIA ALCOHOL AND DRUG-FREE WORKPLACE ACT.

§21-1D-2. Definitions.

§21-1D-5a. Drug-free workplace policy not applicable to workers required to follow federal Department of Transportation drug testing guidelines.

§21-1D-7b. Contractor to provide certified drug-free workplace report.

§21-1D-8. Penalties for violation of this article.

§21-1D-2. Definitions.

1 (a) The term “alcohol test” means a procedure conducted
2 to determine if an individual is under the influence of
3 alcohol.

4 (b) The term “construction”, as used in this article, means
5 any construction, reconstruction, improvement, enlargement,
6 painting, decorating or repair of any public improvement let
7 to contract the value of which contract is over \$100,000. The
8 term “construction” does not include temporary or
9 emergency repairs.

10 (c) The term “contractor” means any employer working
11 on a public improvement without regard to whether they are
12 serving as the prime or subcontractor to another.

13 (d) The term “drug test” means a procedure using at least
14 a nine-panel drug screen in urine specimens that are collected
15 from individuals for the purpose of scientifically analyzing
16 the specimens to determine if the individual ingested, was
17 injected or otherwise exposed to a drug of abuse.

18 (e) The term “drug of abuse” means any substance listed
19 under subsection (h) of this section and any other substance
20 the employer chooses to test for.

21 (f) The term “employee” means a laborer, mechanic or
22 other worker. For the purposes of this article, employee does
23 not include those persons as are employed or hired directly
24 by a public authority on a regular or temporary basis engaged
25 exclusively in making temporary or emergency repairs.
26 Furthermore, employee does not include those persons
27 employed by a contractor who does not work in public
28 improvement construction.

29 (g) The term “medical review officer” means a physician
30 who holds a certificate authorizing them to practice medicine
31 and surgery or osteopathic medicine and surgery, has
32 knowledge of substance abuse disorders, has the appropriate
33 medical training to interpret and evaluate positive drug and
34 alcohol test results together with a person’s medical history
35 and other relevant biomedical information, has successfully
36 completed qualification training as outlined in the Code of
37 Federal Regulations at 49 C.F.R. Part 40 §121 (c) and has
38 passed an exam administered by a nationally recognized
39 medical review officer certification board or subspecialty
40 board for medical practitioners in the field of medical review
41 of federally mandated drug testing.

42 (h) The term “nine-panel drug screen” means a drug-
43 testing program that tests for marijuana, cocaine, opiates
44 including hydromorphone, oxycodone, hydrocodone,
45 phencyclidine, amphetamines, barbiturates, benzodiazepines,
46 methadone and propoxyphene at the substance screening and
47 confirmation limits where provided under federally mandated
48 drug and alcohol testing programs or otherwise accepted as
49 the industry standard.

50 (i) The term “preemployment drug test” means a drug test
51 taken within the preceding twelve months from employment
52 or seven days after hire.

53 (j) The term “public authority”, as used in this article,
54 means any officer, board or commission or other agency of
55 the State of West Virginia, its counties or municipalities or
56 any political subdivision thereof, authorized by law to enter
57 into a contract for the construction of a public improvement,
58 including any institution supported, in whole or in part, by
59 public funds of the State of West Virginia and this article
60 applies to expenditures of these institutions made, in whole
61 or in part, from public funds.

62 (k) The term “public improvement”, as used in this
63 article, includes all buildings, roads, highways, bridges,
64 streets, alleys, sewers, ditches, sewage disposal plants,
65 waterworks, airports and all other structures upon which
66 construction may be let to contract by the State of West
67 Virginia, its counties or municipalities or any political
68 subdivision thereof.

69 (l) The term “random drug testing” means a procedure in
70 which employees who perform safety-sensitive tasks are
71 selected to undergo a drug test by a statistically valid random
72 selection method without prearrangement or planning.

73 (m) The term “reasonable cause” means a belief based on
74 facts and inferences based primarily upon, but not limited to:
75 (1) Observable phenomena, such as direct observation of use,
76 possession or distribution of alcohol or a drug of abuse, or of
77 the physical symptoms of being under the influence of
78 alcohol or a drug of abuse, such as, but not limited to, slurred
79 speech, dilated pupils, odor of an alcoholic beverage or a
80 drug of abuse, changes in affect or dynamic mood swings; (2)
81 a pattern of abnormal conduct, erratic or aberrant behavior or
82 deteriorating work performance such as frequent
83 absenteeism, excessive tardiness or recurrent accidents, that
84 appears to be related to the use of alcohol or a drug of abuse
85 and does not appear to be attributable to other factors; (3) the
86 identification of an employee as the focus of a criminal

87 investigation into unauthorized possession, use or trafficking
88 of a drug of abuse; (4) a report of use of alcohol or a drug of
89 abuse provided by a reliable and credible source; and (5)
90 repeated or flagrant violations of the safety or work rules of
91 the employee's employer, that are determined by the
92 employee's supervisor to pose a substantial risk of physical
93 injury or property damage and that appears to be related to
94 the use of alcohol or a drug of abuse and that does not appear
95 attributable to other factors.

96 (n) The term "safety-sensitive duty" means any task or
97 duty fraught with such risks of injury to the employee or
98 others that even a momentary lapse of attention or judgment,
99 or both, can lead to serious bodily harm or death.

100 (o) The term "under the influence of alcohol" means a
101 concentration of eight hundredths of one percent or more by
102 weight of alcohol in an individual's blood or a concentration
103 of eight hundredths of one gram or more by weight of alcohol
104 per two hundred ten liters of an individual's breath.

**§21-1D-5a. Drug-free workplace policy not applicable to
workers required to follow federal Department
of Transportation drug testing guidelines.**

1 In instances where a worker is required by law to follow
2 United States Department of Transportation drug testing
3 guidelines, no additional drug tests are required under this
4 article.

**§21-1D-7b. Contractor to provide certified drug-free
workplace report.**

1 No less than once per year, or upon completion of the
2 project, every contractor shall provide a certified report to the
3 public authority which let the contract. The report shall
4 include:

5 (1) Information to show that the education and training
6 service to the requirements of section five of this article was
7 provided;

8 (2) The name of the laboratory certified by the United
9 States Department of Health and Human Services or its
10 successor that performs the drug tests pursuant to this article;

11 (3) The average number of employees in connection with
12 the construction on the public improvement;

13 (4) Drug test results for the following categories
14 including the number of positive tests and the number of
15 negative tests:

16 (A) Preemployment and new hires;

17 (B) Reasonable suspicion;

18 (C) Post-accident;

19 (D) Random.

§21-1D-8. Penalties for violation of this article.

1 (a) Any contractor who violates any provision of this
2 article is, for the first offense, guilty of a misdemeanor and,
3 upon conviction thereof, shall be fined not more than \$1,000;
4 for the second offense, the person is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than
6 \$1,000 nor more than \$5,000; for the third or any subsequent
7 offense within the preceding five years , the person is guilty
8 of a misdemeanor and, upon conviction thereof, shall be
9 fined not less than \$5,000 nor more than \$25,000 and the
10 contractor shall be excluded from bidding any additional new
11 public improvement projects for a period of one year.

12 (b) Any person who directly or indirectly aids, requests
13 or authorizes any other person to violate any of the
14 provisions of this article is guilty of a misdemeanor and,
15 upon conviction thereof, shall be fined not less than \$50 nor
16 more than \$250.

CHAPTER 8

(Com. Sub. for H.B. 3240 - By Delegates White and Kominar)

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

AN ACT to amend and reenact §17F-1-2 of the Code of West Virginia, 1931, as amended, relating to all-terrain vehicle rider safety awareness courses; authorizing the Commissioner of Motor Vehicles to authorize state institutions of higher education to issue certificates of completion; and limiting the liability of the state institutions of higher education which operate, own, train or promote all-terrain vehicle rider safety awareness courses approved by the commissioner.

Be it enacted by the Legislature of West Virginia:

That §17F-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§17F-1-2. Safety awareness courses.

1 (a) The Commissioner of Motor Vehicles shall offer a
2 free all-terrain vehicle rider safety awareness course, and
3 may approve other all-terrain vehicle rider safety awareness

4 courses, to meet the reasonably anticipated needs of the
5 public. The commissioner shall offer free safety awareness
6 course materials to authorized dealers of all-terrain vehicles
7 for use by purchasers and potential purchasers free of charge.

8 (b) The commissioner shall issue certificates of
9 completion to persons who satisfactorily complete the
10 requirements of an approved course. The commissioner may
11 authorize a dealer of all-terrain vehicles and other approved
12 providers to issue the certificates of completion. The
13 commissioner may authorize a state institution of higher
14 education, which is the operator, owner, trainer or promoter
15 of an all-terrain vehicle rider safety awareness course
16 approved by the commissioner, pursuant to subsection (a) of
17 this section, to issue the certificates of completion on behalf
18 of the commissioner.

19 (c) No person under the age of eighteen may operate an
20 all-terrain vehicle without a certificate of completion of a
21 vehicle rider safety awareness course as offered or approved
22 by the commissioner.

23 (d) The provisions of subsection (c) of this section do not
24 apply to the operation of an all-terrain vehicle on any private
25 or public recreational trail or area or affiliated trail or area
26 operated by a person or entity which has in place a safety
27 program.

28 (e) No state institution of higher education, which
29 operates, owns, trains or promotes an all-terrain vehicle rider
30 safety awareness course approved by the commissioner,
31 pursuant to this section, is liable for personal injuries to, or
32 for the death of, a rider that may occur during an approved
33 all-terrain vehicle rider safety awareness course, unless an
34 employee or agent of the state institution of higher
35 education's acts or omissions are with malicious purpose, in
36 bad faith, or undertaken in a wanton or reckless manner.

CHAPTER 9

(Com. Sub. for S.B. 501 - By Senators Kessler and Prezioso)

[Amended and again passed May 29, 2009 as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §7-10-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-20-8 of said code; and to amend and reenact §30-10A-4, §30-10A-6 and §30-10A-8 of said code, all relating to euthanizing animals; prohibiting the euthanizing of animals by use of a gas chamber and providing an exception thereto; requiring all persons or entities performing animal euthanasia to register with the Board of Veterinary Medicine; allowing animal euthanasia technicians to administer sedatives and tranquilizers; and directing the Board of Veterinary Medicine to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That §7-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-20-8 of said code be amended and reenacted; and that §30-10A-4, §30-10A-6 and §30-10A-8 of said code be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.
- 19. Agriculture.
- 30. Professions and Occupations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; bonds; liability for costs; liens; exclusions.

1 (a) Subject to the provisions of subsection (h) of this
2 section, a humane officer shall take possession of any animal,
3 including birds or wildlife in captivity, known or believed to
4 be abandoned, neglected, deprived of necessary sustenance,
5 shelter, medical care or reasonable protection from fatal
6 freezing or heat exhaustion or cruelly treated or used as
7 defined in sections nineteen and nineteen-a, article eight,
8 chapter sixty-one of this code.

9 (b) The owner or persons in possession, if his or her
10 identity and residence are known, of any animal seized
11 pursuant to subsection (a) of this section shall be provided
12 written notice of the seizure, his or her liability for the cost
13 and care of the animal seized as provided in this section and
14 the right to request a hearing in writing before a magistrate in
15 the county where the animal was seized. The magistrate
16 court shall schedule any hearing requested within ten
17 working days of the receipt of the request. The failure of an
18 owner or person in possession to request a hearing within
19 five working days of the seizure is prima facie evidence of
20 the abandonment of the animal. At the hearing, if requested,
21 the magistrate shall determine by a preponderance of the
22 evidence if the animal was abandoned, neglected or deprived
23 of necessary sustenance, shelter, medical care or reasonable
24 protection from fatal freezing or heat exhaustion or otherwise
25 treated or used cruelly as set forth in this section.

26 (c) (1) If a hearing is requested and the magistrate finds
27 by a preponderance of the evidence that the owner did
28 abandon, neglect or cruelly treat the animal, or if no hearing
29 is requested and the magistrate finds by a preponderance of
30 the evidence, based upon the affidavit of the humane officer,
31 that the owner did abandon, neglect or cruelly treat the
32 animal, the magistrate shall enter an order awarding custody

33 of the animal to any humane officer for further disposition in
34 accordance with reasonable practices for the humane
35 treatment of animals. After hearing the evidence, if the
36 magistrate is not convinced the animal was neglected or
37 cruelly treated, he or she may dismiss the action and order the
38 animal be returned to the owner. If the magistrate finds in
39 favor of the humane officer, the owner of the animal shall
40 post a bond with the court in an amount sufficient to provide
41 for the reasonable costs of care, medical treatment and
42 provisions for the animal for at least thirty days. The bond
43 shall be filed with the court within five days following the
44 court's finding against the owner. At the end of the time for
45 which expenses are covered by the original bond if the
46 animal remains in the care of the humane officer and the
47 owner desires to prevent disposition of the animal by the
48 humane officer, the owner shall post an additional bond with
49 the court within five days of the expiration of the original
50 bond. During this period the humane officer is authorized to
51 place the animal in a safe private home or other safe private
52 setting in lieu of retaining the animal in an animal shelter.
53 The person whose animal is seized is liable for all costs of the
54 care of the seized animal.

55 (2) If a bond has been posted in accordance with
56 subdivision (1) of this subsection, the custodial animal care
57 agency may draw from the bond the actual reasonable costs
58 incurred by the agency in providing care, medical treatment
59 and provisions to the impounded animal from the date of the
60 initial impoundment to the date of the final disposition of the
61 animal.

62 (d) Any person whose animal is seized and against whom
63 the magistrate enters a finding pursuant to this section is
64 liable during any period it remains in the possession of the
65 humane officer for the reasonable costs of care, medical
66 treatment and provisions for the animal not covered by the
67 posting of the bond as provided in subdivision (1), subsection
68 (c) of this section. The magistrate shall require the person

69 liable for these costs to post bond to provide for the
70 maintenance of the seized animal. This expense, if any,
71 becomes a lien on the animal and must be discharged before
72 the animal is released to the owner. Upon dismissal or
73 withdrawal of the complaint, any unused portion of posted
74 bonds shall be returned to the owner. Upon a finding in favor
75 of the humane officer, all interest in the impounded animal
76 shall transfer to the humane officer for disposition in
77 accordance with reasonable practices for the humane
78 treatment of animals. Any additional expense above the
79 value of the animal may be recovered by the humane officer
80 or custodial agency.

81 (e) After the humane officer takes possession of the
82 animal pursuant to a finding by a magistrate that the animal
83 has been abandoned, neglected or cruelly treated and a
84 licensed veterinarian determines that the animal should be
85 humanely destroyed to end its suffering, the veterinarian may
86 order the animal to be humanely destroyed and neither the
87 humane officer, animal euthanasia technician nor the
88 veterinarian is subject to any civil or criminal liability as a
89 result of the action.

90 (f) (1) The term “humanely destroyed” as used in this
91 section means:

92 (A) Humane euthanasia of an animal by hypodermic
93 injection by a licensed veterinarian or by an animal
94 euthanasia technician certified in accordance with the
95 provisions of article ten-a, chapter thirty of this code; or

96 (B) Any other humane euthanasia procedure approved by
97 the American Veterinary Medical Association, the Humane
98 Society of the United States or the American Humane
99 Association.

100 (2) The term “humanely destroyed” does not include
101 euthanizing an animal by means of a gas chamber: *Provided,*

102 That any county which has a gas chamber in operation as of
103 the effective date of this section may continue to operate the
104 gas chamber subject to the following: (1) The gas chamber
105 shall be operated by an animal euthanasia technician certified
106 pursuant to article ten-a, chapter thirty of this code; and (2)
107 the gas chamber shall have been manufactured and installed
108 by a person who regularly manufactures and installs gas
109 chambers. The Board of Veterinary Medicine shall
110 promulgate emergency rules regarding the inspection of gas
111 chambers, pursuant to section fifteen, article three, chapter
112 twenty-nine-a of this code.

113 (g) In case of an emergency in which an animal cannot be
114 humanely destroyed in an expeditious manner, an animal
115 may be destroyed by shooting if:

116 (1) The shooting is performed by someone trained in the
117 use of firearms with a weapon and ammunition of suitable
118 caliber and other characteristics designed to produce
119 instantaneous death by a single shot; and

120 (2) Maximum precaution is taken to minimize the
121 animal's suffering and to protect other persons and animals.

122 (h) The provisions of this section do not apply to farm
123 livestock, as defined in subsection (d), section two, article
124 ten-b, chapter nineteen of this code; poultry, gaming fowl or
125 wildlife kept in private or licensed game farms if kept and
126 maintained according to usual and accepted standards of
127 livestock; poultry, gaming fowl, wildlife or game farm
128 production and management; nor to the humane use of
129 animals or activities regulated under and in conformity with
130 the provisions of 7 U. S. C. §2131, *et seq.*, and the regulations
131 promulgated thereunder.

132 (i) All persons or entities in the state performing euthanasia
133 under this article shall register with the Board of Veterinary
134 Medicine by December 31, 2009, in a manner to be prescribed

135 by the board. The Board of Veterinary Medicine shall
136 promulgate emergency rules relating to the registration of those
137 performing animal euthanasia, pursuant to section fifteen, article
138 three, chapter twenty-nine-a of this code.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

1 (a) All dogs seized and impounded as provided in this
2 article, except dogs taken into custody under section two of
3 this article, shall be kept housed and fed in the county or
4 municipal shelter for five days after notice of seizure and
5 impounding has been given or posted as required by this
6 article, at the expiration of which time all dogs which have
7 not previously been redeemed by their owners as provided in
8 this article, shall be sold or humanely destroyed. No dog sold
9 as provided in this section may be discharged from the
10 county or municipal shelter until the dog has been registered
11 and provided with a valid registration tag.

12 (b) (1) The term "humanely destroyed" as used in this
13 section means:

14 (A) Humane euthanasia of an animal by hypodermic
15 injection by a licensed veterinarian or by an animal
16 euthanasia technician certified in accordance with the
17 provisions of article ten-a, chapter thirty of this code; or

18 (B) Any other humane euthanasia procedure approved by
19 the American Veterinary Medical Association, the Humane
20 Society of the United States or the American Humane
21 Association.

22 (2) The term "humanely destroyed" does not include
23 euthanizing a dog or cat by means of a gas chamber:

24 *Provided*, That any county which has a gas chamber in
25 operation as of the effective date of this section may continue
26 to operate the gas chamber subject to the following: (1) The
27 gas chamber shall be operated by an animal euthanasia
28 technician certified pursuant to article ten-a, chapter thirty of
29 this code; and (2) the gas chamber shall have been
30 manufactured and installed by a person who regularly
31 manufactures and installs gas chambers. The Board of
32 Veterinary Medicine shall promulgate emergency rules
33 regarding the inspection of gas chambers, pursuant to section
34 fifteen, article three, chapter twenty-nine-a of this code.

35 (c) In an emergency or in a situation in which a dog
36 cannot be humanely destroyed in an expeditious manner, a
37 dog may be destroyed by shooting if:

38 (1) The shooting is performed by someone trained in the
39 use of firearms with a weapon and ammunition of suitable
40 caliber and other characteristics designed to produce
41 instantaneous death by a single shot; and

42 (2) Maximum precaution is taken to minimize the dog's
43 suffering and to protect other persons and animals.

44 (d) The owner, keeper or harbinger of any dog seized and
45 impounded under the provisions of this article may, at any
46 time prior to the expiration of five days from the time that
47 notice of the seizure and impounding of the dog has been
48 given or posted as required by this article, redeem the dog by
49 paying to the dog warden or his or her authorized agent or
50 deputy all of the costs assessed against the dog and by
51 providing a valid certificate of registration and registration
52 tag for the dog.

53 (e) Reasonable costs and fees, in an amount to be
54 determined, from time to time, by the county commission,
55 shall be assessed against every dog seized and impounded
56 under the provisions of this article, except dogs taken into

57 custody under section two of this article. The cost shall be a
58 valid claim in favor of the county against the owner, keeper
59 or harborer of any dog seized and impounded under the
60 provisions of this article and not redeemed or sold as
61 provided in this section and the costs shall be recovered by
62 the sheriff in a civil action against the owner, keeper or
63 harborer.

64 (f) A record of all dogs impounded, the disposition of the
65 dogs and a statement of costs assessed against each dog shall
66 be kept by the dog warden and a transcript thereof shall be
67 furnished to the sheriff quarterly.

68 (g) All persons or entities in the state performing
69 euthanasia under this article shall register with the Board of
70 Veterinary Medicine by December 31, 2009, in a manner to
71 be prescribed by the board. The Board of Veterinary
72 Medicine shall promulgate emergency rules relating to the
73 registration of those performing animal euthanasia, pursuant
74 to section fifteen, article three, chapter twenty-nine-a of this
75 code.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 10A. ANIMAL EUTHANASIA TECHNICIANS.

§30-10A-4. Scope of practice.

§30-10A-6. Recordkeeping.

§30-10A-8. Drug selection.

§30-10A-4. Scope of practice.

1 (a) A certified animal euthanasia technician may sedate,
2 tranquilize and euthanize animals assigned to the care of a
3 legally operated humane society, animal shelter or animal
4 control facility within this state. A certified animal
5 euthanasia technician shall practice sedation, tranquilization
6 and euthanasia under the authority of a licensed veterinarian
7 as defined in article ten of this chapter or a county humane
8 officer as defined in article ten, chapter seven of this code

9 within the limitations imposed by this article and rules
10 promulgated by the board under this article.

11 (b) For the purposes of this article, controlled substance
12 permits issued by the state Board of Pharmacy and the federal
13 Drug Enforcement Administration shall be issued to a
14 municipal or county run animal control facility, or a humane
15 society or animal shelter incorporated and organized under
16 the laws of the state, with one or more duly appointed agents.
17 The humane society or animal shelter shall possess a tax-
18 exempt charitable or tax-exempt governmental determination
19 under the Internal Revenue Code of 1986, as amended.

20 (c) A certified animal euthanasia technician may not
21 practice or offer to practice his or her profession outside the
22 direct authority of the humane society, animal shelter or
23 animal control facility which employs him or her or
24 otherwise contracts for his or her services. A certified animal
25 euthanasia technician is not qualified and may not indicate
26 that he or she is qualified to act in any capacity relative to
27 animals beyond his or her specified and regulated authority
28 to sedate, tranquilize and euthanize animals at the instruction
29 of the humane society, animal shelter or animal control
30 facility by which he or she is employed and under the
31 supervision of a humane officer or licensed veterinarian.

§30-10A-6. Recordkeeping.

1 A humane society, animal shelter or animal control
2 facility which was issued a controlled substances permit by
3 the Board of Pharmacy and an identification number by the
4 federal Drug Enforcement Administration is responsible for
5 ensuring that certified animal euthanasia technicians in its
6 employ maintain proper records regarding the inventory,
7 storage and administration of controlled substances and any
8 other drugs which he or she is authorized to administer. The
9 proper completion and retention of these records is the joint

10 responsibility of the humane society, animal shelter or animal
11 control facility and the certified animal euthanasia technician.
12 The humane society, animal shelter or animal control facility
13 and the certified animal euthanasia technicians are subject to
14 inspection and audit by the board, the West Virginia Board
15 of Pharmacy and any other appropriate state or federal
16 agency with authority regarding the recordkeeping,
17 inventory, storage and administration of controlled
18 substances and other drugs authorized for use by animal
19 euthanasia technicians under authority of this article.

§30-10A-8. Drug selection.

1 (a) In the event that sodium pentobarbital is no longer
2 approved as the euthanasia “drug of choice” for animals by
3 either state or federal mandate, the board shall determine the
4 replacement “drug of choice” for sodium pentobarbital for
5 use by certified animal euthanasia technicians by legislative
6 rule. The replacement “drug of choice” shall be
7 administered, controlled, stored and secured by a humane
8 society, animal shelter or animal control facility which meets
9 the qualifications in section one of this article in accordance
10 with legislative rules promulgated by the board.

11 (b) The board may replace sodium pentobarbital as the
12 “drug of choice” at any time by legislative rule promulgated
13 pursuant to article three, chapter twenty-nine-a of this code.
14 The determined “drug of choice” for animal euthanasia as
15 specified by the board shall be used by animal euthanasia
16 technicians certified under the provisions of this article.

17 (c) The board shall promulgate emergency rules pursuant
18 to section fifteen, article three, chapter twenty-nine-a of this
19 code to allow the use of sedatives and tranquilizers by
20 euthanasia technicians, as defined in section one of this
21 article.

CHAPTER 10

**(Com. Sub. for H.B. 2010 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed May 31, 2009; in effect from passage.]
[Approved by the Governor on June 5, 2009.]

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

Be it enacted by the Legislature of West Virginia:

Title:

- I. General Appropriations.**
- II. Appropriations.**
- III. Administration.**

TITLE I — GENERAL PROVISIONS.

TITLE I - GENERAL PROVISIONS.

- §1. General policy.**
- §2. Definitions.**
- §3. Classification of appropriations.**
- §4. Method of expenditure.**
- §5. Maximum expenditures.**

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

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

2 "Governor" shall mean the Governor of the State of
3 West Virginia.

4 "Code" shall mean the Code of West Virginia, one
5 thousand nine hundred thirty-one, as amended.

6 "Spending unit" shall mean the department, bureau,
7 division, office, board, commission, agency or institution to
8 which an appropriation is made.

9 The "fiscal year two thousand ten" shall mean the period
10 from July 1, 2009, through June 30, 2010.

11 "General revenue fund" shall mean the general operating
12 fund of the state and includes all moneys received or
13 collected by the state except as provided in section two,
14 article two, chapter twelve of the code or as otherwise
15 provided.

16 "Special revenue funds" shall mean specific revenue
17 sources which by legislative enactments are not required to
18 be accounted for as general revenue, including federal
19 funds.

20 "From collections" shall mean that part of the total
21 appropriation which must be collected by the spending unit
22 to be available for expenditure. If the authorized amount of
23 collections is not collected, the total appropriation for the
24 spending unit shall be reduced automatically by the amount
25 of the deficiency in the collections. If the amount collected
26 exceeds the amount designated "from collections," the
27 excess shall be set aside in a special surplus fund and may
28 be expended for the purpose of the spending unit as
29 provided by article two, chapter eleven-b of the code.

1 **Sec. 3. Classification of appropriations.** — An
2 appropriation for:

3 "Personal services" shall mean salaries, wages and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit but shall not include fees or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit.

8 Unless otherwise specified, appropriations for "personal
9 services" shall include salaries of heads of spending units.

10 "Annual increment" shall mean funds appropriated for
11 "eligible employees" and shall be disbursed only in
12 accordance with article five, chapter five of the code.

13 Funds appropriated for "annual increment" shall be
14 transferred to "personal services" or other designated items
15 only as required.

16 "Employee benefits" shall mean social security
17 matching, workers' compensation, unemployment
18 compensation, pension and retirement contributions, public
19 employees insurance matching, personnel fees or any other
20 benefit normally paid by the employer as a direct cost of
21 employment. Should the appropriation be insufficient to
22 cover such costs, the remainder of such cost shall be
23 transferred by each spending unit from its "personal
24 services" line item or its "unclassified" line item or other
25 appropriate line item to its "employee benefits" line item. If
26 there is no appropriation for "employee benefits," such costs
27 shall be paid by each spending unit from its "personal
28 services" line item, its "unclassified" line item or other
29 appropriate line item. Each spending unit is hereby
30 authorized and required to make such payments in
31 accordance with the provisions of article two, chapter
32 eleven-b of the code.

33 Each spending unit shall be responsible for all
34 contributions, payments or other costs related to coverage

35 and claims of its employees for unemployment
36 compensation. Such expenditures shall be considered an
37 employee benefit.

38 "BRIM Premiums" shall mean the amount charged as
39 consideration for insurance protection and includes the
40 present value of projected losses and administrative
41 expenses. Premiums are assessed for coverages, as defined
42 in the applicable policies, for claims arising from, inter alia,
43 general liability, wrongful acts, property, professional
44 liability and automobile exposures.

45 Should the appropriation for "BRIM Premiums" be
46 insufficient to cover such cost, the remainder of such costs
47 shall be transferred by each spending unit from its "personal
48 services" line item, its "employee benefit" line item, its
49 "unclassified" line item or any other appropriate line item to
50 "BRIM Premiums" for payment to the Board of Risk and
51 Insurance Management. Each spending unit is hereby
52 authorized and required to make such payments.

53 "Current expenses" shall mean operating costs other
54 than personal services and shall not include equipment,
55 repairs and alterations, buildings or lands.

56 Each spending unit shall be responsible for and charged
57 monthly for all postage meter service and shall reimburse
58 the appropriate revolving fund monthly for all such
59 amounts. Such expenditures shall be considered a current
60 expense.

61 "Equipment" shall mean equipment items which have an
62 appreciable and calculable period of usefulness in excess of
63 one year.

64 "Repairs and alterations" shall mean routine
65 maintenance and repairs to structures and minor

66 improvements to property which do not increase the capital
67 assets.

68 "Buildings" shall include new construction and major
69 alteration of existing structures and the improvement of
70 lands and shall include shelter, support, storage, protection
71 or the improvement of a natural condition.

72 "Lands" shall mean the purchase of real property or
73 interest in real property.

74 "Capital outlay" shall mean and include buildings, lands
75 or buildings and lands, with such category or item of
76 appropriation to remain in effect as provided by section
77 twelve, article three, chapter twelve of the code.

78 From appropriations made to the spending units of state
79 government, upon approval of the governor there may be
80 transferred to a special account an amount sufficient to
81 match federal funds under any federal act.

82 Appropriations classified in any of the above categories
83 shall be expended only for the purposes as defined above
84 and only for the spending units herein designated: *Provided*,
85 That the secretary of each department shall have the
86 authority to transfer within the department those general
87 revenue funds appropriated to the various agencies of the
88 department: *Provided, however*, That no more than five
89 percent of the general revenue funds appropriated to any one
90 agency or board may be transferred to other agencies or
91 boards within the department: and no funds may be
92 transferred to a "personal services" line unless the source
93 funds are also wholly from a "personal services" line, or
94 unless the source funds are from another activity that has
95 exclusively funded employment expenses (any of object
96 codes 001 through 016, 160 and 163) for at least twelve
97 consecutive months prior to the time of transfer and the

98 position(s) supported by the transferred funds are also
99 permanently transferred to the receiving agency or board
100 within the department: *Provided further*, That the secretary
101 of each department and the director, commissioner,
102 executive secretary, superintendent, chairman or any other
103 agency head not governed by a departmental secretary as
104 established by chapter five-f of the code shall have the
105 authority to transfer funds appropriated to "personal services"
106 and "employee benefits" to other lines within the same
107 account and no funds from other lines shall be transferred to
108 the "personal services" line: *And provided further*, That the
109 secretary of each department and the director, commissioner,
110 executive secretary, superintendent, chairman or any other
111 agency head not governed by a departmental secretary as
112 established by chapter five-f of the code shall have the
113 authority to transfer general revenue funds appropriated to
114 "annual increment" to other general revenue accounts within
115 the same department, bureau or commission for the purpose
116 of providing an annual increment in accordance with article
117 five, chapter five of the code: *And provided further*, That no
118 authority exists hereunder to transfer funds into line-items to
119 which no funds are legislatively appropriated: *And provided*
120 *further*, That if the Legislature by subsequent enactment
121 consolidates agencies, boards or functions, the secretary or
122 other appropriate agency head may transfer the funds
123 formerly appropriated to such agency, board or function in
124 order to implement such consolidation. No funds may be
125 transferred from a Special Revenue Account, dedicated
126 account, capital expenditure account or any other account or
127 fund specifically exempted by the Legislature from transfer,
128 except that the use of the appropriations from the State Road
129 Fund for the office of the Secretary of the Department of
130 Transportation is not a use other than the purpose for which
131 such funds were dedicated and is permitted.

132 Appropriations otherwise classified shall be expended
133 only where the distribution of expenditures for different

134 purposes cannot well be determined in advance or it is
 135 necessary or desirable to permit the spending unit the
 136 freedom to spend an appropriation for more than one of the
 137 above classifications.

1 **Sec. 4. Method of expenditure.** — Money appropriated
 2 by this bill, unless otherwise specifically directed, shall be
 3 appropriated and expended according to the provisions of
 4 article three, chapter twelve of the code or according to any
 5 law detailing a procedure specifically limiting that article.

1 **Sec. 5. Maximum expenditures.** — No authority or
 2 requirement of law shall be interpreted as requiring or
 3 permitting an expenditure in excess of the appropriations set
 4 out in this bill.

TITLE II — APPROPRIATIONS.

TITLE II--APPROPRIATIONS.

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§9. Special revenue appropriations.

§10. State improvement fund appropriations.

§11. Specific funds and collection accounts.

§12. Appropriations for refunding erroneous payment.

§13. Sinking fund deficiencies.

§14. Appropriations for local governments.

§15. Total appropriations.

§16. General school fund.

1 **Section 1. Appropriations from general revenue.** —
 2 From the State Fund, General Revenue, there are hereby
 3 appropriated conditionally upon the fulfillment of the
 4 provisions set forth in article two, chapter eleven-b of the
 5 code the following amounts, as itemized, for expenditure
 6 during the fiscal year two thousand ten.

LEGISLATIVE

1—Senate

Fund 0165 FY 2010 Org 2100

	Activity	General Revenue Fund
1 Compensation of Members (R)	003	\$1,010,000
2 Compensation and Per Diem of Officers 3 and Employees (R)	005	3,003,210
4 Employee Benefits (R)	010	597,712
5 Current Expenses and 6 Contingent Fund (R)	021	561,392
7 Repairs and Alterations (R)	064	450,000
8 Computer Supplies (R)	101	40,000
9 Computer Systems (R)	102	250,000
10 Printing Blue Book (R)	103	150,000
11 Expenses of Members (R)	399	700,000
12 BRIM Premium (R)	913	<u>29,482</u>
13 Total		\$6,791,796

14 The appropriations for the senate for the fiscal year 2009
 15 are to remain in full force and effect and are hereby
 16 reappropriated to June 30, 2010. Any balances so
 17 reappropriated may be transferred and credited to the fiscal
 18 year 2010 accounts.

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

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

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

51 For duties imposed by law and by the senate, the Clerk
52 of the Senate shall be paid a monthly salary as provided by
53 the senate resolution, unless increased between sessions

54 under the authority of the president, payable out of the
 55 appropriation for Compensation and Per Diem of Officers
 56 and Employees or Current Expenses and Contingent Fund
 57 of the senate.

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

2—House of Delegates

Fund 0170 FY 2010 Org 2200

1	Compensation of Members (R)	003	\$3,000,000
2	Compensation and Per Diem of Officers		
3	and Employees (R)	005	700,000
4	Current Expenses and		
5	Contingent Fund (R)	021	4,448,980
6	Expenses of Members (R)	399	1,700,000
7	BRIM Premium (R)	913	<u>50,000</u>
8	Total		\$9,898,980

9 The appropriations for the house of delegates for the
 10 fiscal year 2009 are to remain in full force and effect and are
 11 hereby reappropriated to June 30, 2010. Any balances so
 12 reappropriated may be transferred and credited to the fiscal
 13 year 2010 accounts.

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

18 The Clerk of the House of Delegates, with the approval
 19 of the speaker, is authorized to draw his or her requisitions

20 upon the auditor, payable out of the Current Expenses and
21 Contingent Fund of the house of delegates, for any bills for
22 supplies and services that may have been incurred by the
23 house of delegates and not included in the appropriation bill,
24 for bills for services and supplies incurred in preparation for
25 the opening of the session and after adjournment, and for the
26 necessary operation of the house of delegates' offices, the
27 requisitions for which are to be accompanied by bills to be
28 filed with the auditor.

29 The Speaker of the House of Delegates, upon approval of
30 the house committee on rules, shall have authority to
31 employ such staff personnel during and between sessions of
32 the Legislature as shall be needed, in addition to personnel
33 designated in the house resolution, and the compensation of
34 all personnel shall be as fixed in such house resolution for
35 the session, or fixed by the speaker, with the approval of the
36 house committee on rules, during and between sessions of
37 the Legislature, notwithstanding such house resolution. The
38 Clerk of the House of Delegates is hereby authorized to
39 draw requisitions upon the auditor for such services, payable
40 out of the appropriation for the Compensation and Per Diem
41 of Officers and Employees or Current Expenses and
42 Contingent Fund of the house of delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2010 Org 2300

1	Joint Committee on		
2	Government and Finance (R) . . .	104	\$7,113,700
3	Legislative Printing (R)	105	800,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	155,000
6	Legislative Computer System (R) ..	107	950,000
7	Joint Standing Committee		
8	on Education (R)	108	88,000
9	Tax Reduction and Federal Funding		
10	Increased Compliance (TRAFFIC)(R)	642	0
11	BRIM Premium (R)	913	<u>22,000</u>
12	Total		\$9,128,700

13 The appropriations for the joint expenses for the fiscal
 14 year 2009 are to remain in full force and effect and are
 15 hereby reappropriated to June 30, 2010. Any balances so
 16 reappropriated may be transferred and credited to the fiscal
 17 year 2010 accounts.

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

25 The appropriation for the Tax Reduction and Federal
 26 Funding Increased Compliance (TRAFFIC) (fund 0175,
 27 activity 642) is intended for possible general state tax

28 reductions or the offsetting of any reductions in federal
29 funding for state programs.

JUDICIAL

4—Supreme Court— General Judicial

Fund 0180 FY 2010 Org 2400

1	Personal Services (R)	001	\$66,799,069
2	Annual Increment (R)	004	870,250
3	Employee Benefits (R)	010	20,963,317
4	Childrens' Protection Act (R)	090	2,583,038
5	Unclassified (R)	099	22,419,979
6	Judges' Retirement System (R)	110	2,879,000
7	Retirement Systems -		
8	Unfunded Liability (R)	775	1,075,000
9	BRIM Premium (R)	913	<u>374,015</u>
10	Total		\$ 117,963,668

11 The appropriations to the supreme court of appeals for
12 the fiscal years 2008 and 2009 are to remain in full force
13 and effect and are hereby reappropriated to June 30, 2010.
14 Any balances so reappropriated may be transferred and
15 credited to the fiscal year 2010 accounts.

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

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2010 Org 0100

1	Personal Services	001	\$2,406,443
2	Salary of Governor	002	150,000
3	Annual Increment	004	27,870
4	Employee Benefits	010	694,004
5	Office of Economic Opportunity . . .	034	131,057
6	Unclassified (R)	099	1,267,777
7	GO HELP	116	523,424
8	National Governors' Association . . .	123	60,700
9	Southern States Energy Board	124	28,732
10	Other Post Employee Benefits - Transfer	289	0
11	Southern Governors' Association . .	314	25,000
12	Pharmaceutical Advocate	753	0
13	BRIM Premium •	913	156,851
14	P20 Jobs Cabinet	954	<u>40,000</u>
15	Total		\$5,511,858

16 Any unexpended balances remaining in the
 17 appropriations for Unclassified (fund 0101, activity 099),
 18 JOBS Fund (fund 0101, activity 665), and Pharmaceutical
 19 Cost Management Council (fund 0101, activity 796) at the
 20 close of the fiscal year 2009 are hereby reappropriated for
 21 expenditure during the fiscal year 2010.

*6—Governor's Office —
 Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2010 Org 0100

1	Unclassified	099	623,816
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 623,816

4 Any unexpended balance remaining in the appropriation
 5 for Unclassified - Total (fund 0102, activity 096) at the close
 6 of the fiscal year 2009 is hereby reappropriated for
 7 expenditure during the fiscal year 2010.

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

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

(WV Code Chapter 5)

Fund 0105 FY 2010 Org 0100

1	Civil Contingent Fund - Total (R)	114	\$ 0
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2 Any unexpended balances remaining in the appropriation
 3 for Business and Economic Development Stimulus —
 4 Surplus (fund 0105, activity 084), Civil Contingent Fund —
 5 Total (fund 0105, activity 114), Civil Contingent Fund —
 6 Total — Surplus (fund 0105, activity 238), Civil Contingent
 7 Fund — Surplus (fund 0105, activity 263), Business and
 8 Economic Development Stimulus (fund 0105, activity 586),
 9 and Civil Contingent Fund (fund 0105, activity 614) at the
 10 close of the fiscal year 2009 are hereby reappropriated for
 11 expenditure during the fiscal year 2010.

12 From this appropriation there may be expended, at the
 13 discretion of the Governor, an amount not to exceed one
 14 thousand dollars as West Virginia's contribution to the
 15 interstate oil compact commission.

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

*8—Auditor's Office —
 General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2010 Org 1200

1	Personal Services	001	\$2,264,450
2	Salary of Auditor	002	95,000
3	Annual Increment	004	47,686
4	Employee Benefits	010	826,778
5	Unclassified (R)	099	545,454
6	Other Post Employee Benefits - Transfer	289	0
7	BRIM Premium	913	<u>15,428</u>
8	Total		\$3,794,796

9 Any unexpended balance remaining in the appropriation
 10 for Unclassified (fund 0116, activity 099) at the close of the
 11 fiscal year 2009 is hereby reappropriated for expenditure
 12 during the fiscal year 2010.

9—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2010 Org 1300

1	Personal Services	001	\$1,984,224
2	Salary of Treasurer	002	95,000
3	Annual Increment	004	31,060
4	Employee Benefits	010	639,741

5	Unclassified (R)	099	808,794
6	Abandoned Property Program	118	266,847
7	Other Post Employee Benefits - Transfer	289	0
8	Personal Finance Education Program		
9	for 21 st Century Skills	313	0
10	Tuition Trust Fund (R)	692	157,965
11	BRIM Premium	913	<u>30,809</u>
12	Total		\$4,014,440

13 Any unexpended balances remaining in the
 14 appropriations for Unclassified (fund 0126, activity 099)
 15 and Tuition Trust Fund (fund 0126, activity 692) at the close
 16 of the fiscal year 2009 are hereby reappropriated for
 17 expenditure during the fiscal year 2010.

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2010 Org 1400

1	Personal Services	001	\$4,073,184
2	Salary of Commissioner	002	95,000
3	Annual Increment	004	101,842
4	Employee Benefits	010	1,645,539
5	Animal Identification Program	039	204,353
6	State Farm Museum	055	110,000
7	Unclassified (R)	099	1,308,754
8	Gypsy Moth Program (R)	119	1,531,105
9	Huntington Farmers Market	128	50,000
10	Black Fly Control (R)	137	756,343
11	Other Post Employee Benefits - Transfer	289	0
12	Donated Foods Program	363	50,000
13	Predator Control (R)	470	260,000
14	Logan Farmers Market	501	43,689
15	Bee Research	691	76,429
16	Microbiology Program (R)	785	163,000

17	Moorefield Agriculture Center (R) .	786	1,172,462
18	BRIM Premium	913	130,202
19	Threat Preparedness	942	77,881
20	WV Food Banks	969	100,000
21	Senior's Farmers' Market Nutrition		
22	Coupon Program	970	<u>65,035</u>
23	Total		\$ 12,014,818

24 Any unexpended balances remaining in the
 25 appropriations for Unclassified (fund 0131, activity 099),
 26 Gypsy Moth Program (fund 0131, activity 119), Black Fly
 27 Control (fund 0131, activity 137), Predator Control (fund
 28 0131, activity 470), Microbiology Program (fund 0131,
 29 activity 785), and Moorefield Agriculture Center (fund
 30 0131, activity 786) at the close of the fiscal year 2009 are
 31 hereby reappropriated for expenditure during the fiscal year
 32 2010.

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

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

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2010 Org 1400

1	Personal Services	001	\$ 502,380
2	Annual Increment	004	10,726
3	Employee Benefits	010	210,554
4	Unclassified (R)	099	442,292

5	Soil Conservation Projects (R)	120	10,662,863
6	Other Post Employee Benefits - Transfer	289	0
7	Marlinton Flood Wall (R)	757	1,500,000
8	BRIM Premium	913	<u>12,969</u>
9	Total		\$13,341,784

10 Any unexpended balances remaining in the
 11 appropriations for Unclassified (fund 0132, activity 099),
 12 Soil Conservation Projects (fund 0132, activity 120), and
 13 Marlinton Flood Wall (fund 0132, activity 757) at the close
 14 of the fiscal year 2009 are hereby reappropriated for
 15 expenditure during the fiscal year 2010.

*12—Department of Agriculture —
 Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2010 Org 1400

1	Unclassified	099	\$ 691,433
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 691,433

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

*13—Department of Agriculture —
 Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2010 Org 1400

1	Programs & Awards for 4-H		
2	Clubs and FFA/FHA	577	\$15,000

3	Commissioner's Awards and		
4	Programs	737	<u>43,650</u>
5	Total		\$ 58,650

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

(WV Code Chapter 8A)

Fund 0607 FY 2010 Org 1400

1	Unclassified - Total	096	\$ 108,150
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2 Any unexpended balance remaining in the appropriation
3 for West Virginia Agricultural Land Protection Authority
4 (fund 0607, activity 096) at the close of the fiscal year 2009
5 is hereby reappropriated for expenditure during the fiscal
6 year 2010.

15—Attorney General

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

Fund 0150 FY 2010 Org 1500

1	Personal Services (R)	001	\$ 2,458,451
2	Salary of Attorney General	002	95,000
3	Annual Increment	004	58,175
4	Employee Benefits (R)	010	931,612
5	Unclassified (R)	099	674,309
6	Other Post Employee Benefits - Transfer	289	0
7	Better Government Bureau	740	314,309
8	BRIM Premium	913	<u>118,590</u>
9	Total		\$ 4,650,446

10 Any unexpended balances remaining in the above
11 appropriations for Personal Services (fund 0150, activity
12 001), Employee Benefits (fund 0150, activity 010),

13 Unclassified (fund 0150, activity 099), and Agency Client
 14 Revolving Liquidity Pool (fund 0150, activity 362) at the
 15 close of the fiscal year 2009 are hereby reappropriated for
 16 expenditure during the fiscal year 2010.

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

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2010 Org 1600

1	Personal Services	001	\$ 684,299
2	Salary of Secretary of State	002	95,000
3	Annual Increment	004	14,890
4	Employee Benefits	010	268,484
5	Unclassified (R)	099	246,127
6	Other Post Employee Benefits - Transfer	289	0
7	BRIM Premium	913	<u>15,393</u>
8	Total		\$ 1,324,193

9 Any unexpended balance remaining in the appropriation
 10 for Unclassified (fund 0155, activity 099) at the close of the
 11 fiscal year 2009 is hereby reappropriated for expenditure
 12 during the fiscal year 2010.

17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2010 Org 1601

1 Unclassified — Total 096 \$ 10,275

DEPARTMENT OF ADMINISTRATION*18—Department of Administration —
Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2010 Org 0201

1	Personal Services	001	\$ 484,703
2	Annual Increment	004	3,026
3	Employee Benefits	010	121,826
4	Unclassified	099	116,553
5	Other Post Employee Benefits - Transfer	289	0
6	Financial Advisor (R)	304	200,886
7	Lease Rental Payments	516	16,000,000
8	Design-Build Board	540	19,068
9	BRIM Premium	913	<u>3,990</u>
10	Total		\$ 16,950,052

11 Any unexpended balances remaining in the
 12 appropriations for Financial Advisor (fund 0186, activity
 13 304) and Debt Reduction (fund 0186, activity 635) at the
 14 close of the fiscal year 2009 are hereby reappropriated for
 15 expenditure during the fiscal year 2010.

16 The appropriation for Lease Rental Payments shall be
 17 disbursed as provided by chapter thirty-one, article fifteen,
 18 section six-b of the code.

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2010 Org 0205

1 Any unexpended balance remaining in the appropriation
 2 for Pension Merger Administrative Costs (fund 0195,
 3 activity 429) at the close of the fiscal year 2009 is hereby
 4 reappropriated for expenditure during the fiscal year 2010.

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

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2010 Org 0209

1	Personal Services	001	\$	82,411
2	Annual Increment	004		1,101
3	Employee Benefits	010		30,629
4	Unclassified	099		120,435
5	GAAP Project (R)	125		711,988
6	Other Post Employee Benefits - Transfer	289		0
7	BRIM Premium	913		<u>4,526</u>
8	Total		\$	951,090

9 Any unexpended balance remaining in the appropriation
 10 for GAAP Project (fund 0203, activity 125) at the close of

- 11 the fiscal year 2009 is hereby reappropriated for expenditure
 12 during the fiscal year 2010.

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2010 Org 0211

1	Personal Services	001	\$1,475,957
2	Annual Increment	004	27,742
3	Employee Benefits	010	618,448
4	Unclassified	099	735,223
5	Fire Service Fee	126	14,000
6	Other Post Employee Benefits - Transfer	289	0
7	Preservation and Maintenance of Statues		
8	and Monuments on Capitol Grounds	371	68,000
9	BRIM Premium	913	<u>112,481</u>
10	Total		\$3,051,851

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

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2010 Org 0213

1	Personal Services	001	\$ 710,848
2	Annual Increment	004	12,095
3	Employee Benefits	010	258,005
4	Unclassified	099	203,957
5	Other Post Employee Benefits - Transfer	289	0

6	BRIM Premium	913	<u>6,167</u>
7	Total		\$1,191,072

8 The division of highways shall reimburse the
 9 Unclassified appropriation (fund 2031, activity 099) within
 10 the division of purchasing for all actual expenses incurred
 11 pursuant to the provisions of section thirteen, article two-a,
 12 chapter seventeen of the code.

23-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2010 Org 0217

1	Unclassified - Total	096	\$ 49,000
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2 To pay expenses for members of the commission on
 3 uniform state laws.

24-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2010 Org 0219

1	Personal Services	001	\$ 650,070
2	Annual Increment	004	9,097
3	Employee Benefits	010	180,098
4	Unclassified	099	135,443
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>3,885</u>
7	Total		\$ 978,593

8 Any unexpended balance remaining in the appropriation
 9 for Unclassified - Surplus (fund 0220, activity 097) at the
 10 close of the fiscal year 2009 is hereby reappropriated for
 11 expenditure during the fiscal year 2010.

25-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2010 Org 0220

1	Unclassified	099	\$ 691,098
2	Other Post Employee Benefits - Transfer	289	0
3	BRIM Premium	913	<u>2,788</u>
4	Total		\$ 693,886

26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2010 Org 0221

1	Personal Services	001	\$ 655,000
2	Annual Increment	004	11,100
3	Employee Benefits	010	227,896
4	Unclassified	099	435,622
5	Appointed Counsel Fees and		
6	Public Defender Corporations (R)	127	30,479,274
7	Other Post Employee Benefits - Transfer	289	0
8	BRIM Premium	913	<u>4,216</u>
9	Total		\$ 31,813,108

10 Any unexpended balance remaining in the above
 11 appropriation for Appointed Counsel Fees and Public
 12 Defender Corporations (fund 0226, activity 127) at the close
 13 of the fiscal year 2009 is hereby reappropriated for
 14 expenditure during the fiscal year 2010.

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

(WV Code Chapter 5A)

Fund 0233 FY 2010 Org 0224

1 Unclassified - Total 096 \$ 5,055

28-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2010 Org 0228

1	Other Post Employee Benefits - Transfer	289	\$	0
2	Forensic Medical Examinations (R) .	683		144,808
3	Federal Funds/Grant Match (R)	749		<u>101,556</u>
4	Total		\$	246,364

5 Any unexpended balances remaining in the
6 appropriations for Forensic Medical Examinations (fund
7 0557, activity 683) and Federal Funds/Grant Match (fund
8 0557, activity 749) at the close of the fiscal year 2009 are
9 hereby reappropriated for expenditure during the fiscal year
10 2010.

29-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2010 Org 0230

1	Unclassified	099	\$	10,972,709
2	Other Post Employee Benefits - Transfer	289		<u>0</u>
3	Total		\$	10,972,709

30-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2010 Org 0233

1 Unclassified 099 \$ 639,607

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2	Other Post Employee Benefits - Transfer	289 0
3	BRIM Premium	913 <u>4,200</u>
4	Total	\$ 643,807

DEPARTMENT OF COMMERCE

31-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2010 Org 0304

1 Any unexpended balance remaining in the appropriation
2 for Tourism - Special Projects (fund 0246, activity 859) at
3 the close of the fiscal year 2009 is hereby reappropriated for
4 expenditure during the fiscal year 2010.

32-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2010 Org 0305

1	Personal Services	001	\$2,550,907
2	Annual Increment	004	68,934
3	Employee Benefits	010	1,107,622
4	Unclassified	099	639,230
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>141,742</u>
7	Total		\$4,508,435

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

33-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2010 Org 0306

1	Personal Services	001	\$1,278,901
2	Annual Increment	004	39,543
3	Employee Benefits	010	445,253
4	Unclassified	099	237,689
5	Mineral Mapping System (R)	207	1,575,140
6	Other Post Employee Benefits - Transfer	289	0
7	Geoscience Education Program	541	0
8	BRIM Premium	913	<u>20,228</u>
9	Total		\$3,596,754

10 Any unexpended balance remaining in the appropriation
 11 for Mineral Mapping System (fund 0253, activity 207) at the
 12 close of the fiscal year 2009 is hereby reappropriated for
 13 expenditure during the fiscal year 2010.

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

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2010 Org 0307

1	Personal Services	001	\$3,433,743
2	Annual Increment	004	84,249
3	Employee Benefits	010	1,181,040
4	ARC-WV Home of Your Own Alliance	048	38,400
5	Southern WV Career Center	071	472,080
6	Unclassified	099	1,757,758

7	Partnership Grants (R)	131	637,000
8	National Youth Science Camp	132	200,000
9	Local Economic Development		
10	Partnerships (R)	133	1,795,200
11	ARC Assessment	136	160,616
12	Mid-Atlantic Aerospace Complex (R)	231	169,712
13	Guaranteed Work Force Grant (R) . .	242	2,157,120
14	Other Post Employee Benefits - Transfer	289	0
15	Mingo County Surface Mine Project	296	120,000
16	Robert C. Byrd Institute for Advanced/ 17 Flexible Manufacturing - Technology 18 Outreach and Programs for Environmental 19 and Advanced Technologies	367	499,008
20	Advantage Valley	389	71,328
21	Chemical Alliance Zone	390	36,768
22	WV High Tech Consortium	391	226,352
23	Regional Contracting Assistance		
24	Center	418	144,000
25	Highway Authorities	431	833,090
26	Charleston Farmers Market	476	96,000
27	International Offices (R)	593	663,018
28	Small Business Development (R) . .	703	262,260
29	WV Manufacturing Extension		
30	Partnership	731	138,240
31	Polymer Alliance	754	110,400
32	Regional Councils	784	422,400
33	Mainstreet Program	794	192,821
34	National Institute of Chemical Studies	805	67,680
35	Local Economic Development		
36	Assistance (R)	819	8,327,000
37	I-79 Development Council	824	25,000
38	BRIM Premium	913	26,096
39	4-H Camp Improvements	941	0
40	Hatfield McCoy Recreational Trail .	960	240,000
41	Hardwood Alliance Zone	992	<u>40,896</u>
42	Total		\$ 24,629,275

43 Any unexpended balances remaining in the
44 appropriations for Tourism—Unclassified—Surplus (fund
45 0256, activity 075), Unclassified - Surplus (fund 0256,
46 activity 097), Partnership Grants (fund 0256, activity 131),
47 Local Economic Development Partnerships (fund 0256,
48 activity 133), Mid-Atlantic Aerospace Complex (fund 0256,
49 activity 231), Guaranteed Work Force Grant (fund 0256,
50 activity 242), Local Economic Development Assistance —
51 Surplus (fund 0256, activity 266), Industrial Park Assistance
52 (fund 0256, activity 480), Leverage Technology and Small
53 Business Development Program (fund 0256, activity 525),
54 International Offices (fund 0256, activity 593), Small
55 Business Development (fund 0256, activity 703), Local
56 Economic Development Assistance (fund 0256, activity
57 819), Economic Development Assistance (fund 0256,
58 activity 900), 4-H Camp Improvements (activity 941), and
59 Mining Safety Technology (fund 0256, activity 945) at the
60 close of the fiscal year 2009 are hereby reappropriated for
61 expenditure during the fiscal year 2010.

62 The above appropriation to Local Economic
63 Development Partnerships (activity 133) shall be used by
64 the West Virginia development office for the award of
65 funding assistance to county and regional economic
66 development corporations or authorities participating in the
67 certified development community program developed under
68 the provisions of section fourteen, article two, chapter five-b
69 of the code. The West Virginia development office shall
70 award the funding assistance through a matching grant
71 program, based upon a formula whereby funding assistance
72 may not exceed \$34,000 per county served by an economic
73 development corporation or authority.

74 From the above appropriation for Highway Authorities
75 (fund 0256, activity 431), \$121,250 is for King Coal
76 Highway Authority; \$121,250 is for Coal Field Expressway
77 Authority; \$97,000 is for Coal Heritage Highway Authority;

78 \$97,000 is for Coal Heritage Area Authority; \$48,500 is for
 79 Little Kanawha River Parkway; \$87,300 is for Midland Trail
 80 Scenic Highway Association; \$55,290 is for Shawnee
 81 Parkway Authority; \$97,000 is for Corridor G Regional
 82 Development Authority; \$60,000 is for Corridor H
 83 Authority; and \$48,500 is for Route 2 I68 Highway
 84 Authority.

35-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2010 Org 0308

1	Personal Services	001	\$1,849,948
2	Annual Increment	004	34,586
3	Employee Benefits	010	741,610
4	Unclassified	099	800,128
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>47,521</u>
7	Total		\$3,473,793

36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2010 Org 0310

1	Personal Services	001	\$9,510,723
2	Annual Increment	004	327,177
3	Employee Benefits	010	4,136,440
4	Gypsy Moth Suppression Program –		
5	Wildlife Management Areas	014	0
6	Unclassified	099	12,255
7	Other Post Employee Benefits - Transfer	289	0
8	Litter Control Conservation Officers	564	162,756
9	Upper Mud River Flood Control . . .	654	185,285

10	Law Enforcement	806	2,962,106
11	BRIM Premium	913	<u>308,815</u>
12	Total		\$17,605,557

13 Any unexpended balances remaining in the
 14 appropriations for Land Purchase (fund 0265, activity 761)
 15 and Fish Hatchery Improvements (fund 0265, activity 825)
 16 at the close of the fiscal year 2009 are hereby reappropriated
 17 for expenditure during the fiscal year 2010.

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

37-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2010 Org 0314

1	Personal Services	001	\$6,188,925
2	Annual Increment	004	83,914
3	Employee Benefits	010	2,258,803
4	Unclassified	099	2,247,736
5	Other Post Employee Benefits - Transfer	289	0
6	WV Diesel Equipment Commission	712	38,132
7	BRIM Premium	913	<u>68,134</u>
8	Total		\$ 10,885,644

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

38-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2010 Org 0319

1	Personal Services	001	\$	119,465
2	Annual Increment	004		1,020
3	Employee Benefits	010		32,363
4	Unclassified	099		14,064
5	Other Post Employee Benefits - Transfer	289		<u>0</u>
6	Total		\$	166,912

39-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2010 Org 0320

1	Unclassified	099	\$	33,515
2	Coal Forum	664		15,000
3	Mine Safety Technology Task Force	061		<u>30,000</u>
4	Total		\$	78,515

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

40-WORKFORCE WV

(WV Code Chapter 23)

Fund 0572 FY 2010 Org 0323

1	Unclassified - Total	096	\$	100,000
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*41-Department of Commerce -
Office of the Secretary*

APPROPRIATIONS

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(WV Code Chapter 19)

Fund 0606 FY 2010 Org 0327

1	Unclassified	099	\$ 459,047
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 459,047

42-Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2010 Org 0328

1	Unclassified	099	\$ 1,808,691
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 1,808,691

4 From the above appropriation for Unclassified (fund
 5 0612, activity 099) \$730,000 is for West Virginia University
 6 and \$730,000 is for Southern West Virginia Community and
 7 Technical College for the Mine Training and Energy
 8 Technologies Academy.

DEPARTMENT OF EDUCATION*43-State Department of Education -
School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2010 Org 0402

1	Personal Services	001	\$ 247,203
2	Annual Increment	004	5,073
3	Employee Benefits	010	90,174
4	Unclassified	099	<u>2,187,765</u>
5	Total		\$2,530,215

44-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2010 Org 0402

1	Personal Services	001	\$ 625,015
2	Annual Increment	004	21,446
3	Employee Benefits	010	259,892
4	Unclassified	099	129,288
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>21,694</u>
7	Total		\$1,057,335

45-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2010 Org 0402

1	Personal Services	001	\$3,480,698
2	Annual Increment	004	50,221
3	Employee Benefits	010	1,101,024
4	Unclassified (R)	099	3,400,000
5	34/1000 Waiver	139	237,751
6	Increased Enrollment	140	5,805,078
7	Safe Schools	143	2,482,124
8	Teacher Mentor (R)	158	842,034
9	National Teacher Certification (R) ..	161	400,000
10	Other Post Employee Benefits - Transfer	289	0
11	Technology Repair and Modernization	298	990,628
12	Tax Assessment Errors	353	0
13	HVAC Technicians	355	493,853
14	READS	365	0
15	Early Retirement Notification		
16	Incentive	366	297,188
17	MATH Program	368	396,251

18	21 st Century Fellows	507	297,188
19	Teacher Reimbursement	573	297,188
20	Hospitality Training	600	337,099
21	Low Student Enrollment Allowance	615	600,000
22	Hi-Y Youth in Government	616	98,000
23	High Acuity Special Needs	634	250,000
24	Foreign Student Education	636	95,122
25	State Teacher of the Year	640	43,828
26	Principals Mentorship	649	79,250
27	Allowance for Work Based Learning	744	0
28	Pilot Program of Structured In-School		
29	Alternatives	826	100,000
30	21 st Century Innovation Zones	876	500,000
31	Student Enrichment Program	879	0
32	21 st Century Learners (R)	886	2,723,350
33	BRIM Premium	913	267,786
34	High Acuity Health Care Needs		
35	Program	920	990,628
36	School Nurse Funding	921	1,016,521
37	21 st Century Assessment and Professional		
38	Development	931	4,457,825
39	Allowance for Extraordinary		
40	Sustained Growth	943	298,752
41	WV Commission on Holocaust		
42	Education	935	15,000
43	Regional Education Service Agencies	972	4,200,000
44	Sparse Population Allocation	973	312,048
45	Educational Program Allowance . . .	996	<u>247,657</u>
46	Total		\$37,204,092

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

49 Any unexpended balances remaining in the
50 appropriations for Unclassified (fund 0313, activity 099),
51 Teacher Mentor (fund 0313, activity 158), National Teacher
52 Certification (fund 0313, activity 161), High Acuity Special

53 Needs (fund 0313, activity 634), 21st Century Learners (fund
54 0313, activity 886), and Educational Enhancements -
55 Surplus (fund 0313, activity 927) at the close of the fiscal
56 year 2009 are hereby reappropriated for expenditure during
57 the fiscal year 2010.

58 From the above appropriation for Sparse Population
59 Allocation (activity 973), funding shall be provided in the
60 same manner as in Fiscal Year 2009. It shall be available to
61 those counties whose population falls at or below 2.5
62 students per square mile and which have more than 650
63 square miles for transportation purposes.

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

69 From the above appropriation for Low Student
70 Enrollment Allowance (activity 615), funds shall be
71 allocated to county boards of education in accordance with
72 the provisions of §18-9A-22 of the Code of West Virginia.

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

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

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2010 Org 0402

1	Special Education - Counties	159	\$7,271,757
2	Special Education - Institutions	160	3,694,082
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	591,216
6	Education of Institutionalized		
7	Juveniles and Adults (R)	472	<u>16,539,199</u>
8	Total		\$28,096,254

9 Any unexpended balance remaining in the appropriation for
10 Education of Institutionalized Juveniles and Adults (fund 0314,
11 activity 472) at the close of the fiscal year 2009 is hereby
12 reappropriated for expenditure during the fiscal year 2010.

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

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

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2010 Org 0402

1	Other Current Expenses	022	\$ 148,912,188
2	Advanced Placement	053	155,458
3	Professional Educators	151	841,429,198
4	Service Personnel	152	278,695,752
5	Fixed Charges	153	102,684,546
6	Transportation	154	71,357,448
7	Administration	155	15,842,837
8	Improved Instructional Programs . . .	156	37,185,054
9	21st Century Strategic Technology		
10	Learning Growth	936	<u>4,184,906</u>
11	Basic Foundation Allowances		1,500,447,387
12	Less Local Share		<u>(373,447,774)</u>

13	Total Basic State Aid		1,126,999,613
14	Public Employees' Insurance		
15	Matching	012	213,776,225
16	Teachers' Retirement System	019	52,149,000
17	School Building Authority	453	23,308,825
18	Retirement Systems -		
19	Unfunded Liability	775	<u>300,850,000</u>
20	Total		\$1,717,083,663

21 The above appropriation for the State Aid to Schools
 22 shall be supplemented with additional funding provided
 23 under the American Recovery and Reinvestment Act of
 24 2009 to maintain the public education state aid to schools
 25 funding formula for fiscal year 2010.

*48-State Board of Education -
 Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2010 Org 0402

1	Personal Services	001	\$1,042,746
2	Annual Increment	004	22,869
3	Employee Benefits	010	376,024
4	Unclassified	099	1,198,660
5	Wood Products - Forestry Vocational		
6	Program	146	58,289
7	Albert Yanni Vocational Program ..	147	148,594
8	Vocational Aid	148	17,377,688
9	Adult Basic Education	149	3,906,702
10	Program Modernization	305	990,628
11	Technical & Secondary Program		
12	Improvement Staff	330	300,076
13	GED Testing (R)	339	580,857
14	Aquaculture Support	769	0
15	FFA Grant Awards	839	12,878

16	Pre-Engineering Academy Program	840	<u>297,188</u>
17	Total		\$ 26,313,199

18 Any unexpended balance remaining in the appropriation
 19 for GED Testing (fund 0390, activity 339) at the close of the
 20 fiscal year 2009 is hereby reappropriated for expenditure
 21 during the fiscal year 2010.

*49-State Board of Education -
 Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2010 Org 0402

1	Personal Services	001	\$ 432,124
2	Annual Increment	004	5,196
3	Employee Benefits	010	115,979
4	Unclassified	099	<u>179,782</u>
5	Total		\$ 733,081

50-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2010 Org 0403

1	Personal Services	001	\$8,057,712
2	Annual Increment	004	8,366
3	Employee Benefits	010	3,266,213
4	Unclassified	099	1,607,491
5	Other Post Employee Benefits - Transfer	289	0
6	Capital Outlay and Maintenance (R)	755	62,500
7	BRIM Premium	913	<u>59,087</u>
8	Total		\$13,061,369

9 Any unexpended balance remaining in the appropriation
 10 for Capital Outlay and Maintenance (fund 0320, activity
 11 755) at the close of the fiscal year 2009 is hereby
 12 reappropriated for expenditure during the fiscal year 2010.

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 0294 FY 2010 Org 0431

1	Unclassified (R)	099	\$ 897,933
2	Center for Professional		
3	Development (R)	115	2,937,267
4	National Youth Science Camp	132	0
5	WV Humanities Council	168	450,000
6	Other Post Employee Benefits - Transfer	289	0
7	Benedum Professional Development		
8	Collaborative (R)	427	1,100,000
9	Governor's Honor Academy (R) . . .	478	500,780
10	Energy Express	861	470,000
11	BRIM Premium	913	4,509
12	Special Olympic Games	966	<u>25,000</u>
13	Total		\$6,385,489

14 Any unexpended balances remaining in the
 15 appropriations for Unclassified (fund 0294, activity 099),
 16 Center for Professional Development (fund 0294 activity
 17 115), Benedum Professional Development Collaborative
 18 (fund 0294, activity 427), and Governor's Honor Academy
 19 (fund 0294, activity 478) at the close of the fiscal year 2009
 20 are hereby reappropriated for expenditure during the fiscal
 21 year 2010.

52-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2010 Org 0432

1	Personal Services	001	\$2,626,190
2	Annual Increment	004	59,087
3	Employee Benefits	010	1,106,721
4	Unclassified	099	976,929
5	Other Post Employee Benefits - Transfer	289	0
6	Culture and History Programming . .	732	292,945
7	Capital Outlay and Maintenance (R)	755	100,000
8	Historical Highway Marker		
9	Program (R)	844	75,035
10	BRIM Premium	913	<u>33,677</u>
11	Total		\$5,270,584

12 Any unexpended balances remaining in the
 13 appropriations for Unclassified - Surplus (fund 0293,
 14 activity 097), Capital Outlay, Repairs and Equipment (fund
 15 0293, activity 589), Capital Outlay, Repairs and Equipment
 16 — Surplus (fund 0293, activity 677), Capital Outlay and
 17 Maintenance (fund 0293, activity 755), Independence Hall
 18 (fund 0293, activity 812), and Historical Highway Marker
 19 Program (fund 0293, activity 844) at the close of the fiscal
 20 year 2009 are hereby reappropriated for expenditure during
 21 the fiscal year 2010.

22 The Unclassified appropriation includes funding for the
 23 arts funds, department programming funds, grants, fairs and
 24 festivals and Camp Washington Carver and shall be
 25 expended only upon authorization of the division of culture
 26 and history and in accordance with the provisions of chapter
 27 five-a, article three, and chapter twelve of the code.

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

34 From the above appropriation for Unclassified (activity
 35 099), 15,000 shall be expended for the South Eastern
 36 Museums Conference and \$100,000 shall be used for the
 37 Sesquicentennial Celebration.

53-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2010 Org 0433

1	Personal Services	001	\$ 991,852
2	Annual Increment	004	36,840
3	Employee Benefits	010	391,210
4	Unclassified	099	238,479
5	Services to Blind & Handicapped ..	181	184,140
6	Other Post Employee Benefits - Transfer	289	0
7	BRIM Premium	913	<u>15,177</u>
8	Total		\$1,857,698

54-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2010 Org 0439

1	Personal Services	001	\$3,195,396
2	Annual Increment	004	71,540
3	Employee Benefits	010	1,151,499
4	Unclassified (R)	099	910,942
5	Mountain Stage	249	300,000

6	Other Post Employee Benefits - Transfer	289	0
7	Capital Outlay and Maintenance (R)	755	50,000
8	BRIM Premium	913	<u>41,929</u>
9	Total		\$5,721,306

10 Any unexpended balances remaining in the
 11 appropriations for Unclassified - Surplus (fund 0300,
 12 activity 097), Unclassified (fund 0300, activity 099) and
 13 Capital Outlay and Maintenance (fund 0300, activity 755) at
 14 the close of the fiscal year 2009 are hereby reappropriated
 15 for expenditure during the fiscal year 2010.

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

(WV Code Chapter 18)

Fund 0310 FY 2010 Org 0932

1	Personal Services	001	\$7,414,605
2	Annual Increment	004	166,317
3	Independent Living Services (R) ...	009	500,000
4	Employee Benefits	010	2,516,516
5	Unclassified	099	502,066
6	Workshop Development	163	1,816,149
7	Supported Employment Extended		
8	Services	206	119,032
9	Other Post Employee Benefits - Transfer	289	0
10	Ron Yost Personal Assistance Fund (R)	407	400,000
11	Employment Attendant Care Program	598	229,000
12	Capital Outlay and Maintenance (R)	755	100,000
13	BRIM Premium	913	<u>67,033</u>
14	Total		\$ 13,830,718

15 Any unexpended balances remaining in the
 16 appropriations for Independent Living Services (fund 0310,
 17 activity 009), Unclassified - Surplus (fund 0310, activity

18 097), Ron Yost Personal Assistance Fund (fund 0310,
 19 activity 407), and Capital Outlay and Maintenance (fund
 20 0310, activity 755) at the close of the fiscal year 2009 are
 21 hereby reappropriated for expenditure during the fiscal year
 22 2010.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

56-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2010 Org 0311

1	Personal Services	001	\$73,982
2	Annual Increment	004	390
3	Employee Benefits	010	18,068
4	Unclassified	099	49,235
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>684</u>
7	Total		\$ 142,359

57-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2010 Org 0313

1	Personal Services	001	\$ 3,443,518
2	Annual Increment	004	70,049

3	Employee Benefits	010	1,225,635
4	Water Resources Protection		
5	and Management	068	570,254
6	Unclassified	099	1,024,751
7	Other Post Employee Benefits - Transfer	289	0
8	Dam Safety	607	208,470
9	West Virginia Stream Partners Program	637	77,396
10	WV Contribution to River Commissions	776	148,485
11	Office of Water Resources		
12	Non-Enforcement Activity	855	1,175,370
13	BRIM Premium	913	56,802
14	Welch DEP Office Continuing		
15	Operation	993	0
16	Total		\$ 8,000,730

17 A portion of the appropriation for Unclassified (fund
18 0273, activity 099) and Dam Safety (fund 0273, activity
19 607) may be transferred to the special revenue fund Dam
20 Safety Rehabilitation Revolving Fund (fund 3025) for the
21 state deficient dams rehabilitation assistance program.

58-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2010 Org 0325

1	Unclassified	099	\$ 97,393
2	Other Post Employee Benefits - Transfer	289	0
3	BRIM Premium	913	<u>2,013</u>
4	Total		\$ 99,406

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

(WV Code Chapter 5F)

Fund 0400 FY 2010 Org 0501

1	Unclassified	099	\$ 207,091
2	Women's Commission (R)	191	182,911
3	Other Post Employee Benefits - Transfer	289	0
4	Commission for the Deaf		
5	and Hard of Hearing	704	<u>255,440</u>
6	Total		\$ 645,442

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

*60-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2010 Org 0506

1	Personal Services	001	\$7,860,865
2	Annual Increment	004	207,144
3	Employee Benefits	010	3,196,271
4	Chief Medical Examiner	045	4,644,302
5	Unclassified	099	5,193,262
6	State Aid for Local and		
7	Basic Public Health Services	184	16,642,949
8	Safe Drinking Water Program	187	516,556
9	Women, Infants and Children	210	65,022
10	Basic Public Health Services Support	212	0
11	Early Intervention	223	3,307,043
12	Cancer Registry	225	209,440
13	ABCA Tobacco Retailer Education		
14	Program - Transfer	239	200,000
15	Other Post Employee Benefits - Transfer	289	0
16	CARDIAC Project	375	500,000
17	State EMS Technical Assistance . . .	379	1,440,062

18	EMS Program for Children	381	51,131
19	Statewide EMS Program Support (R)	383	967,216
20	Primary Care Centers - Mortgage		
21	Finance	413	786,918
22	Black Lung Clinics	467	198,646
23	Center for End of Life	545	250,000
24	Women's Right to Know	546	40,000
25	Pediatric Dental Services	550	150,921
26	Vaccine for Children	551	441,804
27	Adult Influenza Vaccine	552	65,000
28	Tuberculosis Control	553	257,274
29	Maternal & Child Health Clinics,		
30	Clinicians and Medical Contracts		
31	& Fees (R)	575	8,842,075
32	Epidemiology Support	626	1,733,837
33	Primary Care Support	628	8,849,423
34	State Aid to Local Health Departments	702	0
35	Health Right Free Clinics	727	*4,249,336
			3,749,336
36	Capital Outlay and Maintenance (R)	755	625,000
37	Healthy Lifestyles (R)	778	168,000
38	Emergency Response Entities -		
39	Special Projects (R)	822	784,000
40	Assistance to Primary Health Care		
41	Centers Community Health		
42	Foundation (R)	845	650,000
43	Osteoporosis and Arthritis Prevention	849	256,507
44	Diabetes Education and Prevention .	873	35,000
45	Tobacco Education Program (R) . . .	906	5,687,358
46	BRIM Premium	913	211,214
47	State Trauma and Emergency		
48	Care System	918	<u>1,813,822</u>
49	Total		\$ 81,097,398

50 Any unexpended balances remaining in the
51 appropriations for Statewide EMS Program Support (fund

*CLERK'S NOTE: The Governor reduced the amount on line 35 from \$4,249,336 to \$3,749,336.

52 0407, activity 383), Maternal and Child Health Clinics,
53 Clinicians and Medical Contracts and Fees (fund 0407,
54 activity 575), Capital Outlay and Maintenance (fund 0407,
55 activity 755), Healthy Lifestyles (fund 0407, activity 778),
56 Emergency Response Entities - Special Projects (fund 0407,
57 activity 822), Assistance to Primary Health Care Centers
58 Community Health Foundation (fund 0407, activity 845)
59 and Tobacco Education Program (fund 0407, activity 906)
60 at the close of the fiscal year 2009 are hereby reappropriated
61 for expenditure during the fiscal year 2010.

62 From the above appropriation for Unclassified (activity
63 099), an amount not less than \$100,000 is for the West
64 Virginia Cancer Coalition; \$50,000 shall be expended for
65 the West Virginia Aids Coalition; \$100,000 is for
66 Adolescent Immunization Education; and \$50,000 is for
67 Hospital Hospitality House of Huntington.

68 From the above appropriation for Maternal and Child
69 Health Clinics, Clinicians and Medical Contracts and Fees
70 (fund 0407, activity 575) \$250,000 is for the West Virginia
71 University Center for Excellence in Women's Health; and
72 \$400,000 shall be transferred to the Breast and Cervical
73 Cancer Diagnostic Treatment Fund.

74 From the above appropriation for ABCA Tobacco
75 Retailer Education Program - Transfer (activity 239),
76 \$200,000 shall be transferred to the Alcohol Beverage
77 Control Administration (fund 7352, org 0708) for
78 expenditure.

79 Included in the above appropriation for Primary Care
80 Centers - Mortgage Finance is \$50,000 for the mortgage
81 payment for the Lincoln Primary Care Center, Inc.; \$53,140
82 for the mortgage payment for the Monroe Health Center;
83 \$42,564 for the mortgage payment for Roane County Family
84 Health Care, Inc.; \$30,000 for the mortgage payment for the
85 Tug River Health Association, Inc.; \$48,000 for the
86 mortgage payment for the Primary Care Systems (Clay);

87 \$20,000 for the mortgage payment for the Belington Clinic;
 88 \$30,000 for the mortgage payment for the Tri-County
 89 Health Clinic; \$15,000 for the mortgage payment for Valley
 90 Health Care (Randolph); \$58,560 for the mortgage payment
 91 for Valley Health Systems, Inc. (Woman's Place and Harts
 92 Health Clinic); \$8,000 for the mortgage payment for
 93 Northern Greenbrier Health Clinic; \$12,696 for the
 94 mortgage payment for the Women's Care, Inc. (Putnam);
 95 \$25,000 for the mortgage payment for the Preston-Taylor
 96 Community Health Centers, Inc.; \$20,000 for the mortgage
 97 payment for the North Fork Clinic (Pendleton); \$40,000 for
 98 the mortgage payment for the Pendleton Community Care;
 99 \$38,400 for the mortgage payment for Clay-Battelle
 100 Community Health Center; \$33,600 for the mortgage
 101 payment for Mountaineer Health Clinic in Paw Paw;
 102 \$13,000 for the mortgage payment for the St. George
 103 Medical Clinic; \$28,000 for the mortgage payment for the
 104 Bluestone Health Center; \$45,000 for the mortgage payment
 105 for Wheeling Health Right; \$48,000 for the mortgage
 106 payment for the Minnie Hamilton Health Care Center, Inc.;
 107 \$54,000 for the mortgage payment for the Shenandoah
 108 Valley Medical Systems, Inc.; \$45,000 for the mortgage
 109 payment for the Change, Inc.; and \$28,958 for the mortgage
 110 payment for the Wirt County Health Services Association.

61-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2010 Org 0506

1	Personal Services	001	\$ 667,097
2	Annual Increment	004	14,869
3	Employee Benefits	010	269,993
4	Unclassified	099	6,663
5	Special Olympics	208	26,074
6	Behavioral Health Program -		

7	Unclassified (R)	219	56,979,562
8	Family Support Act	221	1,093,923
9	Other Post Employee Benefits - Transfer	289	0
10	Institutional Facilities Operations (R)	335	84,564,779
11	Capital Outlay and Maintenance (R)	755	1,000,000
12	Colin Anderson Community		
13	Placement (R)	803	1,164,000
14	Renaissance Program	804	194,000
15	BRIM Premium	913	<u>1,088,070</u>
16	Total		\$147,069,030

17 Any unexpended balances remaining in the
 18 appropriations for Behavioral Health Program - Unclassified
 19 (fund 0525, activity 219), Institutional Facilities Operations
 20 (fund 0525, activity 335), Capital Outlay (fund 0525,
 21 activity 511), Capital Outlay and Maintenance (fund 0525,
 22 activity 755), and Colin Anderson Community Placement
 23 (fund 0525, activity 803) at the close of the fiscal year 2009
 24 are hereby reappropriated for expenditure during the fiscal
 25 year 2010.

26 The secretary shall, within fifteen days after the close of
 27 the six-month period of said fiscal year, file with the
 28 legislative auditor and the department of revenue an
 29 itemized report of expenditures made during the preceding
 30 six-month period.

31 Included in the above appropriation for Behavioral
 32 Health Program - Unclassified (fund 0525, activity 219) is
 33 \$100,000 for the Four Angels Substance Abuse Treatment
 34 Project development.

35 From the above appropriation to Institutional Facilities
 36 Operations, together with available funds from the division
 37 of health - hospital services revenue account (fund 5156,
 38 activity 335), on July 1, 2009, the sum of \$160,000 shall be
 39 transferred to the department of agriculture - land division
 40 as advance payment for the purchase of food products;

41 actual payments for such purchases shall not be required
42 until such credits have been completely expended.

43 Additional funds have been appropriated in fund 5156,
44 fiscal year 2010, organization 0506, for the operation of the
45 institutional facilities. The secretary of the department of
46 health and human resources is authorized to utilize up to ten
47 percent of the funds from the Institutional Facilities
48 Operations line item to facilitate cost effective and cost
49 saving services at the community level.

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

(WV Code Chapter 16)

Fund 0561 FY 2010 Org 0506

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

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

63-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2010 Org 0510

1 Personal Services 001 \$735,925
2 Annual Increment 004 19,912
3 Employee Benefits 010 249,257
4 Unclassified 099 261,293

5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>9,311</u>
7	Total		\$1,275,698

64-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2010 Org 0511

1	Personal Services	001	\$26,387,846
2	Annual Increment	004	771,638
3	Employee Benefits	010	11,018,122
4	Unclassified	099	18,016,131
5	Child Care Development	144	1,276,575
6	Medical Services Contracts and Office of Managed Care	183	2,335,469
8	Medical Services (R)	189	267,315,568
9	Social Services	195	75,586,872
10	Family Preservation Program	196	1,565,000
11	Family Resource Networks (R)	274	1,905,367
12	Other Post Employee Benefits - Transfer	289	0
13	Domestic Violence Legal Services Fund	384	400,000
14	James "Tiger" Morton Catastrophic Illness Fund	455	693,724
16	MR/DD Waiver	466	80,353,483
17	Child Protective Services Case Workers	468	17,358,849
18	Medical Services Trust Fund Transfer .	512	0
19	OSCAR and RAPIDS	515	3,539,120
20	WV Teaching Hospitals Tertiary/Safety Net	547	6,356,000
22	Child Welfare System	603	2,682,490
23	In-Home Family Education	688	*1,250,000 750,000
24	WV Works Separate State Program .	698	5,000,000
25	Child Support Enforcement	705	6,929,116

*CLERK'S NOTE: The Governor reduced the amount on line 23 from \$1,250,000 to \$750,000.

26	Medicaid Auditing	706	604,108
27	Temporary Assistance for Needy		
28	Families/Maintenance of Effort . .	707	22,969,096
29	Child Care Maintenance of		
30	Effort Match	708	5,693,743
31	Child and Family Services	736	2,850,000
32	Grants for Licensed Domestic Violence		
33	Programs and Statewide Prevention	750	*2,500,000 1,500,000
34	Capital Outlay and Maintenance (R)	755	12,500
35	Medical Services Administrative Costs	789	16,675,238
36	Indigent Burials (R)	851	1,700,000
37	BRIM Premium	913	834,187
38	Rural Hospitals Under 150 Beds . . .	940	2,596,000
39	Children's Trust Fund - Transfer . .	951	<u>300,000</u>
40	Total		\$587,476,242

41 Any unexpended balances remaining in the
 42 appropriations for Medical Services (fund 0403, activity
 43 189), Family Resource Networks (fund 0403, activity 274),
 44 Capital Outlay and Maintenance (fund 0403, activity 755),
 45 and Indigent Burials (fund 0403, activity 851) at the close of
 46 the fiscal year 2009 are hereby reappropriated for
 47 expenditure during the fiscal year 2010.

48 The above appropriation for James "Tiger" Morton
 49 Catastrophic Illness Fund (activity 455) shall be transferred
 50 to the James "Tiger" Morton Catastrophic Illness Fund
 51 (fund 5454) as provided by chapter sixteen, article five-q, of
 52 the code.

53 The above appropriation for Domestic Violence Legal
 54 Services Fund (activity 384) shall be transferred to the
 55 Domestic Violence Legal Services Fund (fund 5455).

56 Notwithstanding the provisions of Title I, section three of
 57 this bill, the secretary of the department of health and human

*CLERK'S NOTE: The Governor reduced the amount on line 33 from \$2,500,000 to \$1,500,000.

58 resources shall have the authority to transfer funds within
59 the above account: *Provided*, That no more than five percent
60 of the funds appropriated to one line item may be transferred
61 to other line items: *Provided, however*, That no funds from
62 other line items shall be transferred to the personal services
63 line item.

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

69 From the above appropriation for the Grants for Licensed
70 Domestic Violence Programs and Statewide Prevention
71 (activity 750), \$500,000 shall be divided equally and
72 distributed among the fourteen (14) licensed programs and
73 the West Virginia Coalition Against Domestic Violence
74 (WVCADV).

75 Any unexpended balance remaining in the appropriation
76 for Grants for Licensed Domestic Violence Programs and
77 Statewide Prevention (activity 750), shall be distributed
78 according to the formula established by the Family
79 Protection Services Board.

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

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

87 From the WV Works Separate State Program (activity
88 698), \$1,700,000 shall be transferred to the WV WORKS
89 Separate State College Program Fund, and \$3,300,000 shall
90 be transferred to the WV WORKS Separate State Two
91 Parent Families Program Fund.

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

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

(WV Code Chapter 5F)

Fund 0430 FY 2010 Org 0601

1	Unclassified (R)	099	\$ 728,246
2	Other Post Employee Benefits - Transfer	289	0
3	Fusion Center	469	488,759
4	BRIM Premium	913	9,404
5	WV Fire and EMS Survivor Benefit	939	200,000
6	Homeland State Security Administrative		
7	Agency (R)	953	<u>583,059</u>
8	Total		\$2,009,468

9 Any unexpended balances remaining in the
10 appropriations for Unclassified (fund 0430, activity 099),
11 Capital Outlay (fund 0430, activity 511), Interoperable
12 Communications System - Surplus (fund 0430, activity 771)
13 and Homeland State Security Administrative Agency (fund
14 0430, activity 953), at the close of the fiscal year 2009 are
15 hereby reappropriated for expenditure during the fiscal year
16 2010.

*66-Adjutant General -
State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2010 Org 0603

1	Personal Services	001	\$	0
2	Annual Increment	004		0

3	Employee Benefits	010	0
4	Unclassified (R)	099	17,521,218
5	Other Post Employee Benefits - Transfer	289	0
6	Mountaineer ChalleNGe Academy .	709	1,500,000
7	BRIM Premium	913	0
8	Total		\$ 19,021,218

9 Any unexpended balance remaining in the appropriation
 10 for Unclassified (fund 0433, activity 099) at the close of the
 11 fiscal year 2009 is hereby reappropriated for expenditure
 12 during the fiscal year 2010.

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

*67-Adjutant General -
 Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2010 Org 0603

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

(WV Code Chapter 62)

Fund 0440 FY 2010 Org 0605

1	Personal Services	001	\$ 191,650
2	Annual Increment	004	2,307
3	Employee Benefits	010	232,693
4	Unclassified	099	209,172
5	Salaries of Members of West Virginia Parole Board	227	455,000

7	Other Post Employee Benefits - Transfer	289	0
8	BRIM Premium	913	<u>4,712</u>
9	Total		\$1,095,534

*69-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 0443 FY 2010 Org 0606

1	Personal Services	001	\$ 409,963
2	Annual Increment	004	8,060
3	Employee Benefits	010	169,311
4	Unclassified (R)	099	336,750
5	Other Post Employee Benefits - Transfer	289	0
6	Radiological Emergency Preparedness	554	30,000
7	Federal Funds/Grant Match (R)	749	679,089
8	Mine and Industrial Accident Rapid		
9	Response Call Center	781	564,360
10	Early Warning Flood System (R) ...	877	525,897
11	BRIM Premium	913	20,336
12	WVU Charleston Poison Control Hotline	944	596,100
13	Disaster Mitigation	952	<u>50,000</u>
14	Total		\$3,389,866

15 Any unexpended balances remaining in the
16 appropriations for Unclassified (fund 0443, activity 099),
17 Federal Funds/Grant Match (fund 0443, activity 749), and
18 Early Warning Flood System (fund 0443, activity 877) at
19 the close of the fiscal year 2009 are hereby reappropriated
20 for expenditure during the fiscal year 2010.

*70-Division of Corrections -
Central Office*

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

Fund 0446 FY 2010 Org 0608

1	Personal Services	001	\$ 423,953
2	Annual Increment	004	7,235
3	Employee Benefits	010	135,989
4	Unclassified	099	<u>103,470</u>
5	Total		\$ 670,647

6 Any unexpended balance remaining in the appropriation
7 for Management Information System (fund 0446, activity
8 398) at the close of the fiscal year 2009 is hereby
9 reappropriated for expenditure during the fiscal year 2010.

*71-Division of Corrections -
Correctional Units*

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

Fund 0450 FY 2010 Org 0608

1	Employee Benefits	010	\$ 363,744
2	Childrens Protection Act (R)	090	929,068
3	Unclassified	099	1,120,067
4	Other Post Employee Benefits - Transfer	289	0
5	Charleston Work Release	456	1,360,388
6	Beckley Correctional Center	490	1,043,117
7	Huntington Work Release	495	938,740
8	Anthony Center	504	4,822,085
9	Huttonsville Correctional Center ..	514	20,722,846
10	Northern Correctional Facility	534	7,102,936
11	Inmate Medical Expenses (R)	535	24,226,064
12	Pruntytown Correctional Center ...	543	7,265,811
13	Payments to Federal, County and/or		
14	Regional Jails (R)	555	20,000,000
15	Corrections Academy	569	1,326,521
16	Martinsburg Correctional Center ...	663	3,480,257
17	Parole Services	686	2,553,391
18	Special Services	687	3,271,051

19	Capital Outlay and Maintenance (R)	755	1,000,000
20	McDowell County Correctional Center	790	1,949,983
21	Stephens Correctional Facility	791	6,474,500
22	St. Mary's Correctional Facility . . .	881	13,022,560
23	Denmar Correctional Facility	882	4,455,189
24	Ohio County Correctional Facility ..	883	1,670,038
25	Mt. Olive Correctional Facility	888	20,289,903
26	Lakin Correctional Facility	896	8,536,736
27	BRIM Premium	913	<u>829,190</u>
28	Total		\$ 158,754,185

29 Any unexpended balances remaining in the
 30 appropriations for Children's Protection Act (fund 0450,
 31 activity 090), Unclassified - Surplus (fund 0450, activity
 32 097), Inmate Medical Expenses (fund 0450, activity 535),
 33 Payments to Federal, County and/or Regional Jails (fund
 34 0450, activity 555), and Capital Outlay and Maintenance
 35 (fund 0450, activity 755) at the close of the fiscal year 2009
 36 are hereby reappropriated for expenditure during the fiscal
 37 year 2010.

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

44 From the above appropriation to Unclassified, on July 1,
 45 2009, the sum of \$300,000 shall be transferred to the
 46 department of agriculture - land division as advance
 47 payment for the purchase of food products; actual payments
 48 for such purchases shall not be required until such credits
 49 have been completely expended.

72-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2010 Org 0612

1	Personal Services	001	\$42,790,885
2	Annual Increment	004	249,120
3	Employee Benefits	010	8,553,337
4	Childrens Protection Act	090	827,312
5	Unclassified	099	8,801,916
6	Other Post Employee Benefits - Transfer	289	0
7	Vehicle Purchase	451	600,000
8	Barracks Lease Payments	556	246,478
9	Communications and		
10	Other Equipment (R)	558	1,013,285
11	Trooper Retirement Fund	605	4,764,396
12	Handgun Administration Expense . .	747	79,698
13	Capital Outlay and Maintenance (R)	755	250,000
14	Retirement Systems - Unfunded		
15	Liability	775	9,876,000
16	Automated Fingerprint		
17	Identification System	898	647,084
18	BRIM Premium	913	<u>5,418,504</u>
19	Total		\$84,118,015

20 Any unexpended balances remaining in the
 21 appropriations for Communications and Other Equipment
 22 (fund 0453, activity 558), and Capital Outlay and
 23 Maintenance (fund 0453, activity 755) at the close of the
 24 fiscal year 2009 are hereby reappropriated for expenditure
 25 during the fiscal year 2010.

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

73-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2010 Org 0613

1	Personal Services	001	\$1,243,974
2	Annual Increment	004	43,710
3	Employee Benefits	010	524,725
4	Unclassified	099	268,823
5	Veterans' Field Offices	228	177,140
6	Veterans' Nursing Home	286	6,583,435
7	Other Post Employee Benefits - Transfer	289	0
8	Veterans' Toll Free Assistance Line	328	5,105
9	Veterans' Reeducation Assistance (R)	329	211,604
10	Veterans' Grant Program (R)	342	150,000
11	Veterans' Grave Markers	473	15,750
12	Veterans' Transportation	485	625,000
13	Memorial Day Patriotic Exercise ...	697	20,000
14	Educational Opportunities for		
15	Children of Deceased Veterans(R)	854	50,000
16	BRIM Premium	913	<u>23,860</u>
17	Total		\$9,943,126

18 Any unexpended balances remaining in the
 19 appropriations for Veterans' Reeducation Assistance (fund
 20 0456, activity 329), Veterans' Grant Program (fund 0456,
 21 activity 342), Women's Veterans' Monument (fund 0456,
 22 activity 385), Veterans' Bonus (fund 0456, activity 483),
 23 and Educational Opportunities for Children of Deceased
 24 Veterans (fund 0456, activity 854) at the close of the fiscal
 25 year 2009 are hereby reappropriated for expenditure during
 26 the fiscal year 2010.

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

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

(WV Code Chapter 9A)

Fund 0460 FY 2010 Org 0618

1	Personal Services	001	\$ 745,991
2	Annual Increment	004	27,644
3	Employee Benefits	010	354,353
4	Unclassified	099	29,859
5	Other Post Employee Benefits - Transfer	289	<u>0</u>
6	Total		\$1,157,847

75-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2010 Org 0619

1	Unclassified	099	\$ 85,427
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 85,427

76-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2010 Org 0620

1	Personal Services	001	\$ 309,419
2	Annual Increment	004	4,525
3	Employee Benefits	010	109,047
4	Unclassified	099	103,565
5	Other Post Employee Benefits - Transfer	289	0
6	Child Advocacy Centers (R)	458	1,000,606
7	Community Corrections (R)	561	3,500,000

8	Statistical Analysis Program	597	51,823
9	Grants Program	694	250,000
10	BRIM Premium	913	<u>1,660</u>
11	Total		\$5,330,645

12 Any unexpended balances remaining in the
 13 appropriations for Community Corrections (fund 0546,
 14 activity 561), and Child Advocacy Centers (fund 0546,
 15 activity 458) at the close of the fiscal year 2009 are hereby
 16 reappropriated for expenditure during the fiscal year 2010.

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

77-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2010 Org 0621

1	Jones Building Treatment Center (R)	261	\$ 0
2	Statewide Reporting Centers (R) . . .	262	3,028,129
3	Robert L. Shell Juvenile Center	267	2,080,735
4	Other Post Employee Benefits - Transfer	289	0
5	Central Office	701	2,373,936
6	Capital Outlay and Maintenance (R)	755	250,000
7	Gene Spadaro Juvenile Center	793	2,184,382
8	BRIM Premium	913	96,187
9	WV Industrial Home for Youth (R)	979	11,314,554
10	Davis Center (R)	980	5,583,323
11	Eastern Regional Juvenile Center . .	981	1,829,430
12	Northern Regional Juvenile Center .	982	1,415,513
13	North Central Regional		
14	Juvenile Center	983	1,950,250
15	Southern Regional Juvenile Center .	984	2,004,841

16	Tiger Morton Center	985	2,154,081
17	Donald R. Kuhn Juvenile Center ..	986	4,241,233
18	J.M. "Chick" Buckbee		
19	Juvenile Center	987	<u>2,065,267</u>
20	Total		\$42,571,861

21 Any unexpended balances remaining in the
 22 appropriations for Jones Building Treatment Center (fund
 23 0570, activity 261), Statewide Reporting Centers (fund
 24 0570, activity 262), Capital Outlay and Maintenance (fund
 25 0570, activity 755), WV Industrial Home for Youth (fund
 26 0570, activity 979), and Davis Center (fund 0570, activity
 27 980) at the close of the fiscal year 2009 are hereby
 28 reappropriated for expenditure during the fiscal year 2010.

29 From the above appropriations, on July 1, 2009, the sum
 30 of \$50,000 shall be transferred to the department of
 31 agriculture - land division as advance payment for the
 32 purchase of food products; actual payments for such
 33 purchases shall not be required until such credits have been
 34 completely expended.

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

78-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2010 Org 0622

1	Personal Services	001	\$ 1,348,894
2	Annual Increment	004	38,090
3	Employee Benefits	010	599,124
4	Unclassified (R)	099	341,232
5	Other Post Employee Benefits - Transfer	289	0
6	BRIM Premium	913	<u>9,969</u>
7	Total		\$2,337,309

8 Any unexpended balances remaining in the
 9 appropriations for Equipment (fund 0585, activity 070) and
 10 Unclassified (fund 0585, activity 099) at the close of the
 11 fiscal year 2009 are hereby reappropriated for expenditure
 12 during the fiscal year 2010.

DEPARTMENT OF REVENUE

79-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2010 Org 0701

1	Unclassified (R)	099	\$ 860,220
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 860,220

4 Any unexpended balances remaining in the
 5 appropriations for Unclassified - Total (fund 0465, activity
 6 096) and Unclassified (fund 0465, activity 099) at the close
 7 of the fiscal year 2009 are hereby reappropriated for
 8 expenditure during the fiscal year 2010.

80-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2010 Org 0702

1	Personal Services (R)	001	\$13,270,094
2	Annual Increment	004	322,206
3	Employee Benefits (R)	010	4,968,482
4	Unclassified (R)	099	10,214,281
5	Other Post Employee Benefits - Transfer	289	0
6	GIS Development Project (R)	562	150,000
7	Multi State Tax Commission	653	77,958

8	BRIM Premium	913	<u>14,420</u>
9	Total		\$ 29,017,441

10 Any unexpended balances remaining in the
 11 appropriations for Personal Services (fund 0470, activity
 12 001), Employee Benefits (fund 0470, activity 010), Tax
 13 Technology Upgrade (fund 0470, activity 094), Unclassified
 14 (fund 0470, activity 099), Integrated Tax Accounting
 15 System (fund 0470, activity 292), GIS Development Project
 16 (fund 0470, activity 562), and Remittance Processor (fund
 17 0470, activity 570) at the close of the fiscal year 2009 are
 18 hereby reappropriated for expenditure during the fiscal year
 19 2010.

81-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2010 Org 0703

1	Unclassified (R)	099	\$ 890,921
2	Other Post Employee Benefits - Transfer	289	0
3	Pay Equity Reserve	364	250,000
4	BRIM Premium	913	<u>3,628</u>
5	Total		\$ 1,144,549

6 Any unexpended balance remaining in the appropriation
 7 for Unclassified (fund 0595, activity 099) at the close of the
 8 fiscal year 2009 is hereby reappropriated for expenditure
 9 during the fiscal year 2010.

82-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2010 Org 0709

APPROPRIATIONS

[Ch. 10]

1	Unclassified	099	\$ 677,300
2	Other Post Employee Benefits - Transfer	289	<u>0</u>
3	Total		\$ 677,300

4 Any unexpended balance remaining in the appropriation
 5 for Unclassified - Total (fund 0593, activity 096) at the close
 6 of the fiscal year 2009 is hereby reappropriated for
 7 expenditure during the fiscal year 2010.

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

(WV Code Chapter 29)

Fund 0523 FY 2010 Org 0933

1	Unclassified - Total	096	\$ 89,935
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DEPARTMENT OF TRANSPORTATION

84-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2010 Org 0804

1	Unclassified	099	\$2,514,902
2	Other Post Employee Benefits - Transfer	289	0
3	BRIM Premium	913	<u>186,413</u>
4	Total		\$2,701,315

5 From the above appropriation for Unclassified (activity
 6 099), \$30,000 shall be expended for improvements at the
 7 Duffield Station.

85-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2010 Org 0805

1	Unclassified (R)	099	\$ 1,757,022
2	Federal Funds/Grant Match (R)	749	<u>1,175,620</u>
3	Total		\$ 2,932,642

4 Any unexpended balances remaining in the
 5 appropriations for Unclassified (fund 0510, activity 099),
 6 and Federal Funds/Grant Match (fund 0510, activity 749) at
 7 the close of the fiscal year 2009 are hereby reappropriated
 8 for expenditure during the fiscal year 2010.

86-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2010 Org 0806

1	Unclassified (R)	099	\$415,277
2	Other Post Employee Benefits - Transfer	289	0
3	BRIM Premium	913	<u>2,764</u>
4	Total		\$418,041

5 Any unexpended balance remaining in the appropriation
 6 for Unclassified (fund 0581, activity 099) at the close of the
 7 fiscal year 2009 is hereby reappropriated for expenditure
 8 during the fiscal year 2010.

87-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2010 Org 0807

1	Unclassified (R)	099	\$ 1,274,557
2	Civil Air Patrol	234	163,258
3	Other Post Employee Benefits - Transfer	289	<u>0</u>
4	Total		\$ 1,437,815

5 Any unexpended balance remaining in the appropriation
6 for Unclassified (fund 0582, activity 099) at the close of the
7 fiscal year 2009 is hereby reappropriated for expenditure
8 during the fiscal year 2010.

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

BUREAU OF SENIOR SERVICES

88-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2010 Org 0508

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total - Surplus (fund 0420, activity 284)
3 at the close of the fiscal year 2009 is hereby reappropriated
4 for expenditure during the fiscal year 2010.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2010 Org 0420

1	Other Post Employee Benefits - Transfer	289	\$	0
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2	New River Community and		
3	Technical College	358	5,509,896
4	West Virginia Council for Community		
5	and Technical Education (R)	392	874,357
6	Eastern West Virginia Community and		
7	Technical College	412	2,002,722
8	West Virginia State Community and		
9	Technical College	445	0
10	Kanawha Valley Community and		
11	Technical College	445	3,927,576
12	Southern West Virginia Community and		
13	Technical College	446	8,387,167
14	West Virginia Northern Community and		
15	Technical College	447	7,472,803
16	West Virginia University -		
17	Parkersburg	471	9,422,264
18	West Virginia University Institute		
19	for Technology Community and		
20	Technical College	486	0
21	Bridgemont Community and Technical		
22	College	486	3,790,870
23	Marshall Community and		
24	Technical College	487	5,735,796
25	Community College		
26	Workforce Development (R)	878	967,707
27	Blue Ridge Community and		
28	Technical College	885	2,871,671
29	College Transition Program (R)	887	333,500
30	West Virginia Advance Workforce		
31	Development (R)	893	3,850,000
32	Technical Program Development (R)	894	2,402,500
33	Pierpont Community and		
34	Technical College	930	<u>8,080,538</u>
35	Total		\$ 65,629,367

36 Any unexpended balances remaining in the
37 appropriations for Unclassified - Surplus (fund 0596,
38 activity 097), West Virginia Council for Community and

39 Technical Education (fund 0596, activity 392), Community
 40 College Workforce Development (fund 0596, activity 878),
 41 College Transition Program (fund 0596, activity 887), West
 42 Virginia Advance Workforce Development (fund 0596,
 43 activity 893), and Technical Program Development (fund
 44 0596, activity 894) at the close of the fiscal year 2009 are
 45 hereby reappropriated for expenditure during the fiscal year
 46 2010.

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

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

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

(WV Code Chapter 18B)

Fund 0589 FY 2010 Org 0441

1	Unclassified (R)	099	\$ 2,181,965
2	Higher Education Grant Program . . .	164	31,092,532
3	WVNET	169	2,011,602
4	Other Post Employee Benefits - Transfer	289	0
5	PROMISE Scholarship — Transfer .	800	16,000,000
6	HEAPS Grant Program (R)	867	5,004,027
7	BRIM Premium	913	<u>19,953</u>
8	Total		\$ 56,310,079

9 Any unexpended balances remaining in the
 10 appropriations for Unclassified (fund 0589, activity 099),
 11 VISTA E-Learning (fund 0589, activity 519), Vice
 12 Chancellor for Health Sciences - Rural Health Initiative
 13 Program and Site Support (fund 0589, activity 595), Capital
 14 Outlay and Maintenance (fund 0589, activity 755), and
 15 HEAPS Grant Program (fund 0589, activity 867) at the close
 16 of the fiscal year 2009 are hereby reappropriated for
 17 expenditure during the fiscal year 2010.

18 The above appropriation for Higher Education Grant
 19 Program (activity 164) shall be transferred to the Higher
 20 Education Grant Fund (fund 4933, org 0441) established by
 21 chapter eighteen-c, article five, section three.

22 The above appropriation for PROMISE Scholarship -
 23 Transfer (activity 800) shall be transferred to the PROMISE
 24 Scholarship Fund (fund 4296, org 0441) established by
 25 chapter eighteen-c, article seven, section seven.

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

(WV Code Chapter 18B)

Fund 0586 FY 2010 Org 0442

1	WVU School of Health Science -		
2	Eastern Division	056	\$ 2,535,527
3	School of Osteopathic Medicine . . .	172	7,244,063
4	Marshall Medical School	173	11,967,464
5	WVU—School of Health Sciences .	174	16,620,863
6	WVU School of Health Sciences -		
7	Charleston Division	175	2,543,185
8	Rural Health Outreach Programs . . .	377	600,000
9	Other Post Employee Benefits - Transfer	289	0

10	School of Osteopathic Medicine		
11	BRIM Subsidy	403	168,841
12	Bluefield State College	408	6,174,504
13	Concord University	410	9,634,825
14	Fairmont State University	414	13,769,754
15	Glenville State College	428	6,268,810
16	Shepherd University	432	10,665,423
17	West Liberty University	439	8,854,062
18	West Virginia State University	441	10,391,801
19	Marshall University	448	49,406,129
20	Marshall University Medical School		
21	BRIM Subsidy	449	982,670
22	West Virginia University	459	110,312,115
23	West Virginia University School of		
24	Medicine BRIM Subsidy	460	1,354,826
25	Jackson's Mill	461	0
26	West Virginia University Institute		
27	for Technology	479	8,247,189
28	Vista-E Learning	519	289,265
29	State Priorities - Brownfield		
30	Professional Development (R) . .	531	777,092
31	Rural Health Initiative - Medical		
32	Schools Support	581	461,156
33	Area Health Education Centers	743	0
34	West Virginia State University Land		
35	Grant Match	956	1,846,384
36	West Virginia University —		
37	Potomac State	994	<u>4,437,890</u>
38	Total		\$ 285,553,838

39 Any unexpended balances remaining in the
40 appropriations for Rural Health Outreach Programs (fund
41 0586, activity 377), Marshall School of Medicine - Surplus
42 (fund 0586, activity 452), WVUIT-ABET Accreditation
43 (fund 0586, activity 454), Jackson's Mill (fund 0586,
44 activity 461), State Priorities-Brownfield Professional
45 Development (fund 0586, activity 531), Jackson's Mill -

46 Surplus (fund 0586, activity 842), and Blanchette
47 Rockefeller Neurological Institute - Surplus (fund 0586,
48 activity 947) at the close of fiscal year 2009 are hereby
49 reappropriated for expenditure during the fiscal year 2010.

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

62 Included in the above appropriation for WVU — School
63 of Health Sciences is \$800,000 for the Blanchette
64 Rockefeller Project.

65 Included in the above appropriation for Glenville State
66 College is \$200,000 for a 13 county consortium between the
67 County School Systems and Glenville State.

68 Included in the above appropriation for West Virginia
69 University is \$34,500 for the Marshall and WVU Faculty
70 and Course Development International Study Project,
71 \$246,429 for the WVU Law School — Skills Program,
72 \$147,857 for the WVU Coal and Energy Research Bureau,
73 \$19,714 for the WVU College of Engineering and Mineral
74 Resources—Diesel Training — Transfer, \$82,500 for the
75 WVU — Sheep Study, \$500,000 for the Mining
76 Engineering Program, \$500,000 for the Center for Multiple
77 Sclerosis Program, \$550,000 for the Davis College of

78 Forestry Agriculture and Consumer Sciences various
79 improvements, \$200,000 for Reedsville Arena and outreach
80 activities, \$80,000 for a Landscape Architect at Davis
81 College of Forestry Agriculture and Consumer Sciences,
82 \$100,000 for the WVU — Soil Testing Program, \$100,000
83 for a veterinarian, \$50,000 for the WVU Cancer Study,
84 \$220,000 for the WVU Petroleum Engineering Program,
85 \$100,000 for the WV Alzheimer Disease Register and
86 \$100,000 for the rifle team.

87 Included in the above appropriation for Marshall Medical
88 School is \$417,351 for the Marshall University Forensic Lab
89 and \$175,061 for the Marshall University Center for Rural
90 Health.

91 Included in the above appropriation for Marshall
92 University is \$181,280 for the Marshall University -
93 Southern WV CTC 2+2 Program and \$100,000 for the Luke
94 Lee Listening Language & Learning Lab.

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

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

99 From the above appropriation for Rural Outreach
100 Programs (activity 377) includes rural health activities and
101 programs; rural residency development and education; and
102 rural outreach activities. These funds shall be dispersed
103 equally among the three (3) medical schools.

104 From the above appropriation for WVU - Potomac State
105 is \$50,000 for maintenance, repairs and equipment, \$75,000
106 for Potomac State Farms for maintenance, repairs, and
107 equipment and \$82,500 for the Potomac State Equine
108 Program.

109 The institutions operating from special revenue funds
 110 and/or federal funds shall pay their proportionate share of
 111 the Board of Risk and Insurance Management total
 112 insurance premium cost for their respective institutions.

113 From the above appropriations to the respective medical
 114 schools, the line items for BRIM subsidies funding shall be
 115 paid to the Board of Risk and Insurance Management as a
 116 general revenue subsidy against the "Total Premium Billed"
 117 to each institution as part of the full cost of their malpractice
 118 insurance coverage.

119 Total TITLE II, Section 1 - General Revenue

(Including claims against the state) \$ 3,787,976,953

1 **Sec. 2. Appropriations from state road fund.** - From
 2 the state road fund there are hereby appropriated
 3 conditionally upon the fulfillment of the provisions set forth
 4 in article two, chapter eleven-b of the code the following
 5 amounts, as itemized, for expenditure during the fiscal year
 6 two thousand ten.

DEPARTMENT OF TRANSPORTATION

92-Division of Motor Vehicles

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

Fund 9007 FY 2010 Org 0802

		State Road Fund
	Activity	
1	Personal Services 001	\$15,153,148
2	Annual Increment 004	297,660

3	Employee Benefits	010	6,626,528
4	Unclassified	099	<u>15,404,133</u>
5	Total		\$37,481,469

93-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2010 Org 0803

1	Debt Service	040	\$50,000,000
2	Maintenance	237	309,184,000
3	Maintenance, Contract Paving and		
4	Secondary Road Maintenance ...	272	40,000,000
5	Bridge Repair and Replacement ...	273	33,500,000
6	Inventory Revolving	275	4,000,000
7	Equipment Revolving	276	20,000,000
8	General Operations	277	56,500,000
9	Interstate Construction	278	115,000,000
10	Other Federal Aid Programs	279	350,700,000
11	Appalachian Programs	280	112,000,000
12	Nonfederal Aid Construction	281	32,000,000
13	Highway Litter Control	282	1,691,000
14	Federal Economic Stimulus	891	<u>204,572,000</u>
15	Total		\$ 1,329,147,000

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

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

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

30 It is the intent of the Legislature to capture and match all
31 federal funds available for expenditure on the Appalachian
32 highway system at the earliest possible time. Therefore,
33 should amounts in excess of those appropriated be required
34 for the purposes of Appalachian programs, funds in excess
35 of the amount appropriated may be made available upon
36 recommendation of the commissioner and approval of the
37 governor. Further, for the purpose of Appalachian programs,
38 funds appropriated to line items may be transferred to other
39 line items upon recommendation of the commissioner and
40 approval of the governor.

41 Total TITLE II, Section 2 - State Road Fund

42 (Including claims against the state) \$ 1,367,137,215

1 **Sec. 3. Appropriations from other funds.** - From the
2 funds designated there are hereby appropriated conditionally
3 upon the fulfillment of the provisions set forth in article two,
4 eleven-b of the code the following amounts, as itemized, for
5 expenditure during the fiscal year two thousand ten.

LEGISLATIVE

94-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2010 Org 2300

	Activity	Other Funds
1 Personal Services	001	\$ 286,000
2 Annual Increment	004	6,200
3 Employee Benefits	010	109,200
4 Unclassified	099	135,603
5 Economic Loss Claim Payment		
6 Fund (R)	334	<u>3,597,775</u>
7 Total		\$4,134,778

8 Any unexpended balance remaining in the appropriation
 9 for Economic Loss Claim Payment Fund (fund 1731,
 10 activity 334) at the close of the fiscal year 2009 is hereby
 11 reappropriated for expenditure during the fiscal year 2010.

JUDICIAL

*95-Supreme Court -
 Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2010 Org 2400

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

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

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2010 Org 1200

1	Personal Services	001	\$ 286,431
2	Annual Increment	004	9,300
3	Employee Benefits	010	134,986
4	Unclassified	099	<u>676,054</u>
5	Total		\$1,106,771

6 There is hereby appropriated from this fund, in addition
 7 to the above appropriation, the necessary amount for the
 8 expenditure of funds other than personal services or
 9 employee benefits to enable the division to pay the direct
 10 expenses relating to land sales as provided in chapter
 11 eleven-a of the West Virginia Code.

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

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

(WV Code Chapter 6)

Fund 1224 FY 2010 Org 1200

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

(WV Code Chapter 32)

Fund 1225 FY 2010 Org 1200

1	Personal Services	001	\$1,164,662
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2	Annual Increment	004	18,316
3	Employee Benefits	010	469,696
4	Unclassified	099	<u>1,471,122</u>
5	Total		\$3,123,796

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

(WV Code Chapter 12)

Fund 1233 FY 2010 Org 1200

1	Unclassified - Total	096	\$ 400,000
2	Fifty percent of the deposits made into this fund shall be		
3	transferred to the Treasurer's Office - Technology Support		
4	and Acquisition Fund (fund 1329, org 1300) for expenditure		
5	for the purposes described in West Virginia Code § 12-3-		
6	10c.		

*100-Auditor's Office -
Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2010 Org 1200

1	Unclassified - Total	096	\$3,254,610
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*101-Auditor's Office -
Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2010 Org 1200

1	Personal Services	001	\$2,033,874
2	Annual Increment	004	39,288

Ch. 10]	APPROPRIATIONS		141
3	Employee Benefits	010	705,782
4	Unclassified	099	<u>622,315</u>
5	Total		\$3,401,259

*102-Treasurer's Office -
College Prepaid Tuition and Savings Program
Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2010 Org 1300

1	Unclassified - Total	096	\$ 1,402,462
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*103-Treasurer's Office -
Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1329 FY 2010 Org 1300

1	Unclassified - Total	096	\$ 475,000
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*104-Department of Agriculture -
Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2010 Org 1400

1	Unclassified - Total	096	\$2,683,867
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*105-Department of Agriculture -
West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2010 Org 1400

APPROPRIATIONS

1	Personal Services	001	\$ 53,384
2	Annual Increment	004	998
3	Employee Benefits	010	15,673
4	Unclassified	099	<u>975,996</u>
5	Total		\$1,046,051

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

(WV Code Chapter 19)

Fund 1409 FY 2010 Org 1400

1	Unclassified - Total	096	\$ 210,000
2	The above appropriation shall be expended in accordance		
3	with article twenty-six, chapter nineteen of the code.		

*107-Department of Agriculture -
Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2010 Org 1400

1	Unclassified - Total	096	\$1,507,094
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*108-Department of Agriculture -
Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2010 Org 1400

1	Unclassified - Total	096	\$ 4,539,525
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*109-Department of Agriculture -
Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2010 Org 1400

1 Unclassified - Total 096 \$ 25,000

*110-Attorney General -
Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2010 Org 1500

1	Personal Services	001	\$ 262,577
2	Annual Increment	004	2,437
3	Employee Benefits	010	81,703
4	Unclassified	099	<u>156,266</u>
5	Total		\$ 502,983

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

(WV Code Chapter 47)

Fund 1513 FY 2010 Org 1500

1 Unclassified - Total 096 \$ 262,818

*112-Attorney General -
Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2010 Org 1500

1 Unclassified - Total 096 \$ 901,135

*113-Secretary of State -
Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2010 Org 1600

1	Personal Services	001	\$ 300,000
2	Employee Benefits	010	68,300
3	Unclassified	099	<u>881,700</u>
4	Total		\$1,250,000

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

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2010 Org 1600

1	Personal Services	001	\$1,200,000
2	Annual Increment	004	15,000
3	Employee Benefits	010	467,673
4	Unclassified	099	834,678
5	Technology Improvements	599	<u>0</u>
6	Total		\$2,517,351

DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 18)

Fund 2044 FY 2010 Org 0201

1	Unclassified - Total	096	\$6,688,000
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2 The above appropriation for Unclassified - Total (fund
 3 2044, activity 096) shall be transferred to the Consolidated
 4 Public Retirement Board - West Virginia Teachers'
 5 Retirement System Employers Accumulation Fund (fund
 6 2601).

*116-Division of Information Services and
 Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2010 Org 0210

1	Personal Services	001	\$16,326,413
2	Annual Increment	004	342,459
3	Employee Benefits	010	5,659,244
4	Unclassified	099	<u>15,551,701</u>
5	Total		\$37,879,817

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

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

117-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2010 Org 0222

APPROPRIATIONS

[Ch. 10

1	Personal Services	001	\$2,763,429
2	Annual Increment	004	72,348
3	Employee Benefits	010	991,588
4	Unclassified	099	<u>1,207,158</u>
5	Total		\$5,034,523

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

118-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2010 Org 0228

1	Unclassified - Total (R)	096	\$ 550,092
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2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 2521, activity 096, fiscal year
 4 2009) at the close of the fiscal year 2009 is hereby
 5 reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 5A)

Fund 2531 FY 2010 Org 0231

1	Unclassified - Total	096	\$ 1,881,795
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2 From the above fund, the provisions of West Virginia
 3 Code §11B-2-18 shall not operate to permit expenditures in
 4 excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

120-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2010 Org 0305

1	Personal Services	001	\$	366,741
2	Annual Increment	004		7,594
3	Employee Benefits	010		125,605
4	Unclassified	099		<u>363,374</u>
5	Total		\$	863,314

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

(WV Code Chapter 19)

Fund 3082 FY 2010 Org 0305

1	Unclassified - Total	096	\$	141,750
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*122-Division of Forestry -
Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2010 Org 0305

1	Unclassified - Total	096	\$	2,264,568
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123-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2010 Org 0306

APPROPRIATIONS

[Ch. 10

1	Personal Services	001	\$	25,821
2	Employee Benefits	010		2,351
3	Unclassified	099		<u>190,107</u>
4	Total		\$	218,279

5 The above appropriation shall be used in accordance with
 6 section four, article two, chapter twenty-nine of the code.

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

(WV Code Chapter 5B)

Fund 3002 FY 2010 Org 0307

1	Unclassified - Total	096	\$	3,018,485
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*125-Division of Labor -
 Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2010 Org 0308

1	Personal Services	001	\$	1,095,009
2	Annual Increment	004		12,643
3	Employee Benefits	010		469,000
4	Unclassified	099		<u>563,475</u>
5	Total		\$	2,140,127

*126-Division of Labor -
 Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2010 Org 0308

1	Personal Services	001	\$	80,254
2	Annual Increment	004		1,188
3	Employee Benefits	010		39,313
4	Unclassified	099		<u>65,087</u>
5	Total		\$	185,842

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

(WV Code Chapter 21)

Fund 3191 FY 2010 Org 0308

1	Unclassified - Total	096	\$	136,849
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*128-Division of Labor -
Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2010 Org 0308

1	Unclassified - Total	096	\$	107,066
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*129-Division of Labor -
State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2010 Org 0308

1	Personal Services	001	\$	102,203
2	Annual Increment	004		2,262
3	Employee Benefits	010		46,861
4	Unclassified	099		28,724

150

APPROPRIATIONS

[Ch. 10

5	BRIM Premium	913	<u>3,404</u>
6	Total		\$ 183,454

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

(WV Code Chapter 47)

Fund 3196 FY 2010 Org 0308

1	Unclassified - Total	096	\$ 50,000
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131-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2010 Org 0310

1	Wildlife Resources	023	\$5,493,200
2	Administration	155	1,303,878
3	Capital Improvements and		
4	Land Purchase (R)	248	1,373,300
5	Law Enforcement	806	<u>5,493,200</u>
6	Total		\$13,663,578

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

10 Any unexpended balances remaining in the
11 appropriations for Capital Improvements and Land
12 Purchase (fund 3200, activity 248, fiscal year 2008 and
13 fiscal year 2009) at the close of the fiscal year 2009 are
14 hereby reappropriated for expenditure during the fiscal year
15 2010.

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

(WV Code Chapter 20)

Fund 3202 FY 2010 Org 0310

1	Unclassified - Total	096	\$	75,000
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*133-Division of Natural Resources -
Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2010 Org 0310

1	Personal Services	001	\$	704,058
2	Annual Increment	004		8,850
3	Employee Benefits	010		274,984
4	Unclassified	099		<u>323,849</u>
5	Total		\$	1,311,741

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

(WV Code Chapter 20)

Fund 3205 FY 2010 Org 0310

1	Personal Services	001	\$	130,300
2	Annual Increment	004		2,220
3	Employee Benefits	010		51,341
4	Unclassified	099		<u>217,075</u>
5	Total		\$	400,936

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

(WV Code Chapter 20)

Fund 3253 FY 2010 Org 0310

APPROPRIATIONS

[Ch. 10]

1 Unclassified - Total 096 \$ 135,000

*136-Division of Natural Resources -
Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2010 Org 0310

1 Unclassified - Total 096 \$ 20,000

137-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2010 Org 0314

1	Personal Services	001	\$ 339,000
2	Annual Increment	004	900
3	Employee Benefits	010	126,800
4	WV Mining Extension Service	026	150,000
5	Unclassified	099	1,046,900
6	Mine Safety Technology Task Force	061	<u>115,000</u>
7	Total		\$ 1,778,600

8 Any unexpended balance remaining in the appropriation
9 for Disaster Mitigation (fund 3355, activity 952) at the close
10 of the fiscal year 2009 is hereby reappropriated for
11 expenditure during the fiscal year 2010.

*138-Division of Energy -
Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2010 Org 0328

1 Energy Assistance — Total (R) 647 \$ 300,000

2 Any unexpended balance remaining in the appropriation
3 for Energy Assistance - Total (fund 3010, activity 647) at
4 the close of the fiscal year 2009 is hereby reappropriated for
5 expenditure during the fiscal year 2010.

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

(WV Code Chapter 5B)

Fund 3011 FY 2010 Org 0328

1 Unclassified - Total (R) 096 \$ 835,111

2 Any unexpended balance remaining in the above
3 appropriation for Unclassified - Total (fund 3011, activity
4 096) at the close of the fiscal year 2009 is hereby
5 reappropriated for expenditure during the fiscal year 2010.

DEPARTMENT OF EDUCATION

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

(WV Code Chapter 18)

Fund 3937 FY 2010 Org 0402

1 Unclassified - Total 096 \$ 800,000

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

(WV Code Chapter 18)

Fund 3959 FY 2010 Org 0402

1	Personal Services	001	\$ 794,734
2	Annual Increment	004	8,460
3	Employee Benefits	010	276,409
4	Unclassified	099	<u>271,715</u>
5	Total		\$1,351,318

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

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

(WV Code Chapter 18)

Fund 3960 FY 2010 Org 0402

1	Personal Services	001	\$ 825,000
2	Annual Increment	004	13,000
3	Employee Benefits	010	293,550
4	Unclassified	099	<u>778,450</u>
5	Total		\$1,910,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

Fund 3508 FY 2010 Org 0431

1	Governor's Honor Academy	478	\$ 100,000
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Ch. 10]	APPROPRIATIONS		155
2	EPSCoR (R)	571	359,368
3	Literacy Project (R)	899	<u>350,000</u>
4	Total		\$ 809,368

5 Any unexpended balance remaining in the appropriation
6 for Unclassified - Total (fund 3508, activity 096), EPSCoR
7 (fund 3508, activity 571), Educational Enhancements (fund
8 3508, activity 695), and Literacy Project (fund 3508, activity
9 899) at the close of the fiscal year 2009 are hereby
10 reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 5A)

Fund 3542 FY 2010 Org 0432

1 Unclassified – Total

096	\$ 800,000
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*145-State Board of Rehabilitation -
Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2010 Org 0932

1 Unclassified - Total

096	\$ 905,360
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

146-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2010 Org 0312

1	Personal Services	001	\$ 577,984
2	Annual Increment	004	6,720
3	Employee Benefits	010	183,319
4	Unclassified	099	<u>1,792,680</u>
5	Total		\$2,560,703

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

(WV Code Chapter 22)

Fund 3023 FY 2010 Org 0313

1	Personal Services	001	\$ 311,500
2	Annual Increment	004	8,480
3	Employee Benefits	010	119,508
4	Unclassified	099	<u>159,558</u>
5	Total		\$ 599,046

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

(WV Code Chapter 22)

Fund 3024 FY 2010 Org 0313

1	Personal Services	001	\$ 314,004
2	Annual Increment	004	3,730
3	Employee Benefits	010	94,974
4	Unclassified	099	<u>593,833</u>
5	Total		\$ 1,006,541

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

(WV Code Chapter 22)

Fund 3321 FY 2010 Org 0313

1	Personal Services	001	\$ 931,956
2	Annual Increment	004	12,360
3	Employee Benefits	010	351,585
4	Unclassified	099	<u>16,667,832</u>
5	Total		\$17,963,733

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

(WV Code Chapter 22)

Fund 3322 FY 2010 Org 0313

1	Unclassified - Total	096	\$ 674,360
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*151-Division of Environmental Protection -
Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2010 Org 0313

1	Personal Services	001	\$1,041,794
2	Annual Increment	004	4,889
3	Employee Benefits	010	364,058
4	Unclassified	099	<u>874,153</u>
5	Total		\$2,284,894

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

(WV Code Chapter 22)

Fund 3324 FY 2010 Org 0313

APPROPRIATIONS

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1	Personal Services	001	\$3,889,958
2	Annual Increment	004	60,642
3	Employee Benefits	010	1,785,550
4	Unclassified	099	<u>3,262,525</u>
5	Total		\$8,998,675

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

(WV Code Chapter 22)

Fund 3325 FY 2010 Org 0313

1	Personal Services	001	\$ 259,844
2	Annual Increment	004	8,875
3	Employee Benefits	010	93,757
4	Unclassified	099	<u>196,796</u>
5	Total		\$ 559,272

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

(WV Code Chapter 22)

Fund 3331 FY 2010 Org 0313

1	Personal Services	001	\$ 499,813
2	Annual Increment	004	10,834
3	Employee Benefits	010	191,983
4	Unclassified	099	<u>834,243</u>
5	Total		\$1,536,873

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

(WV Code Chapter 22)

Fund 3332 FY 2010 Org 0313

1	Personal Services	001	\$ 555,417
2	Annual Increment	004	6,156
3	Employee Benefits	010	183,266
4	Unclassified	099	<u>4,026,024</u>
5	Total		\$4,770,863

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

(WV Code Chapter 22)

Fund 3333 FY 2010 Org 0313

1	Personal Services	001	\$1,896,868
2	Annual Increment	004	35,550
3	Employee Benefits	010	741,892
4	Unclassified	099	<u>1,212,109</u>
5	Total		\$3,886,419

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

(WV Code Chapter 22)

Fund 3336 FY 2010 Org 0313

1	Personal Services	001	\$3,924,850
2	Annual Increment	004	55,389
3	Employee Benefits	010	1,294,579
4	Unclassified	099	<u>2,308,152</u>
5	Total		\$7,582,970

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

(WV Code Chapter 22)

Fund 3340 FY 2010 Org 0313

1	Personal Services	001	\$	158,556
2	Annual Increment	004		3,590
3	Employee Benefits	010		52,464
4	Unclassified	099		<u>149,840</u>
5	Total		\$	364,450

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

(WV Code Chapter 22)

Fund 3349 FY 2010 Org 0313

1	Unclassified - Total	096	\$	2,533,626
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*160-Division of Environmental Protection -
Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2010 Org 0313

1	Unclassified - Total	096	\$	60,000
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*161-Division of Environmental Protection -
Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2010 Org 0313

1	Personal Services	001	\$ 377,086
2	Annual Increment	004	6,788
3	Employee Benefits	010	132,289
4	Unclassified	099	<u>2,256,743</u>
5	Total		\$ 2,772,906

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

(WV Code Chapter 22)

Fund 3490 FY 2010 Org 0313

1	Personal Services	001	\$ 768,384
2	Annual Increment	004	11,723
3	Employee Benefits	010	281,953
4	Unclassified	099	<u>492,090</u>
5	Total		\$ 1,554,150

*163-Oil and Gas Conservation Commission —
Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2010 Org 0315

1	Personal Services	001	\$ 115,814
2	Annual Increment	004	2,976
3	Employee Benefits	010	37,262
4	Unclassified	099	<u>73,206</u>
5	Total		\$ 229,258

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*164-Board of Barbers and Cosmetologists*

APPROPRIATIONS

(WV Code Chapters 16 and 30)

Fund 5425 FY 2010 Org 0505

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

165-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2010 Org 0506

1	Unclassified - Total	096	\$	0
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*166-Division of Health -
Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2010 Org 0506

1 Any unexpended balances remaining in the above
 2 appropriations for Institutional Facilities Operations (fund
 3 5124, activity 335) and Tobacco Education Program (fund
 4 5124, activity 906) at the close of the fiscal year 2009 are
 5 hereby reappropriated for expenditure during the fiscal year
 6 2010.

*167-Division of Health -
Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2010 Org 0506

1	Personal Services	001	\$ 342,687
2	Annual Increment	004	11,190
3	Employee Benefits	010	159,369
4	Unclassified.	099	<u>633,288</u>
5	Total		\$1,146,534

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

(WV Code Chapter 16)

Fund 5156 FY 2010 Org 0506

1	Debt Service (R)	040	\$ 200,438
2	Institutional Facilities		
3	Operations (R)	335	38,674,129
4	Medical Services Trust Fund -		
5	Transfer (R)	512	<u>25,300,000</u>
6	Total		\$64,174,567

7 Any unexpended balance remaining in the appropriation
8 for hospital services revenue account at the close of the
9 fiscal year 2009 is hereby reappropriated for expenditure
10 during the fiscal year 2010, except for fund 5156, activity
11 040 (fiscal year 2008); \$414,508.51 for fund 5156, activity
12 335 (fiscal year 2004); \$514,104.86 for fund 5156, activity
13 335 (fiscal year 2005); \$1,784,716.00 for fund 5156, activity
14 335 (fiscal year 2006); and \$3,403,952.63 for fund 5156,
15 activity 335 (fiscal year 2008) which shall expire on June
16 30, 2009.

17 The total amount of this appropriation shall be paid from
18 the hospital services revenue account special fund created
19 by section thirteen, article one, chapter sixteen of the code,

20 and shall be used for operating expenses and for
21 improvements in connection with existing facilities and
22 bond payments.

23 The secretary of the department of health and human
24 resources is authorized to utilize up to ten percent of the
25 funds from the appropriation for Institutional Facilities
26 Operations line to facilitate cost effective and cost saving
27 services at the community level.

28 Necessary funds from the above appropriation may be
29 used for medical facilities operations, either in connection
30 with this account or in connection with the line item
31 designated Institutional Facilities Operations in the
32 consolidated medical service fund (fund 0525, fiscal year
33 2010, organization 0506).

34 From the above appropriation to Institutional Facilities
35 Operations, together with available funds from the
36 consolidated medical services fund (fund 0525, activity 335)
37 on July 1, 2009, the sum of \$160,000 shall be transferred to
38 the department of agriculture - land division as advance
39 payment for the purchase of food products; actual payments
40 for such purchases shall not be required until such credits
41 have been completely expended.

*169-Division of Health -
Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2010 Org 0506

1	Personal Services	001	\$ 612,001
2	Annual Increment	004	13,774
3	Employee Benefits	010	266,536
4	Unclassified	099	<u>1,302,955</u>
5	Total		\$2,195,266

*170-Division of Health -
Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2010 Org 0506

1	Personal Services	001	\$ 423,536
2	Annual Increment	004	7,936
3	Employee Benefits	010	160,258
4	Unclassified	099	<u>186,626</u>
5	Total		\$ 778,356

*171-Division of Health -
Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2010 Org 0506

1	Personal Services	001	\$ 61,049
2	Annual Increment	004	2,047
3	Employee Benefits	010	23,562
4	Unclassified	099	<u>2,996,007</u>
5	Total		\$3,082,665

*172-Division of Health -
Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2010 Org 0506

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

(WV Code Chapter 16)

Fund 5214 FY 2010 Org 0506

1	Personal Services	001	\$ 486,967
2	Annual Increment	004	5,890
3	Employee Benefits	010	202,735
4	Unclassified	099	<u>24,195,585</u>
5	Total		\$ 24,891,177

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

(WV Code Chapter 16)

Fund 5218 FY 2010 Org 0506

1	Unclassified—Total	096	\$ 85,000
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*175-West Virginia Health Care Authority —
Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2010 Org 0507

1	Personal Services	001	\$2,148,295
2	Annual Increment	004	31,072
3	Employee Benefits	010	690,728
4	Hospital Assistance	025	600,000
5	Unclassified	099	<u>3,192,945</u>
6	Total		\$6,663,040

7 The above appropriation is to be expended in accordance
8 with and pursuant to the provisions of article twenty-nine-b,
9 chapter sixteen of the code and from the special revolving
10 fund designated health care cost review fund.

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

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

(WV Code Chapter 16)

Fund 5380 FY 2010 Org 0507

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

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

(WV Code Chapter 16)

Fund 5382 FY 2010 Org 0507

1	Unclassified - Total	096	\$ 2,000,000
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*178-Division of Human Services -
 Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2010 Org 0511

1	Medical Services	189	\$ 165,595,278
2	Medical Services Administrative Costs .	789	<u>412,022</u>
3	Total		\$ 166,007,300

4 From the above appropriation for Medical Services
 5 Administrative Costs (fund 5090, activity 789), \$200,000

6 shall be transferred to the tax division per WV Code §11-27-
 7 32 and the remainder shall be transferred to a special
 8 revenue account in the treasury for use by the department of
 9 health and human resources for administrative purposes.
 10 The remainder of all moneys deposited in the fund shall be
 11 transferred to the West Virginia medical services fund (fund
 12 5084).

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

(WV Code Chapter 48A)

Fund 5094 FY 2010 Org 0511

1 Unclassified - Total (R) 096 \$44,287,194

2 Any unexpended balance remaining in the appropriation
 3 for Unclassified - Total (fund 5094, activity 096) at the close
 4 of the fiscal year 2009 is hereby reappropriated for
 5 expenditure during the fiscal year 2010, except for fund
 6 5094, activity 096, fiscal year 2006 which shall expire on
 7 June 30, 2009.

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

(WV Code Chapter 9)

Fund 5185 FY 2010 Org 0511

1	Medical Services	189	\$30,556,594
2	Medical Services Administrative Costs	789	<u>536,433</u>
3	Total		\$31,093,027

4 The above appropriation to Medical Services shall be
 5 used to provide state match of Medicaid expenditures as

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

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

(WV Code Chapter 16)

Fund 5454 FY 2010 Org 0511

1 Unclassified - Total 096 \$ 1,609,076

*182-Family Protection Services Board -
 Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2010 Org 0511

1 Unclassified - Total 096 \$ 838,022

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

(WV Code Chapter 9)

Fund 5467 FY 2010 Org 0511

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

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

(WV Code Chapter 9)

Fund 5468 FY 2010 Org 0511

1 Unclassified - Total 096 \$ 3,300,000

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

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

(WV Code Chapter 15)

Fund 6003 FY 2010 Org 0601

1 Unclassified - Total 096 \$ 25,000

*186-State Armory Board -
General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2010 Org 0603

1 Unclassified - Total 096 \$ 600,000

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

(WV Code Chapter 24)

Fund 6295 FY 2010 Org 0606

- 1 Unclassified - Total (R) 096 \$ 2,000,000
- 2 Any unexpended balance remaining in the appropriation
- 3 for Unclassified - Total (fund 6295, activity 096) at the close
- 4 of fiscal year 2009 is hereby reappropriated for expenditure
- 5 during the fiscal year 2010.

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

(WV Code Chapter 62)

Fund 6362 FY 2010 Org 0608

1	Personal Services	001	\$ 275,000
2	Annual Increment	004	2,070
3	Employee Benefits	010	88,812
4	Unclassified	099	<u>376,923</u>
5	Total		\$ 742,805

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

(WV Code Chapter 17C)

Fund 6501 FY 2010 Org 0612

1	Personal Services	001	\$ 765,276
2	Annual Increment	004	29,580
3	Employee Benefits	010	294,849
4	Unclassified	099	375,127
5	BRIM Premium	913	<u>302,432</u>
6	Total		\$1,767,264

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

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

(WV Code Chapter 15)

Fund 6513 FY 2010 Org 0612

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

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

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

(WV Code Chapter 15)

Fund 6516 FY 2010 Org 0612

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

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

(WV Code Chapter 15)

Fund 6519 FY 2010 Org 0612

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

4 Any unexpended balance remaining in the appropriation
 5 for Unclassified (fund 6519, fiscal year 2008, activity 099)
 6 at the close of the fiscal year 2009 is hereby reappropriated
 7 for expenditure during the fiscal year 2010.

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

(WV Code Chapter 15)

Fund 6527 FY 2010 Org 0612

1	Unclassified	099	\$ 246,879
2	BRIM Premium	913	<u>18,524</u>
3	Total		\$ 265,403

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

(WV Code Chapter 15)

Fund 6532 FY 2010 Org 0612

1	Unclassified - Total	096	\$ 3,308
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*195-Division of Veterans' Affairs -
Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2010 Org 0613

1	Unclassified - Total	096	\$3,000,000
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196-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2010 Org 0615

1	Personal Services	001	\$1,374,952
2	Annual Increment	004	21,860
3	Employee Benefits	010	438,339
4	Debt Service	040	9,000,000
5	Unclassified	099	<u>545,235</u>
6	Total		\$11,380,386

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

(WV Code Chapter 9A)

Fund 6754 FY 2010 Org 0618

1	Unclassified - Total	096	\$ 466,000
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*198-Fire Commission -
Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2010 Org 0619

1	Personal Services	001	\$1,815,193
2	Annual Increment	004	31,024
3	Employee Benefits	010	647,548

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4	Unclassified	099	1,447,562
5	BRIM Premium	913	<u>58,013</u>
6	Total		\$3,999,340

7 Any unexpended cash balance remaining in fund 6152 at
8 the close of the fiscal year 2009 is hereby available for
9 expenditure as part of the fiscal year 2010 appropriation.

*199-Division of Criminal Justice Services -
WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2010 Org 0620

1	Unclassified - Total	096	\$2,010,348
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*200-Criminal Justice Services -
Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2010 Org 0620

1	Unclassified - Total	096	\$1,500,000
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DEPARTMENT OF REVENUE

201-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2010 Org 0303

1	Personal Services	001	\$1,705,543
2	Annual Increment	004	22,320
3	Employee Benefits	010	548,291
4	Unclassified	099	<u>686,383</u>
5	Total		\$2,962,537

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

(WV Code Chapter 29)

Fund 7007 FY 2010 Org 0701

- 1 Unclassified - Total - Transfer 402 \$ 23,701,000
- 2 The above appropriation for Unclassified - Total -
- 3 Transfer shall be transferred to the Consolidated Public
- 4 Retirement Board - West Virginia Teachers' Retirement
- 5 System Employers Accumulation Fund (fund 2601).

*203-Tax Division -
Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2010 Org 0702

1	Personal Services	001	\$	17,274
2	Annual Increment	004		340
3	Employee Benefits	010		5,845
4	Unclassified	099		<u>7,717</u>
5	Total		\$	31,176

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

(WV Code Chapter 11)

Fund 7073 FY 2010 Org 0702

1	Personal Services	001	\$	895,551
2	Annual Increment	004		23,100
3	Employee Benefits	010		331,342

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4	Unclassified	099 <u>229,847</u>
5	Total	\$1,479,840

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

(WV Code Chapter 11)

Fund 7086 FY 2010 Org 0702

1	Unclassified - Total	096	\$	51,372
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*206-Tax Division -
Wine Tax Administration Fund*

(WV Code Chapter 60)

Fund 7087 FY 2010 Org 0702

1	Unclassified - Total	096	\$	255,734
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*207-State Budget Office -
Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2010 Org 0703

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

3 The above appropriation for Public Employees Insurance
4 Reserve Fund — Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

*208-Insurance Commissioner -
Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2010 Org 0704

1	Personal Services	001	\$ 505,497
2	Annual Increment	004	5,812
3	Employee Benefits	010	147,384
4	Unclassified	099	<u>1,489,260</u>
5	Total		\$2,147,953

*209-Insurance Commissioner -
Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2010 Org 0704

1	Personal Services	001	\$ 375,601
2	Annual Increment	004	5,640
3	Employee Benefits	010	129,597
4	Unclassified	099	<u>281,626</u>
5	Total		\$ 792,464

210-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2010 Org 0704

1	Personal Services	001	\$16,045,026
2	Annual Increment	004	353,336
3	Employee Benefits	010	6,848,269
4	Unclassified	099	<u>14,286,885</u>
5	Total		\$37,533,516

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of collections of fees and charges
8 as provided by law.

*211-Insurance Commissioner –
Workers’ Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2010 Org 0704

1 Unclassified - Total 096 \$ 550,000,000

*212-Insurance Commissioner –
Workers’ Compensation Uninsured Employers’ Fund*

(WV Code Chapter 23)

Fund 7163 FY 2010 Org 0704

1 Unclassified - Total096 \$ 27,000,000

*213-Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2010 Org 0704

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

*214-Insurance Commissioner –
Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)

Fund 7165 FY 2010 Org 0704

1 Unclassified - Total 096 \$ 10,000,000

*215-Lottery Commission -
Revenue Center Construction Fund*

(WV Code Chapter 29)

Fund 7209 FY 2010 Org 0705

1 Unclassified - Total 096 \$ 73,000,000

216-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2010 Org 0706

1	Personal Services	001	\$ 163,463
2	Annual Increment	004	5,332
3	Employee Benefits	010	70,957
4	Unclassified	099	<u>84,260</u>
5	Total		\$ 324,012

*217-Racing Commission -
Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2010 Org 0707

1 Medical Expenses - Total 245 \$ 57,000

2 The total amount of this appropriation shall be paid from
3 the special revenue fund out of collections of license fees
4 and fines as provided by law.

5 No expenditures shall be made from this account except
6 for hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

*218-Racing Commission -
Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2010 Org 0707

1	Personal Services	001	\$ 123,351
2	Annual Increment	004	2,170
3	Employee Benefits	010	32,456
4	Unclassified	099	<u>82,161</u>
5	Total		\$ 240,138

*219-Racing Commission -
General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2010 Org 0707

1	Personal Services	001	\$1,796,977
2	Annual Increment	004	25,206
3	Employee Benefits	010	462,987
4	Unclassified	099	<u>755,728</u>
5	Total		\$3,040,898

*220-Racing Commission -
Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2010 Org 0707

1	Unclassified - Total	096	\$2,770,956
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*221-Alcohol Beverage Control Administration -
Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2010 Org 0708

1	Personal Services	001	\$ 112,338
2	Annual Increment	004	3,780
3	Employee Benefits	010	50,468
4	Unclassified	099	<u>140,324</u>
5	Total		\$ 306,910

6 To the extent permitted by law, four classified exempt
7 positions shall be provided from Personal Services line item
8 for field auditors.

222-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2010 Org 0708

1	Personal Services	001	\$3,683,360
2	Annual Increment	004	98,092
3	Employee Benefits	010	1,629,154
4	Unclassified	099	<u>3,030,048</u>
5	Total		\$8,440,654

6 From the above appropriation an amount shall be used for
7 the Tobacco/Alcohol Education Program.

8 The total amount of this appropriation shall be paid from
9 a special revenue fund out of liquor revenues.

10 The above appropriation includes the salary of the
11 commissioner and the salaries, expenses and equipment of
12 administrative offices, warehouses and inspectors.

13 There is hereby appropriated from liquor revenues, in
14 addition to the above appropriation, the necessary amount
15 for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION*223-Division of Motor Vehicles -
Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2010 Org 0802

1 Unclassified - Total 096 \$ 189,000

*224-Division of Motor Vehicles -
Motor Vehicle Fees Fund*

(WV Code Chapter 17B)

Fund 8223 FY 2010 Org 0802

1 Unclassified - Total 096 \$4,597,699

*225-Division of Highways -
A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2010 Org 0803

1 Unclassified - Total 096 \$2,719,000

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

(WV Code Chapter 17)

Fund 8254 FY 2010 Org 0806

1 Unclassified - Total 096 \$2,500,000

BUREAU OF SENIOR SERVICES

*227-Bureau of Senior Services -
Community Based Service Fund*

(WV Code Chapter 22)

Fund 5409 FY 2010 Org 0508

1 Unclassified - Total 096 \$ 7,250,000

HIGHER EDUCATION

*228-Higher Education Policy Commission -
System -
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2010 Org 0442

1	Debt Service	040	\$ 4,822,241
2	General Capital Expenditures (R) . .	306	<u>500,000</u>
3	Total		\$ 5,322,241

4 Any unexpended balance remaining in the appropriation
5 for General Capital Expenditures (fund 4902, activity 306,
6 fiscal year 2009) at the close of fiscal year 2009 is hereby
7 reappropriated for expenditure during the fiscal year 2010.

8 The total amount of this appropriation shall be paid from
9 the special capital improvements fund created in section
10 eight, article ten, chapter eighteen-b of the code. Projects are
11 to be paid on a cash basis and made available on July 1 of
12 each year.

13 The above appropriations, except for debt service, may
14 be transferred to special revenue funds for capital
15 improvement projects at the institutions.

*229-Higher Education Policy Commission -
System -
Tuition Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2010 Org 0442

1	Debt Service	040	\$ 23,429,974
2	General Capital Expenditures	306	3,000,000
3	Facilities Planning		
4	and Administration (R)	386	<u>414,056</u>
5	Total		\$ 26,844,030

6 Any unexpended balance remaining in the appropriation
7 for Facilities Planning and Administration (fund 4903,
8 activity 386) at the close of fiscal year 2009 is hereby
9 reappropriated for expenditure during the fiscal year 2010.

10 The total amount of this appropriation shall be paid from
11 the special capital improvement fund created in section
12 eight, article ten, chapter eighteen-b of the code. Projects are
13 to be paid on a cash basis and made available on July 1.

14 The above appropriations, except for debt service, may
15 be transferred to special revenue funds for capital
16 improvement projects at the institutions.

*230-Higher Education Policy Commission -
Tuition Fee Revenue Bond Construction Fund*

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2010 Org 0442

1 Any unexpended balance remaining in the appropriation
2 at the close of the fiscal year 2009 is hereby reappropriated
3 for expenditure during the fiscal year 2010.

4 The appropriation shall be paid from available
5 unexpended cash balances and interest earnings accruing to
6 the fund. The appropriation shall be expended at the
7 discretion of the Higher Education Policy Commission and
8 the funds may be allocated to any institution within the
9 system.

10 The total amount of this appropriation shall be paid from
11 the unexpended proceeds of revenue bonds previously
12 issued pursuant to section eight, article twelve-b, chapter
13 eighteen of the code, which have since been refunded.

*231-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center*

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2010 Org 0463

1 Unclassified - Total (R) 096 \$ 15,812,292

2 Any unexpended balance remaining in the appropriation
3 at the close of fiscal year 2009 is hereby reappropriated for
4 expenditure during the fiscal year 2010.

*232-Higher Education Policy Commission -
Marshall University -
Marshall University Land Sale Account*

(WV Code Chapter 18B)

Fund 4270 FY 2010 Org 0471

1 Unclassified - Total 096 \$ 2,292,914

2 The total amount of this appropriation shall be used for
3 the purchase of additional real property or technology, or for
4 capital improvements at the institution.

MISCELLANEOUS BOARDS AND COMMISSIONS

233-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425 FY 2010 Org 0505

1	Personal Services	001	\$ 257,886
2	Annual Increment	004	7,750
3	Employee Benefits	010	115,033
4	Unclassified.	099	<u>119,366</u>
5	Total		\$ 500,035

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of collections made by the board
8 of barbers and cosmetologists as provided by law.

234-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2010 Org 0509

1	Personal Services	001	\$ 48,520
2	Annual Increment	004	1,180
3	Employee Benefits	010	18,568

APPROPRIATIONS

[Ch. 10]

4	Unclassified	099	<u>30,507</u>
5	Total		\$ 98,775

6 The total amount of this appropriation shall be paid from
 7 the special revenue fund out of fees and collections as
 8 provided by article twenty-nine-a, chapter sixteen of the
 9 code.

235-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2010 Org 0906

1	Unclassified - Total	096	\$ 381,443
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236-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2010 Org 0907

1	Unclassified - Total	096	\$ 927,146
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237-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2010 Org 0926

1	Personal Services	001	\$8,348,143
2	Annual Increment	004	161,734
3	Employee Benefits	010	2,719,122
4	Unclassified	099	2,957,041
5	PSC Weight Enforcement	345	4,294,773
6	Debt Payment/Capital Outlay	520	350,000
7	BRIM Premium	913	<u>114,609</u>
8	Total		\$18,945,422

9 The total amount of this appropriation shall be paid from
 10 a special revenue fund out of collection for special license
 11 fees from public service corporations as provided by law.

12 The Public Service Commission is authorized to spend up
 13 to \$500,000, from surplus funds in this account, to meet the
 14 expected deficiencies in the Motor Carrier Division (fund
 15 8625, org 0926) due to the amendment and reenactment of
 16 §24A-3-1 by Enrolled House Bill Number 2715, Regular
 17 Session, 1997.

*238-Public Service Commission -
 Gas Pipeline Division —
 Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2010 Org 0926

1	Personal Services	001	\$ 163,509
2	Annual Increment	004	6,890
3	Employee Benefits	010	54,843
4	Unclassified	099	<u>85,966</u>
5	Total		\$ 311,208

6 The total amount of this appropriation shall be paid from
 7 a special revenue fund out of receipts collected for or by the
 8 public service commission pursuant to and in the exercise of
 9 regulatory authority over pipeline companies as provided by
 10 law.

*239-Public Service Commission -
 Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2010 Org 0926

APPROPRIATIONS

[Ch. 10]

1	Personal Services	001	\$1,552,208
2	Annual Increment	004	49,647
3	Employee Benefits	010	532,255
4	Unclassified	099	<u>679,790</u>
5	Total		\$2,813,900

6 The total amount of this appropriation shall be paid from
 7 a special revenue fund out of receipts collected for or by the
 8 public service commission pursuant to and in the exercise of
 9 regulatory authority over motor carriers as provided by law.

*240-Public Service Commission -
 Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2010 Org 0926

1	Personal Services	001	\$ 533,932
2	Annual Increment	004	8,692
3	Employee Benefits	010	165,481
4	Unclassified	099	339,056
5	BRIM Premium	913	<u>4,533</u>
6	Total		\$1,051,694

7 The total amount of this appropriation shall be paid from
 8 a special revenue fund out of collections made by the public
 9 service commission.

241-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2010 Org 0927

1	Personal Services	001	\$ 368,686
2	Annual Increment	004	8,828

Ch. 10]	APPROPRIATIONS	191
3	Employee Benefits	010 125,754
4	Unclassified	099 <u>300,622</u>
5	Total	\$ 803,890

6 The total amount of this appropriation shall be paid out
7 of collections of license fees as provided by law.

*242-WV Board of Examiners for Speech-Language
Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2010 Org 0930

1	Unclassified - Total	096 \$ 114,000
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243-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2010 Org 0935

1	Unclassified - Total	096 \$ 112,120
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244-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2010 Org 0936

1	Unclassified - Total	096 \$ 18,900
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245-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2010 Org 0938

1	Unclassified - Total	096 \$ 125,578
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246-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2010 Org 0945

1 Unclassified - Total 096 \$ 1,231,332

247-Economic Development Project Bridge Loan Fund

(WV Code Chapter 29)

Fund 9066 FY 2010 Org 0944

1 Unclassified - Total 096 \$ 2,400,000

2 The above appropriation for Unclassified-Total (activity
3 096) shall be transferred to the Housing Development Fund.

248-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2010 Org 0950

1 Unclassified - Total 096 \$ 1,266,707

2 There is hereby appropriated from this fund, in addition
3 to the above appropriation, the amount of funds necessary
4 for the Board of Treasury Investments to pay the fees and
5 expenses of custodians, fund advisors and fund managers
6 for the Consolidated fund of the State as provided in
7 Chapter 12, Article 6C of the West Virginia Code.

8 The total amount of the appropriation shall be paid from
9 the special revenue fund out of fees and collections as
10 provided by law.

11 Total TITLE II, Section 3 - Other Funds

12 (Including claims against the state) \$ 1,424,170,416

1 **Sec. 4. Appropriations from lottery net profits.** - Net
2 profits of the lottery are to be deposited by the director of
3 the lottery to the following accounts in the amounts
4 indicated. The director of the lottery shall prorate each
5 deposit of net profits in the proportion the appropriation for
6 each account bears to the total of the appropriations for all
7 accounts.

8 After first satisfying the requirements for Fund 2252,
9 Fund 3963, and Fund 4908 pursuant to section eighteen,
10 article twenty-two, chapter twenty-nine of the code, the
11 director of the lottery shall make available from the
12 remaining net profits of the lottery any amounts needed to
13 pay debt service for which an appropriation is made for
14 Fund 9065, Fund 4297, and Fund 3514 and is authorized to
15 transfer any such amounts to Fund 9065, Fund 4297, and
16 Fund 3514 for that purpose. Upon receipt of reimbursement
17 of amounts so transferred, the director of the lottery shall
18 deposit the reimbursement amounts to the following
19 accounts as required by this section.

*249-Education, Arts, Sciences and Tourism -
Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2010 Org 0211

	Activity	Lottery Funds
1 Debt Service - Total	310	\$8,240,000

*250-West Virginia Development Office -
Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2010 Org 0304

1	Other Post Employee Benefits - Transfer	289	\$	0
2	Tourism - Telemarketing Center . . .	463		86,400
3	WV Film Office	498		348,159
4	Tourism - Advertising (R)	618		3,092,931
5	Tourism - Unclassified (R)	662		<u>4,078,958</u>
6	Total		\$	7,606,448

7 Any unexpended balances remaining in the
 8 appropriations for Capitol Complex - Capital Outlay (fund
 9 3067, activity 417), Tourism - Advertising (fund 3067,
 10 activity 618), Tourism - Unclassified (fund 3067, activity
 11 662), and Tourism - Special Projects (fund 3067, activity
 12 859) at the close of the fiscal year 2009 are hereby
 13 reappropriated for expenditure during the fiscal year 2010.

251-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2010 Org 0310

1	Gypsy Moth Suppression			
2	Program for State Parks (R)	017	\$	42,997
3	Unclassified (R)	099		2,279,975
4	Other Post Employee Benefits - Transfer	289		0
5	Pricketts Fort State Park	324		120,000
6	Non-Game Wildlife (R)	527		429,357
7	State Parks and			
8	Recreation Advertising (R)	619		<u>577,614</u>
9	Total		\$	3,449,943

10 Any unexpended balances remaining in the
 11 appropriations for Gypsy Moth Suppression Program for
 12 State Parks (fund 3267, activity 017), Unclassified (fund

13 3267, activity 099), Capital Outlay - Parks (fund 3267,
 14 activity 288), Non-Game Wildlife (fund 3267, activity 527),
 15 and State Parks and Recreation Advertising (fund 3267,
 16 activity 619) at the close of the fiscal year 2009 are hereby
 17 reappropriated for expenditure during the fiscal year 2010.

252-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2010 Org 0402

1	Unclassified (R)	099	\$ 4,116,000
2	Other Post Employee Benefits - Transfer	289	0
3	FBI Checks	372	114,831
4	Vocational Education		
5	Equipment Replacement	393	812,067
6	Assessment Program (R)	396	6,444,969
7	SAS in Schools	613	0
8	21st Century Technology Infrastructure		
9	Network Tools and Support (R)	933	<u>22,854,919</u>
10	Total		\$ 34,342,786

11 Any unexpended balances remaining in the
 12 appropriations for Unclassified (fund 3951, activity 099),
 13 Technology Infrastructure Network (fund 3951, activity
 14 351), Assessment Program (fund 38951, activity 396), and
 15 21st Century Technology Infrastructure Network Tools and
 16 Support (fund 3951, activity 933) at the close of the fiscal
 17 year 2009 are hereby reappropriated for expenditure during
 18 the fiscal year 2010.

*253-State Department of Education -
 School Building Authority -
 Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2010 Org 0402

1 Debt Service - Total 310 \$ 18,000,000

*254-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2010 Org 0431

1	Unclassified (R)	099	\$ 220,000
2	Commission for National and		
3	Community Service	193	435,050
4	Other Post Employee Benefits - Transfer	289	0
5	Arts Programs (R)	500	80,000
6	College Readiness (R)	579	181,577
7	Challenger Learning Center	862	125,000
8	Statewide STEM 21 st Century		
9	Academy	897	<u>150,000</u>
10	Total		\$ 1,191,627

11 Any unexpended balances remaining in the
12 appropriations for Unclassified (fund 3508, activity 099),
13 Arts Programs (fund 3508, activity 500), and College
14 Readiness (fund 3508, activity 579) at the close of fiscal
15 year 2009 are hereby reappropriated for expenditure during
16 the fiscal year 2010.

*255-Division of Culture and History -
Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2010 Org 0432

1	Huntington Symphony	027	\$ 95,000
2	Martin Luther King, Jr.		
3	Holiday Celebration	031	10,800
4	Fairs and Festivals	122	2,776,340
5	Archeological Curation/Capital		
6	Improvements (R)	246	53,005
7	Other Post Employee Benefits - Transfer	289	0
8	Historic Preservation Grants (R) . . .	311	556,499
9	West Virginia Public Theater	312	190,000
10	Tri-County Fair Association	343	23,750
11	George Tyler Moore Center for the		
12	Study of the Civil War	397	57,000
13	Greenbrier Valley Theater	423	142,500
14	Theater Arts of West Virginia	464	300,000
15	Marshall Artists Series	518	57,000
16	Grants for Competitive Arts		
17	Program (R)	624	1,075,000
18	West Virginia State Fair	657	50,000
19	Contemporary American Theater		
20	Festival	811	95,000
21	Independence Hall	812	47,500
22	Mountain State Forest Festival	864	66,500
23	WV Symphony	907	95,000
24	Wheeling Symphony	908	95,000
25	Appalachian Children's Chorus	916	<u>95,000</u>
26	Total		\$5,880,894

27 Any unexpended balances remaining in the
28 appropriations for Archeological Curation/Capital
29 Improvements (fund 3534, activity 246), Historic
30 Preservation Grants (fund 3534, activity 311), Grants for
31 Competitive Arts Program (fund 3534, activity 624), and
32 Project ACCESS (fund 3534, activity 865) at the close of
33 the fiscal year 2009 are hereby reappropriated for
34 expenditure during the fiscal year 2010.

35 Included in the above appropriation for Fairs and
36 Festivals (fund 3534, activity 122) funding shall be provided
37 to the African-American Cultural Heritage Festival \$5,000,
38 African-American Heritage Family Tree Museum (Fayette)
39 \$4,500, African-American Jubilee (Ohio) \$5,500, Alderson
40 4th of July Celebration (Greenbrier) \$5,000, Allegheny
41 Echo (Pocahontas) \$7,500, Alpine Festival/Leaf Peepers
42 Festival (Tucker) \$11,250, American Legion Post 8,
43 Veterans Day Parade \$2,000, Angus Beef and Cattle Show
44 (Lewis) \$1,500, Antique Market Fair (Lewis) \$2,000,
45 Apollo Theater-Summer Program (Berkeley) \$2,000,
46 Appalachian Autumn Festival (Braxton) \$3,500,
47 Appalachian Mountain Bike Race (Calhoun) \$1,500, Apple
48 Butter Festival (Morgan) \$6,000, Aracoma Story (Logan)
49 \$50,000, Arkansaw Homemaker's Heritage Weekend
50 (Hardy) \$3,500, Armed Forces Day-South Charleston
51 (Kanawha) \$3,000, Arthurdale Heritage New Deal Festival
52 (Preston) \$5,000, Arts Monongahela (Monongalia) \$20,000,
53 Athens Town Fair (Mercer) \$2,000, Augusta Fair
54 (Randolph) \$5,000, Barbour County Arts & Humanities
55 Council \$1,500, Barbour County Fair \$25,000,
56 Barboursville Octoberfest (Cabell) \$5,000, Bass Festival
57 (Pleasants) \$1,850, Battelle District Fair (Monongalia)
58 \$5,000, Battle of Dry Creek (Greenbrier) \$1,500, Battle of
59 Lewisburg Civil War Days (Greenbrier) \$3,000, Battle of
60 Point Pleasant Memorial Committee (Mason) \$5,000,
61 Beckley Main Street (Raleigh) \$5,000, Belle Boyd House
62 (Berkeley) \$2,000, Belle Town Fair (Kanawha) \$4,500,
63 Bergoo Down Home Days (Webster) \$2,500, Berkeley
64 County Youth Fair \$18,500, Black Bear 4K Mountain Bike
65 Race \$1,000, Black Heritage Festival (Harrison) \$6,000,
66 Black Walnut Festival (Roane) \$10,000, Blue-Gray Reunion
67 (Barbour) \$3,500, Boone County Fair \$10,000, Boone
68 County Labor Day Celebration \$4,000, Bradshaw Fall
69 Festival (McDowell) \$2,000, Bramwell Street Fair (Mercer)
70 \$3,500, Braxton County Fairs and Festivals Association
71 \$11,500, Braxton County Monster Fest/WV Autumn

72 Festival \$2,500, Bridgeport Bennedum Festival (Harrison)
73 \$1,500, Brooke County Fair \$3,500, Bruceton Mills Good
74 Neighbor Days (Preston) \$2,000, Buckwheat Festival
75 (Preston) \$8,500, Buffalo 4th of July Celebration (Putnam)
76 \$500, Buffalo Creek Memorial (Logan) \$5,000, Burlington
77 Apple Harvest Festival (Mineral) \$30,000, Burlington
78 Pumpkin Harvest Festival (Raleigh) \$5,000, Cabell County
79 Fair \$10,000, Calhoun County Wood Festival \$2,000,
80 Campbell's Creek Community Fair (Kanawha) \$2,500, Cape
81 Coalwood Festival Association (McDowell) \$2,500, Capon
82 Bridge Annual VFD Celebration (Hampshire) \$1,000,
83 Capon Bridge Founders Day Festival (Hampshire) \$2,000,
84 Capon Springs Ruritan 4th of July (Hampshire) \$1,000,
85 Carnegie Hall, Inc. (Greenbrier) \$70,000, Cass
86 Homecoming (Pocahontas) \$2,000, Cedarville Town
87 Festival (Gilmer) \$1,000, Celebration in the Park (Wood)
88 \$4,000, Celebration of America (Monongalia) \$6,000,
89 Ceredo Historical Society (Wayne) \$2,000, Ceredo-Kenova
90 Railroad Museum (Wayne) \$2,000, Chapmanville Apple
91 Butter Festival (Logan) \$1,000, Chapmanville Fire
92 Department 4th of July \$3,000, Charles Town Christmas
93 Festival (Jefferson) \$5,000, Charles Town Heritage Festival
94 (Jefferson) \$5,000, Cherry River Festival (Nicholas) \$6,500,
95 Chester Fireworks (Hancock) \$1,500, Chester Fourth of July
96 Festivities (Hancock) \$5,000, Chief Logan State Park-Civil
97 War Celebration (Logan) \$8,000, Christmas in
98 Shepherdstown (Jefferson) \$4,000, Christmas in the Park
99 (Brooke) \$5,000, Christmas in the Park (Logan) \$25,000,
100 City of Dunbar Critter Dinner (Kanawha) \$10,000, City of
101 New Martinsville Festival of Memories (Wetzel) \$11,000,
102 City of Pleasant Valley Celebration (Marion) \$2,500, Civil
103 War Horse Cavalry Race (Barbour) \$1,000, Clay County
104 Golden Delicious Apple Festival \$7,000, Coal Field
105 Jamboree (Logan) \$35,000, Coalton Days Fair (Randolph)
106 \$7,000, Collis P. Huntington Railroad Historical Society
107 \$10,000, Country Roads Festival (Fayette) \$2,000, Cowen
108 Railroad Festival (Webster) \$3,500, Craigs ville Fall Festival

109 (Nicholas) \$3,500, Delbarton Homecoming (Mingo) \$3,500,
110 Doddridge County Fair \$7,000, Durbin Days (Pocahontas)
111 \$5,000, Elbert/Filbert Reunion Festival (McDowell) \$1,500,
112 Elizabethtown Festival (Marshall) \$5,000, Elkins Randolph
113 County 4th of July Car Show \$2,000, Fairview 4th of July
114 Celebration (Marion) \$1,000, Farm Safety Day (Preston)
115 \$2,000, Fayette American Legion 4th of July \$1,000,
116 FestivALL Charleston (Kanawha) \$20,000, First Stage
117 Children's Theater Company (Cabell) \$2,000, Flanagan
118 Murrell House (Summers) \$10,000, Flemington Day Fair
119 and Festival (Taylor) \$3,500, Follansbee Community Days
120 (Brooke) \$8,250, Fort Ashby Fort (Mineral) \$1,500, Fort
121 Gay Mountain Heritage Days (Wayne) \$5,000, Fort New
122 Salem (Harrison) \$3,700, Fort Randolph (Mason) \$5,000,
123 Frankford Autumnfest (Greenbrier) \$5,000, Franklin Fishing
124 Derby (Pendleton) \$7,500, Franklins Fireman Carnival
125 (Pendleton) \$5,000, Freshwater Folk Festival (Greenbrier)
126 \$5,000, Frieda J. Riley Award (Harrison) \$3,000, Friends
127 Auxiliary of W.R. Sharpe Hospital \$5,000, Frontier Days
128 (Harrison) \$3,000, Frontier Fest/Canaan Valley (Taylor
129 County) \$5,000, Fund for the Arts-Wine & All that Jazz
130 Festival \$2,500, Gassaway Days Celebration (Braxton)
131 \$5,000, General Adam Stephen Memorial Foundation
132 \$18,525, Gilbert Kiwanis Harvest Festival (Mingo) \$4,000,
133 Gilbert Spring Fling (Mingo) \$5,000, Gilmer County Farm
134 Show \$4,000, Grafton Mother's Day Shrine Committee
135 (Taylor) \$8,500, Grant County Arts Council \$2,000, Grape
136 Stomping Wine Festival (Nicholas) \$2,000, Great
137 Greenbrier River Race (Pocahontas) \$10,000, Greater
138 Quinwood Days (Greenbrier) \$2,000, Green Spring Days
139 (Hampshire) \$1,000, Guyandotte Civil War Days (Cabell)
140 \$10,000, Hamlin 4th of July Celebration (Lincoln) \$5,000,
141 Hampshire Civil War Celebration Days \$1,000, Hampshire
142 County 4th of July Celebration \$20,000, Hampshire County
143 Fair \$6,000, Hampshire County French & Indian War
144 Celebration \$1,000, Hampshire Heritage Days \$4,000,
145 Hancock County Oldtime Fair \$5,000, Hardy County

146 Commission - 4th of July \$10,000, Hardy County Tour and
147 Crafts Association \$20,000, Hatfield McCoy Matewan
148 Reunion Festival (Mingo) \$5,000, Hatfield McCoy Trail
149 National ATV and Dirt Bike Weekend \$5,000, Heritage
150 Craft Center of the Eastern Panhandle \$7,000, Heritage
151 Craft Festival (Monroe) \$1,000, Heritage Days Festival
152 (Roane) \$1,500, Heritage Farm Museum & Village (Cabell)
153 \$50,000, Hicks Festival (Tucker) \$2,000, Hilltop Festival
154 (Huntington) \$1,000, Hinton Railroad Days (Summers)
155 \$5,500, Historic Fayette Theater (Fayette) \$5,500, Historic
156 Middleway Conservancy (Jefferson) \$1,000, Holly River
157 Festival (Webster) \$1,500, Hundred 4th of July (Wetzel)
158 \$7,250, Hundred American Legion Earl Kiger Post
159 Bluegrass Festival (Wetzel) \$2,000, Huntington Outdoor
160 Theater (Cabell) \$2,000, Hurricane 4th of July Celebration
161 (Putnam) \$5,000, Iaeger Lions Club Annual Golf Show
162 (McDowell) \$1,500, Iaeger Town Fair (McDowell) \$1,500,
163 Indian Mound Cemetery (Hampshire) \$2,000, Irish Heritage
164 Festival of WV (Raleigh) \$5,000, Irish Spring Festival
165 (Lewis) \$1,000, Italian Heritage Festival-Clarksburg
166 (Harrison) \$30,000, Jackson County Fair \$5,000,
167 Jacksonburg Homecoming (Wetzel) \$1,000, Jane Lew Arts
168 and Crafts Fair (Lewis) \$1,000, Jefferson County African
169 American Heritage Festival \$5,000, Jefferson County Black
170 History Preservation Society \$5,000, Jefferson County Fair
171 Association \$25,000, Jefferson County Historical Landmark
172 Commission \$8,000, Jersey Mountain Ruritan Pioneer Days
173 (Hampshire) \$1,000, John Henry Days Festival (Monroe)
174 \$5,000, Johnnie Johnson Blues and Jazz Festival (Marion)
175 \$5,000, Johnstown Community Fair (Harrison) \$2,500,
176 Junior Heifer Preview Show (Lewis) \$2,000, Kanawha Coal
177 Riverfest-St. Albans \$5,000, Kanawha County Fair
178 (Kanawha) \$5,000, Kay Ford Reunion (Kanawha) \$2,500,
179 Kenova Fall Festival (Wayne) \$5,000, Kermit Fall
180 Festival (Mingo) \$3,000, Keyser Old Fashioned 4th of
181 July Celebration (Mineral) \$1,000, King Coal Festival
182 (Mingo) \$5,000, Kingwood Downtown Street Fair and

183 Heritage Days (Preston) \$2,000, L.Z. Rainelle WV
184 Veterans Reunion (Greenbrier) \$5,000, Lady of
185 Agriculture (Preston) \$1,000, Lamb and Steer Show
186 \$9,000, Larry Joe Harless Center Octoberfest Hatfield
187 McCoy Trail (Mingo) \$10,000, Last Blast of Summer
188 (McDowell) \$5,000, Laurel Mt. Re-enactment Committee
189 (Barbour) \$3,250, Levels VFD Lawn Association
190 (Hampshire) \$1,000, Lewis County Fair Association \$3,500,
191 Lewisburg Shanghai (Greenbrier) \$2,000, Lincoln County
192 Fall Festival \$8,000, Lincoln County Winterfest \$5,000,
193 Lincoln District Fair (Marion) \$2,500, Lindside 4th of July
194 (Monroe) \$500, Little Birch Days Celebration (Braxton)
195 \$500, Little Levels Heritage Festival \$2,000, Logan County
196 Arts and Crafts Fair \$4,000, Logan Freedom Festival
197 \$15,000, Lost Creek Community Festival \$7,000, Maddie
198 Carroll House (Cabell) \$7,500, Mannington District Fair
199 (Marion) \$6,000, Maple Syrup Festival (Randolph) \$1,000,
200 Marion County FFA Farm Fest \$2,500, Marmet Annual
201 Labor Day Celebration (Kanawha) \$2,000, Marshall County
202 Antique Power Show \$2,500, Marshall County Fair \$7,500,
203 Marshall County Historical Society \$8,500, Mason County
204 Fair \$5,000, Mason Dixon Festival (Monongalia) \$7,000,
205 Matewan Massacre Reenactment (Mingo) \$6,000, Matewan-
206 Magnolia Fair (Mingo) \$45,000, McARTS-McDowell
207 County \$20,000, McCoy Theater (Hardy) \$20,000,
208 McDowell County Fair \$2,500, McGrew House History Day
209 \$2,000, McNeill's Rangers (Mineral) \$8,000, Meadow
210 Bridge Hometown Festival (Fayette) \$1,250, Meadow River
211 Days Festival \$3,000, Mercer Bluestone Valley Fair \$2,000,
212 Mercer County Fair \$2,000, Mid Ohio Valley Antique
213 Engine Festival (Wood) \$3,000, Milton Christmas in the
214 Park (Cabell) \$2,500, Milton Fourth of July Celebration
215 (Cabell) \$2,500, Mineral County Fair \$1,750, Mineral
216 County Veterans Day Parade \$1,500, Molasses Festival
217 (Calhoun) \$2,000, Monroe County Farmer's Day - Union
218 \$2,000, Monroe County Harvest Festival \$2,000, Moon
219 Over Mountwood Fishing Festival (Wood) \$3,000, Morgan

220 County Fair-History Wagon \$1,500, Morgantown Theater
221 Company \$20,000, Mothers' Day Festival (Randolph)
222 \$2,500, Moundsville Bass Festival \$4,000, Moundsville July
223 4th Celebration (Marshall) \$5,000, Mount Liberty Fall
224 Festival (Barbour) \$2,500, Mountain Fest (Monongalia)
225 \$20,000, Mountain Festival (Mercer) \$4,625, Mountain
226 Heritage Arts and Crafts Festival (Jefferson) \$5,000,
227 Mountain Music Festival (McDowell) \$2,500, Mountain
228 State Apple Harvest Festival (Berkeley) \$7,500, Mountain
229 State Arts and Crafts Fair (Jackson) \$40,000, Mountain
230 State Arts Crafts Fair Cedar Lakes (Jackson) \$5,000,
231 Mountaineer Boys' State (Lewis) \$10,000, Mountaineer Hot
232 Air Balloon Festival (Monongalia) \$4,000, Mud River
233 Festival (Lincoln) \$8,000, Mullens Dogwood Festival
234 (Wyoming) \$7,000, Multi-Cultural Festival of West
235 Virginia \$20,000, Music Hall of Fame (Marion) \$5,000,
236 Nettle Festival (Pocahontas) \$5,000, New Cumberland
237 Christmas Parade (Hancock) \$3,000, New Cumberland
238 Fourth of July Fireworks (Hancock) \$5,000, New River
239 Bridge Day Festival (Fayette) \$40,000, Newburg Volunteer
240 Fireman's Field Day (Preston) \$1,000, Newell Annual Clay
241 Festival (Hancock) \$3,000, Nicholas County Fair \$5,000,
242 Nicholas County Potato Festival \$3,500, Nicholas Old Main
243 Foundation (Nicholas) \$2,000, Norman Dillon Farm
244 Museum (Berkeley) \$10,000, North Preston Farmers Club -
245 Civil War Times \$1,000, North River Valley Festival
246 (Hampshire) \$1,000, Northern Preston Mule Pull and
247 Farmers Days \$4,000, Oak Leaf Festival (Fayette) \$6,000,
248 Oceana Heritage Festival (Wyoming) \$6,000, Oglebay City
249 Park - Festival of Lights (Ohio) \$80,000, Oglebay Festival
250 (Ohio) \$10,000, Ohio County Fair \$9,000, Ohio Valley Beef
251 Association (Wood) \$2,500, Old Central City Fair
252 (Huntington) \$5,000, Old Opera House Theater Company
253 (Jefferson) \$15,000, Old Tyme Christmas (Jefferson)
254 \$2,400, Paden City Labor Day Festival (Wetzel) \$6,500,
255 Parkersburg Arts Center \$20,000, Parkersburg Homecoming
256 (Wood) \$12,000, Patty Fest (Monongalia) \$2,000, Paw Paw

257 District Fair (Marion) \$3,500, Pax Reunion Committee
258 (Fayette) \$5,000, Pendleton County 4-H Weekend \$2,000,
259 Pendleton County Committee for Arts \$15,000, Pendleton
260 County Fair \$25,000, Pennsboro Country Road Festival
261 (Ritchie) \$2,000, Petersburg Fourth of July Celebration
262 (Grant) \$20,000, Petersburg HS Celebration (Grant)
263 \$10,000, Piedmont-Annual Back Street Festival (Mineral)
264 \$4,000, Pinch Reunion (Kanawha) \$1,500, Pine Bluff Fall
265 Festival (Harrison) \$4,000, Pine Grove 4th of July Festival
266 (Wetzel) \$7,000, Pineville Festival (Wyoming) \$6,000,
267 Pleasants County Agriculture Youth Fair \$5,000, Poca
268 Heritage Days (Putnam) \$3,000, Pocahontas County Pioneer
269 Days \$7,000, Pocahontas Historic Opera House \$6,000,
270 Point Pleasant Stern Wheel Regatta (Mason) \$5,000,
271 Potomac Highlands Maple Festival (Grant) \$6,000,
272 Princeton Street Fair (Mercer) \$5,000, Putnam County Fair
273 \$5,000, Quartets on Parade (Hardy) \$4,000, Rainelle Fall
274 Festival (Greenbrier) \$3,000, Raleigh County All Wars
275 Museum \$10,000, Rand Community Center Festival
276 (Kanawha) \$2,500, Randolph County Community Arts
277 Council \$3,000, Randolph County Fair \$7,000, Randolph
278 County Ramp and Rails \$2,000, Ranson Christmas Festival
279 (Jefferson) \$5,000, Ranson Festival (Jefferson) \$5,000,
280 Ravenswood Octoberfest (Jackson) \$8,000, Reedsville VFD
281 Fair (Preston) \$2,000, Renick Liberty Festival (Greenbrier)
282 \$1,000, Rhododendron Girls' State (Ohio) \$10,000, Riders
283 of the Flood (Greenbrier) \$3,000, Ripley 4th of July
284 (Jackson) \$15,000, Ritchie County Fair and Exposition
285 \$5,000, Ritchie County Pioneer Days \$1,000, River City
286 Festival (Preston) \$1,000, Riverfest (Marion) \$2,000, Roane
287 Co. 4-H and FFA Youth Livestock Program \$5,000, Roane
288 County Agriculture Field Day \$3,000, Ronceverte River
289 Festival (Greenbrier) \$5,000, Rowlesburg Labor Day
290 Festival (Preston) \$1,000, Rupert Country Fling
291 (Greenbrier) \$3,000, Saint Spyridon Greek Festival
292 (Harrison) \$2,500, Salem Apple Butter Festival (Harrison)
293 \$4,000, Scottish Heritage Society/N.Central WV Central

294 (Harrison) \$5,000, Sistersville 4th of July Fireworks (Tyler)
295 \$5,500, Smoke on the Water (Kanawha) \$2,000, Smoke on
296 the Water (Wetzel) \$3,000, Society for the Preservation of
297 McGrew House (Preston) \$3,500, Soldiers' Memorial
298 Theater (Raleigh) \$10,000, South Charleston Summerfest
299 (Kanawha) \$10,000, Southern Wayne County Fall Festival
300 \$1,000, Southern WV Veterans' Museum (Summers)
301 \$4,500, Spirit of Grafton Celebration (Taylor) \$7,000, Spirit
302 of Grafton Celebration (Taylor) \$3,000, Spring Mountain
303 Festival (Grant) \$4,000, Springfield Peach Festival
304 (Hampshire) \$1,200, St. Albans City of Lights - December
305 (Kanawha) \$5,000, Stoco Reunion (Raleigh) \$2,500,
306 Stonewall Jackson Heritage Arts and Crafts \$11,000,
307 Storytelling Festival (Lewis) \$500, Strawberry Festival
308 (Upshur) \$30,000, Summers County Historic Landmark
309 Commission \$5,000, Tacy Fair (Barbour) \$1,000, Taste of
310 Parkersburg (Wood) \$5,000, Taylor County Fair \$5,500,
311 Terra Alta VFD 4th of July Celebration (Preston) \$1,000,
312 Those Who Served War Museum (Mercer) \$4,000, Three
313 Rivers Avian Center (Summers) \$15,000, Three Rivers Coal
314 Festival (Marion) \$7,750, Thunder on the Tygart - Mothers'
315 Day Celebration \$15,000, Town of Anawalt 60th year Inc.
316 Ceremony (McDowell) \$1,500, Town of Delbarton 4th of
317 July Celebration \$3,000, Town of Fayetteville Heritage
318 Festival (Fayette) \$7,500, Town of Matoaka Hog Roast
319 (Mercer) \$1,000, Treasure Mountain Festival (Pendleton)
320 \$25,000, Tri-County Fair (Grant) \$15,000, Tucker County
321 Arts Festival and Celebration \$18,000, Tucker County Fair
322 \$4,750, Tucker County Health Fair \$2,000, Tug Valley Arts
323 Council (Mingo) \$5,000, Tug Valley Chamber of
324 Commerce Coal House (Mingo) \$2,000, Tunnelton Depot
325 Days (Preston) \$1,000, Tunnelton Historical Society
326 (Preston) \$2,000, Tunnelton Volunteer Fire Department
327 (Preston) \$1,000, Turkey Festival (Hardy) \$3,000, Tyler
328 County Fair \$5,200, Tyler County Fourth of July \$500,
329 Uniquely West Virginia Festival (Morgan) \$2,000, Upper
330 Ohio Valley Italian Festival (Ohio) \$12,000, Upshur County

331 Fair \$7,000, Valley District Fair- Reedsville (Preston)
332 \$3,500, Veterans Welcome Home Celebration (Cabell)
333 \$3,000, Vietnam Veterans of America Christmas Party
334 (Cabell) \$1,000, Volcano Days at Mountwood Park (Wood)
335 \$5,000, War Homecoming Fall Festival \$1,500,
336 Wardensville Fall Festival (Hardy) \$5,000, Wayne County
337 Fair \$5,000, Wayne County Fall Festival \$5,000, Webb
338 Chapel Cemetery Association Event (Preston) \$2,000,
339 Webster County Wood Chopping Festival \$15,000, Webster
340 Wild Water Weekend \$2,000, Weirton July 4th Celebration
341 (Hancock) \$20,000, Wellsburg 4th of July Celebration
342 (Brooke) \$7,500, Wellsburg Apple Festival of Brooke
343 County \$5,000, West Virginia Blackberry Festival
344 (Harrison) \$5,000, West Virginia Chestnut Festival
345 (Preston) \$1,000, West Virginia Coal Festival (Boone)
346 \$10,000, West Virginia Dairy Cattle Show \$10,000, West
347 Virginia Dandelion Festival (Greenbrier) \$5,000, West
348 Virginia Fair and Exposition (Wood) \$8,100, West Virginia
349 Fireman's Rodeo (Fayette) \$2,500, West Virginia Honey
350 Festival (Wood) \$2,000, West Virginia Museum of Glass
351 (Lewis) \$5,000, West Virginia Music Hall Fame (Kanawha)
352 \$3,000, West Virginia Oil and Gas Festival (Tyler) \$11,000,
353 West Virginia Polled Hereford Assoc. \$1,500, West
354 Virginia Poultry Festival (Hardy) \$5,000, West Virginia
355 Pumpkin Festival (Cabell) \$10,000, West Virginia
356 Roundhouse Rail Days (Berkeley) \$10,000, West Virginia
357 State Folk Festival (Gilmer) \$5,000, West Virginia Water
358 Festival - City of Hinton (Summers) \$16,000, West Virginia
359 Wine & Jazz Festival (Monongalia) \$9,000, West Virginia
360 Wine and Arts Festival (Berkeley) \$5,000, Weston VFD 4th
361 of July Firemen Festival (Lewis) \$2,000, Wetzel County
362 Autumnfest \$5,500, Wetzel County Town and Country Days
363 \$17,000, Wheeling Celtic Festival (Ohio) \$2,000, Wheeling
364 City of Lights (Ohio) \$8,000, Wheeling Sterwheel Regatta
365 (Ohio) \$10,000, Wheeling Vintage Raceboat Regatta (Ohio)
366 \$20,000, Whipple Community Action (Fayette) \$2,500,
367 Widen Days Festival (Clay) \$2,000, Wileyville

368 Homecoming (Wetzel) \$4,000, Wine Festival and Mountain
 369 Music Event (Harrison) \$5,000, Winter Festival of the
 370 Waters (Berkeley) \$5,000, Wirt County Fair \$2,500, Wirt
 371 County Pioneer Days \$2,000, WV State Monarch Butterfly
 372 Festival (Brooke) \$5,000, WV Strawberry Festival (horse
 373 pull) \$2,500, YMCA Camp Horseshoe (Ohio) \$100,000,
 374 Youth Museum of Southern WV (Raleigh) \$12,000, Youth
 375 Stockman Beef Expo. (Lewis) \$2,000.

376 Any Fairs & Festival awards shall be funded in addition
 377 to, and not in lieu of, individual grant allocations derived
 378 from the Arts Council and the Cultural Grant Program
 379 allocations.

*256-Library Commission -
 Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2010 Org 0433

1	Books and Films	179	\$ 450,000
2	Services to Libraries	180	550,000
3	Grants to Public Libraries	182	8,348,884
4	Other Post Employee Benefits - Transfer	289	0
5	Digital Resources	309	219,992
6	Libraries - Special Projects	625	784,000
7	Infomine Network	884	<u>842,005</u>
8	Total		\$11,194,881

*257-Bureau of Senior Services -
 Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2010 Org 0508

APPROPRIATIONS

1	Personal Services	001	\$ 137,542
2	Annual Increment	004	2,600
3	Employee Benefits	010	60,120
4	Unclassified	099	350,448
5	Local Programs Service Delivery		
6	Costs	200	2,475,250
7	Silver Haired Legislature	202	15,000
8	Area Agencies Administration	203	78,685
9	Other Post Employee Benefits -Transfer	289	0
10	Senior Citizen Centers and		
11	Programs (R)	462	2,600,000
12	Transfer to Division of Human Services		
13	for Health Care and Title XIX Waiver		
14	for Senior Citizens (R)	539	23,822,578
15	Roger Tompkins Alzheimers Respite		
16	Care	643	1,796,248
17	Regional Aged and Disabled		
18	Resource Center	767	1,000,000
19	Senior Services Medicaid Transfer .	871	8,670,000
20	Legislative Initiatives for the Elderly	904	10,000,000
21	Long Term Care Ombudsman	905	321,325
22	BRIM Premium	913	7,243
23	West Virginia Elder Watch	934	150,000
24	In-Home Services and Nutrition		
25	for Senior Citizens	917	<u>5,700,000</u>
26	Total		\$ 57,187,039

27 Any unexpended balance remaining in the appropriation
 28 for Senior Citizen Centers and Programs (fund 5405,
 29 activity 462), and Transfer to Division of Human Services
 30 for Health Care and Title XIX Waiver for Senior Citizens
 31 (fund 5405, activity 539) at the close of the fiscal year 2009
 32 is hereby reappropriated for expenditure during the fiscal
 33 year 2010.

34 The above appropriation for Transfer to Division of
 35 Human Services for Health Care and Title XIX Waiver for

36 Senior Citizens along with the federal moneys generated
 37 thereby shall be used for reimbursement for services
 38 provided under the program. Further, the program shall be
 39 preserved within the aggregate of these funds.

*258-Community and Technical College —
 Capital Improvement Fund*

(WV Code Chapter 18B)

Fund 4908 FY 2010 Org 0442

1 Debt Service - Total (R) 310 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation
 3 for Debt Service - Total (fund 4908, activity 310) at the
 4 close of fiscal year 2009 is hereby reappropriated for
 5 expenditure during the fiscal year 2010.

*259-Higher Education Policy Commission -
 Lottery Education -
 Higher Education Policy Commission -
 Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2010 Org 0441

1	Marshall Medical School -		
2	RHI Program and Site Support (R) 033		\$ 449,326
3	WVU Health Sciences -		
4	RHI Program and Site Support (R) 035		1,236,178
5	RHI Program and Site Support -		
6	District Consortia (R) 036		2,332,340
7	RHI Program and Site Support -		
8	RHEP Program Administration (R) . 037		178,004
9	RHI Program and Site Support -		
10	Grad Med Ed and Fiscal		
11	Oversight (R) 038		101,727

12	Higher Education Grant Program (R) 164	3,240,668
13	Tuition Contract Program (R) 165	1,020,834
14	Minority Doctoral Fellowship (R) . . 166	150,000
15	Underwood—Smith Scholarship	
16	Program - Student Awards (R) . . 167	141,142
17	Health Sciences Scholarship (R) . . . 176	250,900
18	Other Post Employee Benefits - Transfer 289	0
19	Vice Chancellor for Health Sciences —	
20	Rural Health Residency Program (R) 601	262,713
21	MA Public Health Program and	
22	Health Science Technology (R) . . 623	60,030
23	Marshall University Graduate	
24	College Writing Project (R) 807	24,193
25	WV Engineering, Science, and	
26	Technology Scholarship Program (R) 868	470,473
27	Health Sciences Career	
28	Opportunities Program (R) 869	363,675
29	HSTA Program (R) 870	1,343,803
30	WV Autism Training Center (R) . . . 932	2,012,918
31	Center for Excellence in Disabilities (R) 967	<u>277,458</u>
32	Total	\$ 13,916,382

33 Any unexpended balances remaining in the
34 appropriations at the close of fiscal year 2009 are hereby
35 reappropriated for expenditure during the fiscal year 2010.

36 The above appropriation for Underwood-Smith
37 Scholarship Program - Student Awards (activity 167) shall
38 be transferred to the Underwood -Smith Teacher
39 Scholarship Fund (fund 4922, org 0441) established by
40 chapter eighteen-c, article four, section one.

41 The above appropriation for WV Engineering, Science,
42 and Technology Scholarship Program (activity 868) shall be
43 transferred to the West Virginia Engineering, Science and
44 Technology Scholarship Fund (fund 4928, org 0441)
45 established by chapter eighteen-c, article six, section one.

46 The above appropriation for Higher Education Grant
47 Program (activity 164) shall be transferred to the Higher
48 Education Grant Fund (fund 4933, Org 0441) established by
49 W.Va. Code 18C-5-3.

Total TITLE II, Section 4 - Lottery Revenue \$ 166,010,000

1 **Sec. 5. Appropriations from state excess lottery**
2 **revenue fund.** - In accordance with section eighteen-a,
3 article twenty-two, chapter twenty nine of the code, the
4 following appropriations shall be deposited and disbursed by
5 the director of the lottery to the following accounts in this
6 section in the amounts indicated.

7 After first funding the appropriations required by W.V.
8 Code §29-22-18a, the director of the lottery shall provide
9 funding from the state excess lottery revenue fund for the
10 remaining appropriations in this section to the extent that
11 funds are available. In the event that revenues to the state
12 excess lottery revenue fund are not sufficient to meet all the
13 appropriations made pursuant to this section, then the
14 director of the lottery shall first provide the necessary funds
15 to meet the appropriation for Fund 7208, activity 482 of this
16 section; next, to provide the funds necessary for Fund 7208,
17 activity 095 of this section; next, to provide the funds
18 necessary for Fund 3517, activity 775 of this section; next,
19 to provide the funds necessary for Fund 3517, activity 062,
20 Technology System Specialists of this section; next, to
21 provide the funds necessary for Fund 3517, activity 978 of
22 this section. Allocation of the funds for each appropriation
23 shall be allocated in succession before any funds are
24 provided for the next subsequent appropriation.

*260-Lottery Commission -
Refundable Credit*

Fund 7207 FY 2010 Org 0705

	Activity	Lottery Funds
1	Unclassified - Total - Transfer 402	\$ 10,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the General
4 Revenue Fund to provide reimbursement for the refundable
5 credit allowable under chapter eleven, article twenty-one,
6 section twenty-one of the code. The amount of the required
7 transfer shall be determined solely by the state tax
8 commissioner and shall be completed by the director of the
9 lottery upon the commissioner's request.

*261-Lottery Commission -
General Purpose Account*

Fund 7206 FY 2010 Org 0705

1	Unclassified - Total - Transfer 402	\$65,000,000
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2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the General
4 Revenue Fund as determined by the director of the lottery.

262-Education Improvement Fund

Fund 4295 FY 2010 Org 0441

1	Unclassified - Total - Transfer 402	\$29,000,000
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2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the PROMISE
4 Scholarship Fund (fund 4296, org 0441) established by
5 chapter eighteen-c, article seven, section seven.

6 The Legislature has explicitly set a finite amount of
7 available appropriations and directed the administrators of

8 the Program to provide for the award of scholarships within
9 the limits of available appropriations.

*263-Economic Development Authority -
Economic Development Project Fund*

Fund 9065 FY 2010 Org 0944

1 Debt Service - Total 310 \$19,000,000

2 Pursuant to subsection (f), section eighteen-a, article
3 twenty-two, chapter twenty-nine of the code, excess lottery
4 revenues are authorized to be transferred to the lottery fund
5 as reimbursement of amounts transferred to the economic
6 development project fund pursuant to section four of this
7 title and subsection (f), section eighteen, article twenty-two,
8 chapter twenty-nine of the code.

264-School Building Authority

Fund 3514 FY 2010 Org 0402

1 Unclassified - Total 096 \$19,000,000

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total - Transfer (fund 3514, activity 402)
4 at the close of the fiscal year 2009 is hereby reappropriated
5 for expenditure during the fiscal year 2010.

265-West Virginia Infrastructure Council

Fund 3390 FY 2010 Org 0316

1 Unclassified - Total - Transfer 402 \$40,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the West

4 Virginia Infrastructure Fund (fund 3384, org 0316) created
 5 by chapter thirty-one, article fifteen-a, section nine of the
 6 code.

266-Higher Education Improvement Fund

Fund 4297 FY 2010 Org 0441

1 Unclassified - Total 096 \$10,000,000

267-State Park Improvement Fund

Fund 3277 FY 2010 Org 0310

1 Unclassified - Total (R) 096 \$5,000,000

2 Any unexpended balance remaining in the appropriation
 3 at the close of the fiscal year 2009 is hereby reappropriated
 4 for expenditure during the fiscal year 2010.

5 Appropriations to the State Park Improvement Fund are
 6 not to be expended on personal services or employee
 7 benefits.

*268-Lottery Commission -
 Excess Lottery Revenue Fund Surplus*

Fund 7208 FY 2010 Org 0705

1	Teachers' Retirement Savings		
2	Realized	095	\$6,688,000
3	Other Post Employee Benefits - Transfer	289	0
4	Unclassified - Transfer	482	62,900,000
5	School Access Safety	978	<u>0</u>
6	Total		\$ 69,588,000

7 The above appropriation for Unclassified - Transfer (fund
8 7208, activity 482) shall be transferred to the General
9 Revenue Fund.

10 The above appropriation for Teachers' Retirement
11 Savings Realized (fund 7208, activity 095) shall be
12 transferred to the Employee Pension and Health Care
13 Benefit Fund.

269—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2010 Org 2300

1 Any unexpended balance remaining in the appropriation
2 for Tax Reduction and Federal Funding Increased
3 Compliance (TRAFFIC) - Lottery Surplus (fund 1736,
4 activity 929) at the close of the fiscal year 2009 is hereby
5 reappropriated for expenditure during the fiscal year 2010.

270—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2010 Org 0100

1 Any unexpended balance remaining in the appropriation
2 for Publication of Papers and Transition Expenses —
3 Lottery Surplus (fund 1046, activity 066) at the close of the
4 fiscal year 2009 is hereby reappropriated for expenditure
5 during the fiscal year 2010.

271-Division of Finance

Fund 2208 FY 2010 Org 0209

1	Enterprise Resource Planning System		
2	Planning Project	087	\$ 0

3 Any unexpended balance remaining in the appropriation
4 Enterprise Resource Planning System Planning Project
5 (fund 2208, activity 087) at the close of the fiscal year 2009
6 is hereby reappropriated for expenditure during the fiscal
7 year 2010.

8 The above appropriation for Enterprise Resource
9 Planning System Planning Project, activity 087, shall be
10 expended upon consultation with the executive and
11 legislative branches.

272—Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2010 Org 0231

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Lottery Surplus (fund 2532, activity 928)
3 at the close of the fiscal year 2009 is hereby reappropriated
4 for expenditure during the fiscal year 2010.

273—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2010 Org 0307

1 Any unexpended balances remaining in the
2 appropriations for Recreational Grants or Economic
3 Development Loans (fund 3170, activity 253), Economic
4 Development Assistance (fund 3170, activity 900), and
5 Connectivity Research and Development - Lottery Surplus
6 (fund 3170, activity 923) at the close of the fiscal year 2009
7 are hereby reappropriated for expenditure during the fiscal
8 year 2010.

9 The above appropriation to Connectivity Research and
 10 Development - Lottery Surplus shall be used by the West
 11 Virginia Development Office for the coordinated
 12 development of technical infrastructure in areas where
 13 expanded resources and technical infrastructure may be
 14 expected or required pursuant to the provisions of 5A-6-4 of
 15 the code.

274-State Department of Education

Fund 3517 FY 2010 Org 0402

1	Student Enrichment Program	879	\$ 0
2	Retirement Systems-Unfunded Liability	775	30,530,000
3	School Access Safety	978	10,000,000
4	Technology System Specialists	062	*5,000,000
			0
5	Total		\$ 45,530,000

6 ~~*From the above appropriation for Technology System~~
 7 ~~Specialists (activity 062), the State Department of Education~~
 8 ~~shall make available matching grants of \$40,000 to county~~
 9 ~~boards of education for each *learning technology proficient*~~
 10 ~~*school* with a minimum net enrollment of 450 students for~~
 11 ~~a full-time Technology System Specialist to be employed~~
 12 ~~within the school. The grants shall be awarded until funds~~
 13 ~~are exhausted. The grants shall be determined on a~~
 14 ~~competitive basis by the West Virginia State Department of~~
 15 ~~Education and report guidelines and procedures to the~~
 16 ~~Legislative Oversight Committee on Education~~
 17 ~~Accountability (LOCEA). The State Department of~~
 18 ~~Education shall enter an agreement with each county board~~
 19 ~~of education receiving a grant specifying a county board~~
 20 ~~matching obligation of at least \$20,000 of the total~~
 21 ~~employment costs represented by each grant-funded position~~

*CLERK'S NOTE: The Governor reduced the amount on line 4 from \$5,000,000 to \$0; and he deleted language on line 6 through line 28.

22 ~~and the Technology System Specialist job description and~~
 23 ~~qualifications. *Learning technology proficient school is*~~
 24 ~~hereby defined as a public school having at least one~~
 25 ~~classroom computer for every five students, at least one~~
 26 ~~digital projector for every five classrooms and at least one~~
 27 ~~interactive whiteboard, as evidenced by the West Virginia~~
 28 ~~Department of Education 2008 Digital Divide Survey.~~

29 From the above appropriation for Retirement Systems -
 30 Unfunded Liability (fund 3517, activity 775) shall be
 31 transferred to the Consolidated Public Retirement Board-
 32 West Virginia Teachers' Retirement System Employers
 33 Accumulation Fund (fund 2601).

34 The above appropriation for School Access Safety (fund
 35 3517, activity 978), shall be transferred to the School Access
 36 Safety Fund (fund 3516).

37 From the above appropriation for School Access Safety
 38 (activity 978) up to \$5,000,000 may be used to work with
 39 public schools throughout the state for tactical surveys of the
 40 school facilities.

*275—Higher Education Policy Commission -
 Administration -
 Control Account*

(WV Code Chapter 18B)

Fund 4932 FY 2010 Org 0441

1 Any unexpended balances remaining in the
 2 appropriations for Advanced Technology Centers (fund
 3 4932, activity 028), and HEAPS Grant Program (fund 4932,
 4 activity 867) at the close of the fiscal year 2009 are hereby
 5 reappropriated for expenditure during the fiscal year 2010.

*276-Division of Health —
 Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2010 Org 0506

1 Any unexpended balances remaining in the
2 appropriations for Chief Medical Examiner — Capital
3 Improvements — Lottery Surplus (fund 5219, activity 051),
4 and Capital Outlay and Maintenance (fund 5219, activity
5 755) at the close of the fiscal year 2009 are hereby
6 reappropriated for expenditure during the fiscal year 2010.

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

(WV Code Chapter 5F)

Fund 6005 FY 2010 Org 0601

1 Any unexpended balance remaining in the appropriation
2 for Interoperable Communications System (fund 6005,
3 activity 303) at the close of the fiscal year 2009 is hereby
4 reappropriated for expenditure during the fiscal year 2010.

*278—Division of Corrections -
Correctional Units*

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

Fund 6283 FY 2010 Org 0608

1 Any unexpended balances remaining in the
2 appropriations for Capital Outlay, Repairs and Equipment
3 (fund 6283, activity 589), and Capital Outlay and
4 Maintenance (fund 6283, activity 755) at the close of the
5 fiscal year 2009 are hereby reappropriated for expenditure
6 during the fiscal year 2010.

279—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2010 Org 0702

1 Any unexpended balance remaining in the appropriation
2 for Remittance Processor — Lottery Surplus (fund 7082,
3 activity 054) at the close of the fiscal year 2009 is hereby
4 reappropriated for expenditure during the fiscal year 2010.

Total TITLE II, Section 5 - Excess Lottery Funds \$312,118,000

1 **Sec. 6. Appropriations of federal funds.** - In
2 accordance with article eleven, chapter four of the code,
3 from federal funds there are hereby appropriated
4 conditionally upon the fulfillment of the provisions set forth
5 in article two, eleven-b of the code the following amounts,
6 as itemized, for expenditure during the fiscal year two
7 thousand ten.

LEGISLATIVE

280-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2010 Org 2300

	Activity	Federal Fund
1	Unclassified - Total 096	\$1,314,969
2	Federal Economic Stimulus 891	<u>348,230</u>
3	Total	\$1,663,199

JUDICIAL

281-Supreme Court

Fund 8867 FY 2010 Org 2400

1 Unclassified - Total 096 \$1,500,000

EXECUTIVE

*282-Governor's Office -
American Recovery and Reinvestment Act*

(WV Code Chapter 5)

Fund 8701 FY 2010 Org 0100

1 Federal Economic Stimulus 891 \$266,468,000

2 The above appropriation for Federal Economic Stimulus
3 shall be used in accordance with regulations and guidelines
4 provided by the U.S. Department of Education which
5 include restoring funding levels in the public education
6 funding formula and higher education institutions.

*283-Governor's Office -
Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2010 Org 0100

1 Unclassified - Total 096 \$7,272,541
2 Federal Economic Stimulus 891 25,000,000
3 Total \$32,272,541

*284-Governor's Office -
Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2010 Org 0100

1	Unclassified - Total	096	\$5,662,509
2	Federal Economic Stimulus	891	<u>174,851</u>
3	Total		\$5,837,360

*285-Auditor's Office -
National White Collar Crime Center*

(WV Code Chapter 12)

Fund 8807 FY 2010 Org 1200

1	Unclassified - Total	096	\$14,006,826
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286-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2010 Org 1400

1	Unclassified - Total	096	\$4,303,826
2	Federal Economic Stimulus	891	<u>716,000</u>
3	Total		\$5,019,826

*287-Department of Agriculture -
Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2010 Org 1400

1 Unclassified - Total 096 \$ 852,868

*288-Department of Agriculture -
State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2010 Org 1400

1 Unclassified - Total 096 \$ 1,814,314

*289-Department of Agriculture -
Land Protection Authority*

Fund 8896 FY 2010 Org 1400

1 Unclassified - Total 096 \$ 60,000

*290-Secretary of State -
State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2010 Org 1600

1 Unclassified - Total 096 \$ 1,290,000

DEPARTMENT OF ADMINISTRATION

291-West Virginia Prosecuting Attorney's Institute

(WV Code Chapter 7)

Fund 8834 FY 2010 Org 0228

1 Unclassified - Total 096 \$ 81,343

292—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2010 Org 0230

1 Unclassified - Total 096 \$ 37,948,479

DEPARTMENT OF COMMERCE

293-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2010 Org 0305

1	Unclassified - Total	096	\$4,167,091
2	Federal Economic Stimulus	891	<u>7,000,000</u>
3	Total		\$11,167,091

294-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2010 Org 0306

1	Unclassified - Total	096	\$ 380,000
2	Federal Economic Stimulus	891	<u>25,000</u>
3	Total		\$ 405,000

295-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2010 Org 0307

10 Pursuant to the requirements of 42 U.S.C. 1103, Section
 11 903 of the Social Security Act, as amended, and the
 12 provisions of section nine, article nine, chapter twenty-one-a
 13 of the code of West Virginia, one thousand nine hundred
 14 thirty-one, as amended, the above appropriation to
 15 Unclassified shall be used by the Workforce West Virginia
 16 for the specific purpose of administration of the state's
 17 unemployment insurance program or job service activities,
 18 subject to each and every restriction, limitation or obligation
 19 imposed on the use of the funds by those federal and state
 20 statutes.

300-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2010 Org 0328

1	Unclassified - Total	096	\$1,505,435
2	Federal Economic Stimulus	891	<u>27,000,000</u>
3	Total		\$ 28,505,435

DEPARTMENT OF EDUCATION

301-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2010 Org 0402

1	Unclassified - Total	096	\$ 235,000,000
2	Federal Economic Stimulus	891	<u>85,000,000</u>
3	Total		\$ 320,000,000

*302-State Department of Education -
 School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2010 Org 0402

1	Unclassified - Total	.....	096	\$ 115,000,000
2	Federal Economic Stimulus	.....	891	<u>650,000</u>
3	Total	.....		\$115,650,000

*303-State Board of Education -
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2010 Org 0402

1	Unclassified - Total	096	\$ 16,250,000
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*304-State Department of Education -
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2010 Org 0402

1	Unclassified - Total	.....	096	\$ 106,800,000
2	Federal Economic Stimulus	.....	891	<u>80,000,000</u>
3	Total	.....		\$ 186,800,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 8841 FY 2010 Org 0431

APPROPRIATIONS

[Ch. 10]

1	Unclassified - Total	096	\$ 325,000
2	Federal Economic Stimulus	891	<u>50,000</u>
3	Total		\$ 375,000

306-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2010 Org 0432

1	Unclassified - Total	096	\$ 2,233,324
2	Federal Economic Stimulus	891	<u>300,000</u>
3	Total		\$ 2,533,324

307-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2010 Org 0433

1	Unclassified - Total	096	\$ 1,950,351
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308-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2010 Org 0439

1	Unclassified - Total	096	\$ 1,500,000
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*309-State Board of Rehabilitation -
Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2010 Org 0932

Ch. 10]	APPROPRIATIONS	229
1	Unclassified - Total	096 \$32,224,316
2	Federal Economic Stimulus	891 <u>4,808,444</u>
3	Total	\$37,032,760

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

(WV Code Chapter 18)

Fund 8890 FY 2010 Org 0932

Unclassified - Total	096	\$21,731,781
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

311-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2010 Org 0313

1	Unclassified - Total	096	\$ 153,476,907
2	Federal Economic Stimulus	891	<u>64,700,000</u>
3	Total		\$ 218,176,907

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

312-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2010 Org 0506

1	Unclassified - Total	096	\$7,325,557
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*313-Division of Health -
Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2010 Org 0506

1	Unclassified - Total	096	\$ 86,579,129
2	Federal Economic Stimulus	891	<u>4,256,000</u>
3	Total		\$ 90,835,129

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

(WV Code Chapter 16)

Fund 8824 FY 2010 Org 0506

1	Unclassified - Total	096	\$ 16,000,000
2	Federal Economic Stimulus	891	<u>14,500,000</u>
3	Total		\$ 30,500,000

315-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2010 Org 0507

1	Unclassified - Total	096	\$2,500,000
2	Federal Economic Stimulus	891	<u>3,000,000</u>
3	Total		\$5,500,000

316-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2010 Org 0510

Ch. 10] APPROPRIATIONS 231

1 Unclassified - Total 096 \$ 438,899

317-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2010 Org 0511

1	Unclassified	099	\$	155,854,516
2	Medical Services	189		1,890,000,000
3	Medical Services Administrative Costs	789		66,082,651
4	Federal Economic Stimulus	891		<u>221,214,902</u>
5	Total		\$	2,333,152,069

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

318-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2010 Org 0601

1 Unclassified - Total 096 \$20,002,304

319-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2010 Org 0603

1	Unclassified - Total	096	\$	96,633,010
2	Federal Economic Stimulus	891		<u>4,535,000</u>
3	Total		\$	101,168,010

*320-Division of Homeland Security and
Emergency Management*

(WV Code Chapter 15)

Fund 8727 FY 2010 Org 0606

1 Unclassified - Total 096 \$21,255,931

321-Division of Corrections

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

Fund 8836 FY 2010 Org 0608

1 Unclassified - Total 096 \$ 110,000

322-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2010 Org 0612

1 Unclassified - Total 096 \$31,436,810

2 Federal Economic Stimulus 891 485,386

3 Total \$31,922,196

323-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2010 Org 0613

1 Unclassified - Total 096 \$11,200,000

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

(WV Code Chapter 9A)

Fund 8728 FY 2010 Org 0618

Ch. 10] APPROPRIATIONS 233

1 Unclassified - Total 096 \$1,774,230

325-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2010 Org 0619

1 Unclassified - Total 096 \$ 80,000

326-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2010 Org 0620

1	Unclassified - Total	096	\$13,146,311
2	Federal Economic Stimulus	891	<u>10,045,566</u>
3	Total		\$23,191,877

DEPARTMENT OF REVENUE

*327-Tax Division -
Consolidated Federal Fund*

(WV Code Chapter 11)

Fund 8899 FY 2010 Org 0702

1 Unclassified - Total 096 \$ 10,000

328-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2010 Org 0704

1	Unclassified - Total	096	\$ 4,200,000
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DEPARTMENT OF TRANSPORTATION

329-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2010 Org 0802

1	Unclassified - Total	096	\$18,167,668
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330-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2010 Org 0805

1	Unclassified - Total	096	\$23,127,478
2	Federal Economic Stimulus	891	<u>10,051,239</u>
3	Total		\$33,178,717

331-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2010 Org 0806

1	Unclassified - Total	096	\$1,050,000
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BUREAU OF SENIOR SERVICES

332-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2010 Org 0508

Ch. 10] APPROPRIATIONS 235

1	Unclassified - Total	..... 096	\$14,515,250
2	Federal Economic Stimulus	..... 891	<u>340,092</u>
3	Total	.....	\$14,855,342

MISCELLANEOUS BOARDS AND COMMISSIONS

333-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2010 Org 0913

1	Unclassified - Total 096	\$ 260,000
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*334-Public Service Commission -
Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2010 Org 0926

1	Unclassified - Total 096	\$ 1,562,171
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*335-Public Service Commission -
Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2010 Org 0926

1	Unclassified - Total 096	\$ 282,370
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336-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2010 Org 0941

1 Unclassified - Total 096 \$ 600,000

337-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2010 Org 0942

1 Unclassified - Total 096 \$ 50,000

Total TITLE II, Section 6 - Federal Funds \$ 4,108,936,130

- 1 **Sec. 7. Appropriations from federal block grants. -**
 2 The following items are hereby appropriated from federal
 3 block grants to be available for expenditure during the fiscal
 4 year 2010.

*338-Governor's Office -
 Office of Economic Opportunity
 Community Services*

Fund 8799 FY 2010 Org 0100

1 Unclassified - Total 096 \$ 9,632,952
 2 Federal Economic Stimulus 891 5,597,000
 3 Total \$15,229,952

*339-West Virginia Development Office -
 Community Development*

Fund 8746 FY 2010 Org 0307

1 Unclassified - Total 096 \$38,351,067
 2 Federal Economic Stimulus 891 5,000,000
 3 Total \$43,351,067

*340-Workforce West Virginia -
 Workforce Investment Act*

Fund 8749 FY 2010 Org 0323

1	Unclassified - Total	096	\$25,030,749
2	Federal Economic Stimulus	891	<u>7,555,357</u>
3	Total		\$32,586,106

*341-Division of Energy -
Energy and Conservation*

Fund 8702 FY 2010 Org 0328

1	Federal Economic Stimulus	891	\$10,000,000
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*342-Division of Health -
Maternal and Child Health*

Fund 8750 FY 2010 Org 0506

1	Unclassified - Total	096	\$10,974,424
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*343-Division of Health -
Preventive Health*

Fund 8753 FY 2010 Org 0506

1	Unclassified - Total	096	\$ 2,244,387
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*344-Division of Health -
Substance Abuse Prevention and Treatment*

Fund 8793 FY 2010 Org 0506

1	Unclassified - Total	096	\$11,586,339
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*345-Division of Health -
Community Mental Health Services*

Fund 8794 FY 2010 Org 0506

1 Unclassified - Total 096 \$ 3,345,285

*346-Division of Health -
Abstinence Education Program*

Fund 8825 FY 2010 Org 0506

1 Unclassified - Total 096 \$ 700,000

*347-Division of Human Services -
Energy Assistance*

Fund 8755 FY 2010 Org 0511

1 Unclassified - Total 096 \$50,000,000

*348-Division of Human Services -
Social Services*

Fund 8757 FY 2010 Org 0511

1 Unclassified - Total 096 \$16,007,529

*349-Division of Human Services -
Temporary Assistance for Needy Families*

Fund 8816 FY 2010 Org 0511

1	Unclassified - Total	..... 096	\$130,250,890
2	Federal Economic Stimulus	..... 891	<u>30,000,000</u>
3	Total	.....	\$160,250,890

*350-Division of Human Services -
Child Care and Development*

Fund 8817 FY 2010 Org 0511

1	Unclassified - Total	096	\$40,022,445
2	Federal Economic Stimulus	891	<u>6,523,500</u>
3	Total		\$46,545,945

*351-Division of Criminal Justice Services -
Juvenile Accountability Incentive*

Fund 8829 FY 2010 Org 0620

1	Unclassified - Total	096	\$ <u>500,000</u>
2	Total TITLE II, Section 7 -		
3	Federal Block Grants		\$ <u>403,321,924</u>

1 **Sec. 8. Awards for claims against the state.** – There
2 are hereby appropriated for fiscal year 2010, from the fund
3 as designated, in the amounts as specified, general revenue
4 funds in the amount of \$80,942, special revenue funds in the
5 amount of \$305,999 and state road funds in the amount of
\$508,746 for payment of claims against the state.

1 **Sec. 9. Special revenue appropriations.** - There are
2 hereby appropriated for expenditure during the fiscal year
3 two thousand ten appropriations made by general law from
4 special revenues which are not paid into the state fund as
5 general revenue under the provisions of section two, article
6 two, chapter twelve of the code: *Provided*, That none of the
7 money so appropriated by this section shall be available for
8 expenditure except in compliance with and in conformity to
9 the provisions of articles two and three, chapter twelve and
10 article two, chapter eleven-b of the code, unless the
11 spending unit has filed with the director of the budget and
12 the legislative auditor prior to the beginning of each fiscal
13 year:

14 (a) An estimate of the amount and sources of all
15 revenues accruing to such fund;

16 (b) A detailed expenditure schedule showing for what
17 purposes the fund is to be expended.

1 **Sec. 10. State improvement fund appropriations. -**
2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year two
4 thousand ten, for the purpose of making studies and
5 recommendations relative to improvements of the
6 administration and management of spending units in the
7 executive branch of state government, shall be deposited in
8 the state treasury in a separate account therein designated
9 state improvement fund.

10 There are hereby appropriated all moneys so deposited
11 during the fiscal year two thousand ten to be expended as
12 authorized by the governor, for such studies and
13 recommendations which may encompass any problems of
14 organization, procedures, systems, functions, powers or
15 duties of a state spending unit in the executive branch, or the
16 betterment of the economic, social, educational, health and
17 general welfare of the state or its citizens.

1 **Sec. 11. Specific funds and collection accounts. - A**
2 fund or collection account which by law is dedicated to a
3 specific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection account
5 and shall be expended according to the provisions of article
6 three, chapter twelve of the code.

1 **Sec. 12. Appropriations for refunding erroneous**
2 **payment. -** Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he or
7 she shall issue his or her requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue his
9 or her warrant to the treasurer and the treasurer shall pay the
10 warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 13. Sinking fund deficiencies.** - There is hereby
2 appropriated to the governor a sufficient amount to meet any
3 deficiencies that may arise in the mortgage finance bond
4 insurance fund of the West Virginia housing development
5 fund which is under the supervision and control of the
6 municipal bond commission as provided by section
7 twenty-b, article eighteen, chapter thirty-one of the code, or
8 in the funds of the municipal bond commission because of
9 the failure of any state agency for either general obligation
10 or revenue bonds or any local taxing district for general
11 obligation bonds to remit funds necessary for the payment
12 of interest and sinking fund requirements. The governor is
13 authorized to transfer from time to time such amounts to the
14 municipal bond commission as may be necessary for these
15 purposes.

16 The municipal bond commission shall reimburse the
17 state of West Virginia through the governor from the first
18 remittance collected from the West Virginia housing
19 development fund or from any state agency or local taxing
20 district for which the governor advanced funds, with interest
21 at the rate carried by the bonds for security or payment of
22 which the advance was made.

1 **Sec. 14. Appropriations for local governments.** -
2 There are hereby appropriated for payment to counties,
3 districts and municipal corporations such amounts as will
4 be necessary to pay taxes due counties, districts and

5 municipal corporations and which have been paid into the
6 treasury:

7 (a) For redemption of lands;

8 (b) By public service corporations;

9 (c) For tax forfeitures.

1 **Sec. 15. Total appropriations.** - Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits,
4 current expenses, repairs and alterations, equipment and
5 capital outlay, where not otherwise specifically provided and
6 except as otherwise provided in TITLE I - GENERAL
7 PROVISIONS, Sec. 3.

1 **Sec. 16. General school fund.** - The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is
4 appropriated for expenditure in accordance with section
5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III - ADMINISTRATION.

TITLE III - ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 **Section 1. Appropriations conditional.** - The
2 expenditure of the appropriations made by this act, except
3 those appropriations made to the legislative and judicial
4 branches of the state government, are conditioned upon the
5 compliance by the spending unit with the requirements of
6 article two, chapter eleven-b of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending units, it
9 is the intent of this act that appropriations and
10 reappropriations shall be to the succeeding or later spending
11 unit created, unless otherwise indicated.

1 **Sec. 2. Constitutionality.** - If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of this
4 act which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.



CHAPTER 11

**(S.B. 403 - By Senators Helmick, McCabe, Chafin,
Edgell, D. Facemire, Fanning, Green, Prezioso, White,
Boley, K. Facemyer and Sypolt)**

[Passed March 11, 2009; in effect from passage.]
[Approved by the Governor on March 23, 2009.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2009, organization 0803, for the fiscal year ending June 30, 2009, by supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 11, 2009, which

included the statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2008, and further included the estimate of revenues for the fiscal year 2009, less net appropriation balances forwarded and regular appropriations for the fiscal year 2009; and

WHEREAS, It thus appears from the Governor’s Executive Budget Document, statement of the State Road Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2009; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2009, organization 0803, be supplemented and amended to read as follows:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 2. Appropriations from State Road Fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *93-Division of Highways*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2009 Org 0803

7				State
8				Road
9			Activity	Fund

10	1	Debt Service	040	\$ 50,000,000
11	2	Maintenance	237	326,769,000
12	3	Maintenance, Contract Paving and		
13	4	Secondary Road Maintenance	272	113,000,000
14	5	Bridge Repair and Replacement	273	46,000,000
15	6	Inventory Revolving	275	4,000,000

16	7	Equipment Revolving	276	20,000,000
17	8	General Operations	277	46,371,000
18	9	Interstate Construction	278	134,000,000
19	10	Other Federal Aid Programs . . .	279	339,700,000
20	11	Appalachian Programs	280	114,078,000
21	12	Nonfederal Aid Construction . . .	281	45,000,000
22	13	Highway Litter Control	282	1,699,000
23	14	Federal Economic Stimulus	891	<u>40,000,000</u>
24		Total		\$ 1,280,617,000

25 The above appropriations are to be expended in
 26 accordance with the provisions of chapters seventeen and
 27 seventeen-c of the Code of West Virginia.

28 The Commissioner of Highways shall have the authority
 29 to operate revolving funds within the State Road Fund for the
 30 operation and purchase of various types of equipment used
 31 directly and indirectly in the construction and maintenance of
 32 roads and for the purchase of inventories and materials and
 33 supplies.

34 There is hereby appropriated within the above items
 35 sufficient money for the payment of claims, accrued or
 36 arising during this budgetary period, to be paid in accordance
 37 with sections seventeen and eighteen, article two, chapter
 38 fourteen of the Code of West Virginia.

39 It is the intent of the Legislature to capture and match all
 40 federal funds available for expenditure on the Appalachian
 41 Highway System at the earliest possible time. Therefore,
 42 should amounts in excess of those appropriated be required
 43 for the purposes of Appalachian programs, funds in excess of
 44 the amount appropriated may be made available upon
 45 recommendation of the commissioner and approval of the
 46 Governor. Further, for the purpose of Appalachian programs,
 47 funds appropriated to line items may be transferred to other
 48 line items upon recommendation of the commissioner and
 49 approval of the Governor.

50 The purpose of this supplemental appropriation bill is to
51 supplement, amend, decrease, increase and add items of
52 appropriation in the aforesaid account for the designated
53 spending unit for expenditure during the fiscal year ending
54 June 30, 2009.

CHAPTER 12

**(S.B. 771 - By Senators Helmick, McCabe, Bowman, Chafin,
Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, White,
Unger, Wells, K. Facemyer, Guills and Sypolt)**

[Passed April 12, 2009; in effect from passage.]
[Approved by the Governor on April 17, 2009.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2009, to the Crime Victims Compensation Fund, fund 8738, fiscal year 2009, organization 2300, to the Governor's Office - Office of Economic Opportunity, fund 8797, fiscal year 2009, organization 0100, to the Governor's Office - Commission for National and Community Service, fund 8800, fiscal year 2009, organization 0100, to the Department of Agriculture, fund 8736, fiscal year 2009, organization 1400, to the Division of Forestry, fund 8703, fiscal year 2009, organization 0305, to the State Department of Education, fund 8712, fiscal year 2009, organization 0402, to the State Department of Education - School Lunch Program, fund 8713, fiscal year 2009, organization 0402, to the State Department of Education - Aid for Exceptional Children, fund 8715, fiscal year 2009, organization 0402, to the State Board of Rehabilitation -

Division of Rehabilitation Services, fund 8734, fiscal year 2009, organization 0932, Division of Environmental Protection, fund 8708, fiscal year 2009, organization 0313, Division of Health - Central Office, fund 8802, fiscal year 2009, organization 0506, Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2009, organization 0506, to the West Virginia Health Care Authority, fund 8851, fiscal year 2009, organization 0507, to the Division of Human Services, fund 8722, fiscal year 2009, organization 0511, to the Adjutant General - State Militia, fund 8726, fiscal year 2009, organization 0603, to the West Virginia State Police, fund 8741, fiscal year 2009, organization 0612, to the Division of Criminal Justice Services, fund 8803, fiscal year 2009, organization 0620, to the Division of Public Transit, fund 8745, fiscal year 2009, organization 0805, to the Bureau of Senior Services, fund 8724, fiscal year 2009, organization 0508, to the Workforce West Virginia - Workforce Investment Act, fund 8749, fiscal year 2009, organization 0323, to the Division of Human Services - Temporary Assistance for Needy Families, fund 8816, fiscal year 2009, organization 0511, and to the Division of Human Services - Child Care and Development, fund 8817, fiscal year 2009, organization 0511, all supplementing and amending the appropriations for the fiscal year ending June 30, 2009.

WHEREAS, The Governor has established the availability of federal funds now available for expenditure in the fiscal year ending June 30, 2009, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2009, to fund 8738, fiscal year 2009, organization 2300, be supplemented and amended by adding a new item of appropriation as follows:

248

APPROPRIATIONS

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1 TITLE II --APPROPRIATIONS.

2 **Sec. 6. Appropriations of federal funds.**

3 **LEGISLATIVE**

4 *271-Crime Victims Compensation Fund*

5 (WV Code Chapter 14)

6 Fund 8738 FY 2009 Org 2300

7		Federal
8	Activity	Funds

9	3a Federal Economic Stimulus	891	\$ 348,230
---	--	-----	------------

10 And that the total appropriation for the fiscal year ending
11 June 30, 2009, to fund 8797, fiscal year 2009, organization
12 0100, be supplemented and amended by adding a new item
13 of appropriation as follows:

14 TITLE II--APPROPRIATIONS.

15 **Sec. 6. Appropriations of federal funds.**

16 **EXECUTIVE**

17 *273-Governor's Office -*
18 *Office of Economic Opportunity*

19 (WV Code Chapter 5)

20 Fund 8797 FY 2009 Org 0100

21	2 Federal Economic Stimulus	891	\$ 6,000,000
----	---------------------------------------	-----	--------------

22 And that the total appropriation for the fiscal year ending
23 June 30, 2009, to fund 8800, fiscal year 2009, organization

24 0100, be supplemented and amended by adding a new item
25 of appropriation as follows:

26 TITLE II--APPROPRIATIONS.

27 **Sec. 6. Appropriations of federal funds.**

28 **EXECUTIVE**

29 *274-Governor's Office -*
30 *Commission for National and Community Service*

31 (WV Code Chapter 5)

32 Fund 8800 FY 2009 Org 0100

33 2 Federal Economic Stimulus 891 \$ 150,000

34 And that the total appropriation for the fiscal year ending
35 June 30, 2009, to fund 8736, fiscal year 2009, organization
36 1400, be supplemented and amended by adding a new item
37 of appropriation as follows:

38 TITLE II--APPROPRIATIONS.

39 **Sec. 6. Appropriations of federal funds.**

40 **EXECUTIVE**

41 *276-Department of Agriculture*

42 (WV Code Chapter 19)

43 Fund 8736 FY 2009 Org 1400

44 2 Federal Economic Stimulus 891 \$ 716,000

45 And that the total appropriation for the fiscal year ending
46 June 30, 2009, to fund 8703, fiscal year 2009, organization

47 0305, be supplemented and amended by adding a new item
48 of appropriation as follows:

49 TITLE II--APPROPRIATIONS.

50 **Sec. 6. Appropriations of federal funds.**

51 **DEPARTMENT OF COMMERCE**

52 *282-Division of Forestry*

53 (WV Code Chapter 19)

54 Fund 8703 FY 2009 Org 0305

55 2 Federal Economic Stimulus 891 \$ 2,000,000

56 And that the total appropriation for the fiscal year ending
57 June 30, 2009, to fund 8712, fiscal year 2009, organization
58 0402, be supplemented and amended by adding a new item
59 of appropriation as follows:

60 TITLE II--APPROPRIATIONS.

61 **Sec. 6. Appropriations of federal funds.**

62 **DEPARTMENT OF EDUCATION**

63 *290-State Department of Education*

64 (WV Code Chapters 18 and 18A)

65 Fund 8712 FY 2009 Org 0402

66 2 Federal Economic Stimulus 891 \$ 32,000,000

67 And that the total appropriation for the fiscal year ending
68 June 30, 2009, to fund 8713, fiscal year 2009, organization
69 0402, be supplemented and amended by adding a new item
70 of appropriation as follows:

71 TITLE II--APPROPRIATIONS.

72 **Sec. 6. Appropriations of federal funds.**

73 **DEPARTMENT OF EDUCATION**

74 *291-State Department of Education -*
75 *School Lunch Program*

76 (WV Code Chapters 18 and 18A)

77 Fund 8713 FY 2009 Org 0402

78 2 Federal Economic Stimulus 891 \$ 325,000

79 And that the total appropriation for the fiscal year ending
80 June 30, 2009, to fund 8715, fiscal year 2009, organization
81 0402, be supplemented and amended by adding a new item
82 of appropriation as follows:

83 TITLE II--APPROPRIATIONS.

84 **Sec. 6. Appropriations of federal funds.**

85 **DEPARTMENT OF EDUCATION**

86 *293-State Department of Education -*
87 *Aid for Exceptional Children*

88 (WV Code Chapters 18 and 18A)

89 Fund 8715 FY 2009 Org 0402

90 2 Federal Economic Stimulus 891 \$ 40,000,000

91 And that the total appropriation for the fiscal year ending
92 June 30, 2009, to fund 8734, fiscal year 2009, organization
93 0932, be supplemented and amended by adding a new item
94 of appropriation as follows:

252

APPROPRIATIONS

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95

TITLE II--APPROPRIATIONS.

96

Sec. 6. Appropriations of federal funds.

97

DEPARTMENT OF EDUCATION AND THE ARTS

98

298-State Board of Rehabilitation -

99

Division of Rehabilitation Services

100

(WV Code Chapter 18)

101

Fund 8734 FY 2009 Org 0932

102

2 Federal Economic Stimulus 891 \$ 1,000,000

103

And that the total appropriation for the fiscal year ending

104

June 30, 2009, to fund 8708, fiscal year 2009, organization

105

0313, be supplemented and amended by adding a new item

106

of appropriation as follows:

107

TITLE II--APPROPRIATIONS.

108

Sec. 6. Appropriations of federal funds.

109

DEPARTMENT OF ENVIRONMENTAL

110

PROTECTION

111

300-Division of Environmental Protection

112

(WV Code Chapter 22)

113

Fund 8708 FY 2009 Org 0313

114

2 Federal Economic Stimulus 891 \$ 35,602,400

115

And that the total appropriation for the fiscal year ending

116

June 30, 2009, to fund 8802, fiscal year 2009, organization

117

0506, be supplemented and amended by adding a new item

118

of appropriation as follows:

119 TITLE II--APPROPRIATIONS.

120 **Sec. 6. Appropriations of federal funds.**

121 **DEPARTMENT OF HEALTH AND HUMAN**
122 **RESOURCES**

123 *302-Division of Health -*
124 *Central Office*

125 (WV Code Chapter 16)

126 Fund 8802 FY 2009 Org 0506

127 2 Federal Economic Stimulus 891 \$ 4,256,000

128 And that the total appropriation for the fiscal year ending
129 June 30, 2009, to fund 8824, fiscal year 2009, organization
130 0506, be supplemented and amended by adding a new item
131 of appropriation as follows:

132 TITLE II--APPROPRIATIONS.

133 **Sec. 6. Appropriations of federal funds.**

134 **DEPARTMENT OF HEALTH AND HUMAN**
135 **RESOURCES**

136 *303-Division of Health -*
137 *West Virginia Safe Drinking Water Treatment*

138 (WV Code Chapter 16)

139 Fund 8824 FY 2009 Org 0506

140 2 Federal Economic Stimulus 891 \$ 5,000,000

141 And that the total appropriation for the fiscal year ending
142 June 30, 2009, to fund 8851, fiscal year 2009, organization

254

APPROPRIATIONS

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143 0507, be supplemented and amended by adding a new item
144 of appropriation as follows:

145 TITLE II--APPROPRIATIONS.

146 **Sec. 6. Appropriations of federal funds.**

147 **DEPARTMENT OF HEALTH AND HUMAN**
148 **RESOURCES**

149 *304-West Virginia Health Care Authority*

150 (WV Code Chapter 16)

151 Fund 8851 FY 2009 Org 0507

152 2 Federal Economic Stimulus 891 \$ 50,000

153 And that the total appropriation for the fiscal year ending
154 June 30, 2009, to fund 8722, fiscal year 2009, organization
155 0511, be supplemented and amended by adding a new item
156 of appropriation as follows:

157 TITLE II--APPROPRIATIONS.

158 **Sec. 6. Appropriations of federal funds.**

159 **DEPARTMENT OF HEALTH AND HUMAN**
160 **RESOURCES**

161 *306-Division of Human Services*

162 (WV Code Chapters 9, 48 and 49)

163 Fund 8722 FY 2009 Org 0511

164 4a Federal Economic Stimulus 891 \$ 126,367,951

165 And that the total appropriation for the fiscal year ending
166 June 30, 2009, to fund 8726, fiscal year 2009, organization

167 0603, be supplemented and amended by adding a new item
168 of appropriation as follows:

169 TITLE II--APPROPRIATIONS.

170 **Sec. 6. Appropriations of federal funds.**

171 **DEPARTMENT OF MILITARY AFFAIRS**
172 **AND PUBLIC SAFETY**

173 *308-Adjutant General - State Militia*

174 (WV Code Chapter 15)

175 Fund 8726 FY 2009 Org 0603

176 2 Federal Economic Stimulus 891 \$ 4,535,000

177 And that the total appropriation for the fiscal year ending
178 June 30, 2009, to fund 8741, fiscal year 2009, organization
179 0612, be supplemented and amended by adding a new item
180 of appropriation as follows:

181 TITLE II--APPROPRIATIONS.

182 **Sec. 6. Appropriations of federal funds.**

183 **DEPARTMENT OF MILITARY AFFAIRS**
184 **AND PUBLIC SAFETY**

185 *311-West Virginia State Police*

186 (WV Code Chapter 15)

187 Fund 8741 FY 2009 Org 0612

188 2 Federal Economic Stimulus 891 \$ 485,386

256

APPROPRIATIONS

[Ch. 12

189 And that the total appropriation for the fiscal year ending
190 June 30, 2009, to fund 8803, fiscal year 2009, organization
191 0620, be supplemented and amended by adding a new item
192 of appropriation as follows:

193 TITLE II--APPROPRIATIONS.

194 **Sec. 6. Appropriations of federal funds.**

195 **DEPARTMENT OF MILITARY AFFAIRS**
196 **AND PUBLIC SAFETY**

197 *315-Division of Criminal Justice Services*

198 (WV Code Chapter 15)

199 Fund 8803 FY 2009 Org 0620

200 2 Federal Economic Stimulus 891 \$ 8,192,846

201 And that the total appropriation for the fiscal year ending
202 June 30, 2009, to fund 8745, fiscal year 2009, organization
203 0805, be supplemented and amended by adding a new item
204 of appropriation as follows:

205 TITLE II--APPROPRIATIONS.

206 **Sec. 6. Appropriations of federal funds.**

207 **DEPARTMENT OF TRANSPORTATION**

208 *319-Division of Public Transit*

209 (WV Code Chapter 17)

210 Fund 8745 FY 2009 Org 0805

211 2 Federal Economic Stimulus 891 \$ 4,000,000

212 And that the total appropriation for the fiscal year ending
213 June 30, 2009, to fund 8724, fiscal year 2009, organization
214 0508, be supplemented and amended by adding a new item
215 of appropriation as follows:

216 TITLE II--APPROPRIATIONS.

217 **Sec. 6. Appropriations of federal funds.**

218 **BUREAU OF SENIOR SERVICES**

219 *321-Bureau of Senior Services*

220 (WV Code Chapter 29)

221 Fund 8724 FY 2009 Org 0508

222 2 Federal Economic Stimulus 891 \$ 340,000

223 And that the total appropriation for the fiscal year ending
224 June 30, 2009, to fund 8749, fiscal year 2009, organization
225 0323, be supplemented and amended by adding a new item
226 of appropriation as follows:

227 TITLE II--APPROPRIATIONS.

228 **Sec. 7. Appropriations from federal block grants.**

229 *330-Workforce West Virginia -*
230 *Workforce Investment Act*

231 Fund 8749 FY 2009 Org 0323

232 2 Federal Economic Stimulus 891 \$ 3,777,679

233 And that the total appropriation for the fiscal year ending
234 June 30, 2009, to fund 8816, fiscal year 2009, organization
235 0511, be supplemented and amended by adding a new item
236 of appropriation as follows:

258

APPROPRIATIONS

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237

TITLE II--APPROPRIATIONS.

238

Sec. 7. Appropriations from federal block grants.

239

338-Division of Human Services -

240

Temporary Assistance for Needy Families

241

Fund 8816 FY 2009 Org 0511

242

2 Federal Economic Stimulus 891 \$ 12,000,000

243

And that the total appropriation for the fiscal year ending

244

June 30, 2009, to fund 8817, fiscal year 2009, organization

245

0511, be supplemented and amended by adding a new item

246

of appropriation as follows:

247

TITLE II--APPROPRIATIONS.

248

Sec. 7. Appropriations from federal block grants.

249

339-Division of Human Services -

250

Child Care and Development

251

Fund 8817 FY 2009 Org 0511

252

2 Federal Economic Stimulus 891 \$ 6,523,500

253

The purpose of this supplementary appropriation bill is to

254

supplement, increase and add an item of appropriation in the

255

aforsaid accounts for the designated spending units for

256

expenditure during the fiscal year 2009.

CHAPTER 13

(S.B. 772 - By Senators Helmick, McCabe, Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, White, Unger, Wells, K. Facemyer, Guills and Sypolt)

[Passed April 12, 2009; in effect from passage.]
[Approved by the Governor on April 17, 2009.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2009, to the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2009, organization 1400, to the Department of Transportation - Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2009, organization 0802, to the Bureau of Senior Services - Community-Based Service Fund, fund 5409, fiscal year 2009, organization 0508, and to a new item of appropriation designated to the West Virginia Northern Community and Technical College - WVNCC Land Sale Account, fund 4732, fiscal year 2009, organization 0489, supplementing and amending chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2009, organization 1400, in the Department of Transportation - Division of Motor Vehicles - Motor Vehicle Fees Fund, fund 8223, fiscal year 2009, organization 0802, in the Bureau of Senior Services - Community-Based Service Fund, fund 5409, fiscal year 2009,

organization 0508, and in the West Virginia Northern Community and Technical College - WVNCC Land Sale Account, fund 4732, fiscal year 2009, organization 0489, available for expenditure during the fiscal year ending June 30, 2009, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2009, to fund 1409, fiscal year 2009, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 **Sec. 3. Appropriations from other funds.**

3 **EXECUTIVE**

4 *105--Department of Agriculture -*
5 *General John McCausland Memorial Farm*

6 (WV Code Chapter 19)

7 Fund 1409 FY 2009 Org 1400

8		Other
9	Activity	Funds

10	1	Unclassified - Total	096	\$	110,000
----	---	--------------------------------	-----	----	---------

11 And that the total appropriation for the fiscal year ending
12 June 30, 2009, to fund 8223, fiscal year 2009, organization
13 0802, be supplemented and amended by increasing the total
14 appropriation as follows:

15 TITLE II--APPROPRIATIONS.

16 **Sec. 3. Appropriations from other funds.**

17 **DEPARTMENT OF TRANSPORTATION**

18 *224–Division of Motor Vehicles -*
19 *Motor Vehicle Fees Fund*

20 (WV Code Chapter 17B)

21 Fund 8223 FY 2009 Org 0802

22			Other
23		Activity	Funds

24	1	Unclassified - Total	096	\$	159,800
----	---	--------------------------------	-----	----	---------

25 And that the total appropriation for the fiscal year ending
26 June 30, 2009, to fund 5409, fiscal year 2009, organization
27 0508, be supplemented and amended by increasing the total
28 appropriation as follows:

29 **TITLE II--APPROPRIATIONS.**

30 **Sec. 3. Appropriations from other funds.**

31 **BUREAU OF SENIOR SERVICES**

32 *227–Bureau of Senior Services -*
33 *Community Based Service Fund*

34 (WV Code Chapter 22)

35 Fund 5409 FY 2009 Org 0508

36				Other
37		Activity		Funds

38	1	Unclassified - Total	096	\$	250,000
----	---	--------------------------------	-----	----	---------

39 And that chapter ten, Acts of the Legislature, regular
40 session, 2008, known as the Budget Bill, be supplemented
41 and amended by adding to Title II, section three thereof, the
42 following:

262

APPROPRIATIONS

[Ch. 13

43

TITLE I-- APPROPRIATIONS.

44

Sec. 3. Appropriations from other funds.

45

HIGHER EDUCATION

46

231a--West Virginia Northern Community and Technical

47

College -

48

WVNCC Land Sale Account

49

(WV Code Chapter 18B)

50

Fund 4732 FY 2009 Org 0489

51

Other

52

Activity

Funds

53

1 Unclassified - Total (R) 096 \$ 593,250

54

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.

57

Any unexpended balance remaining in Unclassified - Total (fund 4732, activity 096) at the close of the fiscal year 2009 is hereby reappropriated for expenditure during the fiscal year 2010.

61

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the budget act; and provide for a new item of appropriation to be established therein to appropriate funds for the designated spending units for expenditure during the fiscal year 2009.

CHAPTER 14

(S.B. 773 - By Senators Helmick, McCabe, Bowman, Chafin, Edgell, D. Facemire, Fanning, Green, Plymale, Prezioso, White, Unger, Wells, K. Facemyer, Guills and Sypolt)

[Passed April 12, 2009; in effect from passage.]
[Approved by the Governor on April 17, 2009.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2009, to a new item of appropriation designated to the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2009, organization 1400, by supplementing and amending chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - Land Protection Authority, fund 8896, fiscal year 2009, organization 1400, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter ten, Acts of the Legislature, regular session, 2008, known as the Budget Bill, be supplemented and amended by adding to Title II, section six thereof, the following:

- 1 TITLE II--APPROPRIATIONS.
- 2 **Sec. 6. Appropriations of federal funds.**

3

EXECUTIVE

4

*278a-Department of Agriculture -
Land Protection Authority*

5

6

Fund 8896 FY 2009 Org 1400

7

Other

8

Activity

Funds

9

1

Unclassified - Total 096 \$ 60,000

10 The purpose of this supplementary appropriation bill is
11 to supplement the accounts in the budget act for the fiscal
12 year ending June 30, 2009, by providing for a new item of
13 appropriation to be established therein to appropriate funds
14 to the designated spending unit for expenditure during the
15 fiscal year 2009.



CHAPTER 15

**(Com. Sub. for S.B. 532 - By Senators Minard,
Jenkins and Kessler)**

[Passed April 9, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §31-17-1, §31-17-2, §31-17-3,
§31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12,
§31-17-13 and §31-17-20 of the Code of West Virginia, 1931,
as amended; to amend said code by adding thereto a new
article, designated §31-17A-1, §31-17A-2, §31-17A-3,
§31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8,

§31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and to amend and reenact §46A-4-102 of said code, all relating to the Division of Banking's participation in the Nationwide Mortgage Licensing System and Registry; complying with the SAFE Mortgage Licensing Act; amending and creating definitions; exempting federally insured depository institutions from broker licensing; allowing the Division of Banking to participate in the Nationwide Mortgage Licensing System and Registry; permitting the Nationwide Mortgage Licensing System and Registry to process background and credit checks on behalf of the Commissioner of Banking; creating a tiered bond structure for licensed lenders and brokers; reducing the license processing time for lenders and brokers; requiring a new application for certain changes in control of mortgage licensees; clarifying the fee for licensee office relocation; synchronizing the mortgage annual report requirement with the Nationwide Mortgage Licensing System and Registry; outlining the purpose of the West Virginia SAFE Mortgage Licensing Act; defining terms associated with the SAFE Mortgage Licensing Act; requiring licensing and registration of mortgage loan originators; creating an application procedure for mortgage loan originators with minimum standards; requiring precensure education of mortgage loan originators; implementing a precensure testing requirement for mortgage loan originators; explaining standards for mortgage loan originator license renewal; clarifying annual continuing education requirements for mortgage loan originators; granting the commissioner authority to require mortgage loan originator licensing through the Nationwide Mortgage Licensing System and Registry; requiring the commissioner to create a challenge process for the Nationwide Mortgage Licensing System and Registry; creating enforcement authority for mortgage loan originators; defining violations and penalties of the SAFE Mortgage Licensing Act; requiring a surety bond to cover

licensed mortgage loan originators that is tied to the amount of mortgage originations by each lender, broker or regulated consumer lender licensee; creating confidentiality provisions; granting investigation and examination authority to the Commissioner of Banking for violations of the SAFE Mortgage Licensing Act; outlining prohibited acts and practices for mortgage loan originators; requiring the Commissioner of Banking to report to the Nationwide Mortgage Licensing System and Registry; clarifying the use of unique identifiers; creating a severability section; defining effective dates; requiring the licensure of mortgage loan originators employed by licensed regulated consumer lenders; and implementing a bond requirement for regulated consumer lenders that originate mortgage loans.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2, §31-17-3, §31-17-4, §31-17-5, §31-17-7, §31-17-11, §31-17-12, §31-17-13 and §31-17-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §31-17A-1, §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-5, §31-17A-6, §31-17A-7, §31-17A-8, §31-17A-9, §31-17A-10, §31-17A-11, §31-17A-12, §31-17A-13, §31-17A-14, §31-17A-15, §31-17A-16, §31-17A-17, §31-17A-18, §31-17A-19 and §31-17A-20; and that §46A-4-102 of said code be amended and reenacted, all to read as follows:

Chapter

31. Corporations.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31. CORPORATIONS.

Article

17. West Virginia Residential Mortgage Lender, Broker and Servicer Act.

17A. West Virginia Safe Mortgage Licensing Act.

**ARTICLE 17. WEST VIRGINIA RESIDENTIAL
MORTGAGE LENDER, BROKER
AND SERVICER ACT.**

- §31-17-1. Definitions and general provisions.
- §31-17-2. License required for lender and broker originator; exemptions.
- §31-17-3. Supervision by Commissioner of Banking; rules and regulations; personnel; participation in the Nationwide Mortgage Licensing System and Registry.
- §31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.
- §31-17-5. Refusal or issuance of license.
- §31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.
- §31-17-11. Records and reports; examination of records; analysis.
- §31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license.
- §31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.
- §31-17-20. Effective date.

§31-17-1. Definitions and general provisions.

1 As used in this article:

2 (a) "Additional charges" means every type of charge
3 arising out of the making or acceptance of a primary or
4 subordinate mortgage loan, except finance charges,
5 including, but not limited to, official fees and taxes,
6 reasonable closing costs and certain documentary charges
7 and insurance premiums and other charges which definition
8 is to be read in conjunction with and permitted by section one
9 hundred nine, article three, chapter forty-six-a of this code;

10 (b) "Affiliated" means persons under the same ownership
11 or management control. As to corporations, limited liability
12 companies or partnerships, where common owners manage
13 or control a majority of the stock, membership interests or
14 general partnership interests of one or more such
15 corporations, limited liability companies or partnerships,

16 those persons are considered affiliated. In addition, persons
17 under the ownership or management control of the members
18 of an immediate family shall be considered affiliated. For
19 purposes of this section, "immediate family" means mother,
20 stepmother, father, stepfather, sister, stepsister, brother,
21 stepbrother, spouse, child and grandchildren;

22 (c) "Amount financed" means the total of the following
23 items to the extent that payment is deferred:

24 (1) The cash price of the goods, services or interest in
25 land, less the amount of any down payment, whether made in
26 cash or in property traded in;

27 (2) The amount actually paid or to be paid by the seller
28 pursuant to an agreement with the buyer to discharge a
29 security interest in or a lien on property traded in; and

30 (3) If not included in the cash price:

31 (A) Any applicable sales, use, privilege, excise or
32 documentary stamp taxes;

33 (B) Amounts actually paid or to be paid by the seller for
34 registration, certificate of title or license fees; and

35 (C) Additional charges permitted by this article;

36 (d) "Applicant" means a person who has applied for a
37 lender or broker license;

38 (e) "Broker" means any person acting in the regular
39 course of business who, for a fee or commission or other
40 consideration, negotiates or arranges, or who offers to
41 negotiate or arrange, or originates or assigns a primary or
42 subordinate mortgage loan between a lender and a borrower.
43 A person is considered to be acting in the regular course of

44 business if he or she negotiates or arranges, or offers to
45 negotiate or arrange, or originates, processes or assigns any
46 primary or subordinate mortgage loans in any one calendar
47 year; or if he or she seeks to charge a borrower or receive
48 from a borrower money or other valuable consideration in
49 any primary or subordinate mortgage transaction before
50 completing performance of all broker services that he or she
51 has agreed to perform for the borrower;

52 (f) "Brokerage fee" means the fee or commission or other
53 consideration charged by a broker or loan originator for the
54 services described in subdivision(e) of this section;

55 (g) "Commissioner" means the Commissioner of Banking
56 of this state;

57 (h) "Finance charge" means the sum of all interest and
58 similar charges payable directly or indirectly by the debtor
59 imposed or collected by the lender incident to the extension
60 of credit as coextensive with the definition of "loan finance
61 charge" set forth in section one hundred two, article one,
62 chapter forty-six-a of this code;

63 (i) "Lender" means any person who makes or offers to
64 make or accepts or offers to accept or purchases or services
65 any primary or subordinate mortgage loan in the regular
66 course of business. A person is considered to be acting in the
67 regular course of business if he or she makes or accepts, or
68 offers to make or accept, any primary or subordinate
69 mortgage loans in any one calendar year;

70 (j) "Licensee" means any person duly licensed by the
71 commissioner under the provisions of this article or article
72 seventeen-a of this chapter as a lender, broker or mortgage
73 loan originator;

74 (k) "Nationwide Mortgage Licensing System and
75 Registry" means a mortgage licensing system developed and
76 maintained by the Conference of State Bank Supervisors and
77 the American Association of Residential Mortgage
78 Regulators for the licensing and registration of licensed
79 mortgage brokers and lenders licensed under this article and
80 mortgage loan originators licensed under article seventeen-a
81 of this chapter;

82 (l) "Person" means an individual, partnership,
83 association, trust, corporation or any other legal entity, or any
84 combination thereof;

85 (m) "Primary mortgage loan" means any loan primarily
86 for personal, family or household use that is secured by a
87 mortgage, deed of trust or other equivalent consensual
88 security interest on a dwelling as defined in Section 103(v) of
89 the Truth in Lending Act or residential real estate upon which
90 is constructed or intended to be constructed a dwelling;

91 (n) "Servicing" or "servicing a residential mortgage loan"
92 means through any medium or mode of communication the
93 collection or remittance for, or the right or obligation to
94 collect or remit for another lender, note owner or noteholder,
95 payments of principal, interest, including sales finance
96 charges in a consumer credit sale, and escrow items as
97 insurance and taxes for property subject to a residential
98 mortgage loan; and

99 (o) "Subordinate mortgage loan" means any loan
100 primarily for personal, family or household use that is
101 secured by a mortgage, deed of trust or other equivalent
102 consensual security interest on a dwelling as defined in
103 Section 103(v) of the Truth in Lending Act or residential real
104 estate upon which is constructed or intended to be
105 constructed a dwelling and is subject to the lien of one or
106 more prior recorded mortgages or deeds of trust.

§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 other lender under the regular supervision and
23 examination for consumer compliance of any agency of the
24 federal government;

25 (5) Any agency or instrumentality of this state, federal,
26 county or municipal government or on behalf of the agency
27 or instrumentality;

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

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

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

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

56 (g) The placement or sale for securitization of a primary
57 or subordinate mortgage loan into a secondary market by a
58 licensee may not subject the warehouser or final
59 securitization holder or trustee to the provisions of this
60 article: *Provided*, That the warehouser, final securitization

61 holder or trustee under an arrangement is either a licensee, or
62 person or entity entitled to make exempt loans of that type
63 under this section, or the loan is held with right of recourse
64 to a licensee.

§31-17-3. Supervision by Commissioner of Banking; rules and regulations; personnel; participation in the Nationwide Mortgage Licensing System and Registry.

1 (a) It shall be the duty of the commissioner to enforce the
2 provisions of this article and, to implement and make
3 effective such provisions, he or she is hereby authorized and
4 empowered to promulgate reasonable rules in accordance
5 with the provisions of article three, chapter twenty-nine-a of
6 this code and to employ such personnel as may be necessary.

7 (b) The commissioner may participate in the Nationwide
8 Mortgage Licensing System and Registry and permit such
9 system to process applications for mortgage lender and
10 mortgage broker licenses in this state and receive and
11 maintain records related to such licenses that are allowed or
12 required to be maintained by the commissioner. The
13 commissioner is authorized to establish relationships or
14 contracts with the Nationwide Mortgage Licensing System
15 and Registry or other entities designated by the Nationwide
16 Mortgage Licensing System and Registry to collect and
17 maintain records and process transaction fees or other fees
18 related to licensees subject to this article. The Nationwide
19 Mortgage Licensing System and Registry shall transfer
20 electronically all fees payable to the Division of Banking
21 directly to the credit of the commissioner's special revenue
22 account with the State Treasurer.

23 (c) Mortgage lenders and brokers licensed pursuant to
24 this article shall submit renewals for calendar year 2010 on
25 or before October 1, 2009, in accordance with the

26 amendments to this article and on a form prescribed by the
27 commissioner. Beginning January 2, 2010, licensees shall
28 transition to the Nationwide Mortgage Licensing System and
29 Registry according to the terms established by that system.

**§31-17-4. Applications for licenses; requirements; bonds; fees;
renewals; waivers and reductions; per loan fee.**

1 (a) In connection with an application for licensing as a
2 mortgage lender or mortgage broker, the applicant shall, at a
3 minimum, furnish to the Nationwide Mortgage Licensing
4 System and Registry information concerning the applicant's
5 identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of
7 Investigation and any governmental agency or entity
8 authorized to receive such information for a state, national
9 and international criminal history background check; and

10 (2) Personal history and experience in a form prescribed
11 by the Nationwide Mortgage Licensing System and Registry
12 and the commissioner, including the submission of
13 authorization for the Nationwide Mortgage Licensing System
14 and Registry and the commissioner to obtain:

15 (A) An independent credit report obtained from a
16 consumer reporting agency described in Section 603(p) of the
17 Fair Credit Reporting Act; and

18 (B) Information related to any administrative, civil or
19 criminal findings by any governmental jurisdiction.

20 (b) In order to reduce the points of contact which the
21 Federal Bureau of Investigation may have to maintain for
22 purposes of this article, the commissioner may use the
23 Nationwide Mortgage Licensing System and Registry or its
24 designated vendor as a channeling agent for requesting

25 information from and distributing information to the
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the
28 commissioner may have to maintain, for purposes of this
29 article, the commissioner may use the Nationwide Mortgage
30 Licensing System and Registry as a channeling agent for
31 requesting and distributing information to and from any
32 source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall
34 each year be submitted under oath, in the form prescribed by
35 the commissioner, and shall contain the full name and
36 address of the applicant and, if the applicant is a partnership,
37 limited liability company or association, of every member
38 thereof, and, if a corporation, of each officer, director and
39 owner of ten percent or more of the capital stock thereof and
40 further information as the commissioner may reasonably
41 require. Background and credit checks shall be conducted in
42 accordance with this section for any officer, director or
43 owner, directly or indirectly, of ten percent or more of the
44 capital stock of a corporation or any member of a limited
45 liability or partnership with, directly or indirectly, a ten
46 percent or greater ownership interest. Any application shall
47 also disclose the location at which the business of lender or
48 broker is to be conducted.

49 (e) At the time of making application for a lender's
50 license, the applicant therefor shall:

51 (1) If a foreign corporation, submit a certificate from the
52 Secretary of State certifying that the applicant is registered
53 with the Secretary of State to transact business in this state;

54 (2) Submit proof that he or she has available for the
55 operation of the business at the location specified in the
56 application net worth of at least \$250,000;

57 (3) File with the commissioner a bond in favor of the
58 state for the benefit of consumers or for a claim by the
59 commissioner for an unpaid civil administrative penalty or an
60 unpaid examination invoice in the amount of \$100,000 for
61 licensees with West Virginia annual loan originations of \$0
62 to \$3 million, \$150,000 for West Virginia annual loan
63 originations greater than \$3 million and up to \$10 million,
64 and \$250,000 for West Virginia annual loan originations over
65 \$10 million in a form and with conditions as the
66 commissioner may prescribe and executed by a surety
67 company authorized to do business in this state: *Provided,*
68 That lender licensees who service West Virginia mortgage
69 loans shall file with the commissioner a bond under the same
70 conditions listed above in the amount of \$200,000;

71 (4) Pay to the commissioner a license fee of \$1,250 plus
72 the actual cost of fingerprint processing and the processing
73 fees assessed by the Nationwide Mortgage Licensing System
74 and Registry. If the commissioner shall determine that an
75 investigation outside this state is required to ascertain facts or
76 information relative to the applicant or information set forth
77 in the application, the applicant may be required to advance
78 sufficient funds to pay the estimated cost of the investigation.
79 An itemized statement of the actual cost of the investigation
80 outside this state shall be furnished to the applicant by the
81 commissioner and the applicant shall pay or shall have
82 returned to him or her, as the case may be, the difference
83 between his or her payment in advance of the estimated cost
84 and the actual cost of the investigation; and

85 (5) Submit a full and complete disclosure of any litigation
86 or unresolved complaint filed by a governmental authority or
87 class action lawsuit on behalf of consumers relating to the
88 operation of the license applicant.

89 (f) At the time of making application for a broker's
90 license, the applicant therefor shall:

- 91 (1) If a foreign corporation, submit a certificate from the
92 Secretary of State certifying that the applicant is registered
93 with the Secretary of State to transact business in this state;
- 94 (2) Submit proof that he or she has available for the
95 operation of the business at the location specified in the
96 application net worth of at least \$10,000;
- 97 (3) File with the commissioner a bond in favor of the
98 state for the benefit of consumers or for a claim by the
99 commissioner for an unpaid civil administrative penalty or an
100 unpaid examination invoice in the amount of \$50,000 for
101 licensees with West Virginia loan originations of \$0 to \$3
102 million, \$75,000 for West Virginia loan originations greater
103 than \$3 million and up to \$10 million, and \$100,000 for West
104 Virginia loan originations over \$10 million in a form and
105 with conditions as the commissioner may prescribe and
106 executed by a surety company authorized to do business in
107 this state: *Provided*, That the bond must be in the amount of
108 \$150,000 before a broker may participate in a table-funded
109 residential mortgage loan;
- 110 (4) Pay to the commissioner a license fee of \$350 plus the
111 actual cost of fingerprint processing and the processing fees
112 assessed by the Nationwide Mortgage Licensing System and
113 Registry; and
- 114 (5) Submit a full and complete disclosure of any litigation
115 or unresolved complaint filed by a governmental authority or
116 class action lawsuit on behalf of consumers relating to the
117 operation of the license applicant.
- 118 (g) The aggregate liability of the surety on any bond
119 given pursuant to the provisions of this section shall in no
120 event exceed the amount of the bond.
- 121 (h) Nonresident lenders and brokers licensed under this
122 article by their acceptance of the license acknowledge that

123 they are subject to the jurisdiction of the courts of West
124 Virginia and the service of process pursuant to section one
125 hundred thirty-seven, article two, chapter forty-six-a of this
126 code and section thirty-three, article three, chapter fifty-six of
127 this code.

128 (i) The commissioner may elect to reduce or waive the
129 application fees, bond amounts and net worth requirements
130 imposed by this section for nonprofit corporations whose
131 residential mortgage lending or brokering activities provide
132 housing primarily to households or persons below the
133 HUD-established median income for their area of residence.

134 (j) Every broker and lender licensee shall pay a fee of \$5
135 for each residential mortgage loan originated, made or
136 brokered in a calendar year. This fee shall be paid annually
137 to the Division of Banking and remitted with the report
138 required pursuant to subsection (b), section eleven of this
139 article for loans made, brokered or originated during the
140 previous calendar year. If a licensee ceases operation, it shall
141 remit any fees due since the last reporting period when it
142 relinquishes its license.

143 (k) If a claim for a consumer restitution is pending on a
144 bond required pursuant to this section when the
145 commissioner makes a claim for a civil administrative
146 penalty or an unpaid examination invoice, the consumer
147 claim shall be resolved before any payments may be made for
148 an unpaid penalty or examination invoice.

§31-17-5. Refusal or issuance of license.

1 (a) Upon an applicant's full compliance with the
2 provisions of section four of this article, the commissioner
3 shall investigate the relevant facts with regard to the
4 applicant and his or her application for a lender's or broker's
5 license, as the case may be. Upon the basis of the application

6 and all other information before him or her, the commissioner
7 shall make and enter an order denying the application and
8 refusing the license sought if the commissioner finds that:

9 (1) The applicant does not have available the net worth
10 required by the provisions of section four of this article, if
11 applicable;

12 (2) The financial responsibility, character, reputation,
13 experience or general fitness of the applicant, including its
14 officers, directors, principals and employees, reasonably
15 warrants the belief that the business will not be operated
16 lawfully and properly in accordance with the provisions of
17 this article; and

18 (3) The applicant has done any act or has failed or
19 refused to perform any duty or obligation for which the
20 license sought could be suspended or revoked were it then
21 issued and outstanding.

22 Otherwise, the commissioner shall issue to the applicant
23 a lender's or broker's license which shall entitle the applicant
24 to engage in the business of lender or broker, as the case may
25 be, during the period, unless sooner suspended or revoked,
26 for which the license is issued.

27 (b) Every application for a lender's or broker's license
28 shall be passed upon and the license issued or refused within
29 sixty days after the applicant therefor has fully complied with
30 the provisions of this article. Under no circumstances
31 whatever may a person or licensee act as a broker and lender
32 in the same transaction. Whenever an application for a
33 lender's or broker's license is denied and the license sought is
34 refused, which refusal has become final, the commissioner
35 shall retain all fees to cover administrative costs of
36 processing the broker or lender application.

§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.

1 (a) A license may not be transferable or assignable. A
2 licensee may not offer a franchise under that license to
3 another person. The commissioner may allow licensees to
4 have branch offices without requiring additional licenses
5 provided the location of all branch offices is registered with
6 the Division of Banking by the licensee. Whenever a
7 licensee changes his or her place of business to a location
8 other than that set forth in his or her license and branch
9 registration, he or she shall give written notice thirty days
10 prior to such change to the commissioner and pay a
11 relocation fee of \$100 for each office relocation.

12 (b) Every lender's or broker's license shall, unless sooner
13 suspended or revoked, expire on December 31 of each year
14 and any license may be renewed each year in the same
15 manner, for the same license fee or fees specified above and
16 upon the same basis as an original license is issued in
17 accordance with the provisions of this article. All
18 applications for the renewal of licenses shall be filed with the
19 Nationwide Mortgage Licensing System and Registry
20 according to the renewal schedule published for the system,
21 but no later than sixty days before the expiration thereof.

22 (c) Any change in control of a licensee whereby equitable
23 interest of fifty percent or more is transferred to an outside
24 party, a new application must be submitted according to this
25 article.

§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
11 commissioner is hereby authorized to prescribe by rules the
12 minimum information to be shown in the books, accounts and
13 records.

14 (b) Each licensee shall file with the commissioner a
15 report under oath or affirmation concerning his or her
16 business and operations in this state for the preceding license
17 year upon participation in the Nationwide Mortgage
18 Licensing System and Registry and on a date established by
19 the Nationwide Mortgage Licensing System and Registry.
20 For license years 2008 and 2009, all licensees shall submit an
21 annual report to the Division of Banking on or before March
22 15, 2009, and March 15, 2010, respectively, on a form
23 prescribed by the commissioner.

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

35 (d) The commissioner shall publish annually an aggregate
36 analysis of the information furnished in accordance with the
37 provisions of subsection (b) or (c) of this section, but the

38 individual reports are not public records and may not be open
39 to public inspection.

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

**§31-17-12. Grounds for suspension or revocation of license;
suspension and revocation generally;
reinstatement or new license.**

1 (a) The commissioner may suspend or revoke any broker
2 or lender license issued hereunder if he or she finds that the
3 licensee or any owner, director, officer, member, partner,
4 stockholder, employee or agent of the licensee:

5 (1) Has knowingly violated any provision of this article
6 or any order, decision or rule of the commissioner lawfully
7 made pursuant to the authority of this article;

8 (2) Has knowingly made any material misstatement in the
9 application for the license;

10 (3) Does not have available the net worth required by the
11 provisions of section four of this article, if applicable;

12 (4) Has failed or refused to keep the bond required by this
13 article in full force and effect, if applicable;

14 (5) In the case of a foreign corporation, does not remain
15 qualified to do business in this state;

16 (6) Has committed any fraud or engaged in any dishonest
17 activities with respect to any mortgage loan business in this
18 state or failed to disclose any of the material particulars of
19 any mortgage loan transaction in this state to anyone entitled
20 to the information; or

21 (7) Has otherwise demonstrated bad faith, dishonesty or
22 any other quality indicating that the business of the licensee
23 in this state has not been or will not be conducted honestly or
24 fairly within the purpose of this article. It shall be a
25 demonstration of bad faith and an unfair or deceptive act or
26 practice to engage in a pattern of making loans where the
27 consumer has insufficient sources of income to timely repay
28 the debt and the lender had the primary intent to acquire the
29 property upon default rather than to derive profit from the
30 loan. This section may not limit any right the consumer may
31 have to bring an action for a violation of section one hundred
32 four, article six, chapter forty-six-a of this code in an
33 individual case.

34 The commissioner may also suspend or revoke the
35 license of a licensee if he or she finds the existence of any
36 ground upon which the license could have been refused or
37 any ground which would be cause for refusing a license to
38 the licensee were he or she then applying for the same. The
39 commissioner may also suspend or revoke the license of a
40 licensee pursuant to his or her authority under section
41 thirteen, article two, chapter thirty-one-a of this code.

42 (b) The suspension or revocation of the license of any
43 licensee does not impair or affect the obligation of any
44 preexisting lawful mortgage loan between the licensee and
45 any obligor.

46 (c) The commissioner may reinstate a suspended license,
47 or issue a new license to a licensee whose license has been
48 revoked, if the grounds upon which any license was
49 suspended or revoked have been eliminated or corrected and
50 the commissioner is satisfied that the grounds are not likely
51 to recur.

52 (d) In addition to the authority conferred under this
53 section, the commissioner may impose a fine or penalty not
54 exceeding \$1000 upon any lender or broker required to be

55 licensed under this chapter who the commissioner determines
56 has violated any of the provisions of this chapter. For the
57 purposes of this section, each separate violation is subject to
58 the fine or penalty herein prescribed and each day after the
59 date of notification, excluding Sundays and holidays, that an
60 unlicensed person engages in the business or holds himself or
61 herself out to the general public as a mortgage lender or
62 broker shall constitute a separate violation.

§31-17-13. Notice of refusal, or suspension or revocation, of license; relinquishing license.

1 (a) Whenever the commissioner refuses to issue a license,
2 or suspends or revokes a license, he shall make and enter an
3 order to that effect and shall cause a copy of the order to be
4 served in person or by certified mail, return receipt requested,
5 or in any other manner in which process in a civil action in
6 this state may be served, on the applicant or licensee, as the
7 case may be. The commissioner shall also submit a copy of
8 any such order for publication by the Nationwide Mortgage
9 Licensing System and Registry.

10 (b) It shall be the duty of the licensee to comply with any
11 such order: (i) Immediately if the license was suspended
12 either following a hearing or for failure to keep the bond
13 required by the provisions of section four of this article in full
14 force and effect; or otherwise (ii) following expiration of the
15 period provided in section fourteen of this article in which
16 such licensee, if not previously provided the opportunity to
17 a hearing on the matter, may demand a hearing before the
18 commissioner without such demand having been timely
19 made.

§31-17-20. Effective date.

1 The amendments to this article enacted during the regular
2 session of the Legislature in the year 2009 shall be effective
3 as of July 1, 2009.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

- §31-17A-1. Purpose.
- §31-17A-2. Definitions.
- §31-17A-3. License and registration required.
- §31-17A-4. State license application and issuance.
- §31-17A-5. Issuance of license.
- §31-17A-6. Prelicensing and relicensing education of loan originators.
- §31-17A-7. Testing of loan originators.
- §31-17A-8. Standards for license renewal.
- §31-17A-9. Continuing education for mortgage loan originators.
- §31-17A-10. Authority to require license.
- §31-17A-11. Nationwide Mortgage Licensing System and Registry information challenge process.
- §31-17A-13. Surety bond required.
- §31-17A-14. Confidentiality.
- §31-17A-15. Investigation and examination authority.
- §31-17A-16. Prohibited acts and practices.
- §31-17A-17. Report to mortgage licensing system and registry.
- §31-17A-18. Unique identifier shown.
- §31-17A-19. Severability.
- §31-17A-20. Effective date.

§31-17A-1. Purpose.

1 The activities of mortgage loan originators and the
2 origination or offering of financing for residential real
3 property have a direct, valuable and immediate impact upon
4 West Virginia's consumers, West Virginia's economy, the
5 neighborhoods and communities of West Virginia and the
6 housing and real estate industry. The Legislature finds that
7 accessibility to mortgage credit is vital to the state's citizens.
8 The Legislature also finds that it is essential for the protection
9 of the citizens of West Virginia and the stability of West
10 Virginia's economy that reasonable standards for licensing
11 and regulation of the business practices of mortgage loan
12 originators be imposed. The Legislature further finds that the
13 obligations of mortgage loan originators to consumers in
14 connection with originating or making residential mortgage
15 loans are such as to warrant the regulation of the mortgage
16 lending process. The purpose of this article is to protect
17 consumers seeking mortgage loans and to ensure that the

18 mortgage lending industry is operating without unfair,
19 deceptive and fraudulent practices on the part of mortgage
20 loan originators.

§31-17A-2. Definitions.

1 For purposes of this article, the following definitions
2 shall apply:

3 (1) “Depository institution” has the same meaning as in
4 section three of the Federal Deposit Insurance Act and
5 includes any federally insured credit union.

6 (2) “Federal banking agencies” means the Board of
7 Governors of the Federal Reserve System, the Comptroller of
8 the Currency, the Director of the Office of Thrift
9 Supervision, the National Credit Union Administration and
10 the Federal Deposit Insurance Corporation.

11 (3) “Immediate family member” means a spouse, child,
12 sibling, parent, grandparent or grandchild. This includes
13 stepparents, stepchildren, stepsiblings and adoptive
14 relationships.

15 (4) “Individual” means a natural person.

16 (5) “Loan processor or underwriter” means an individual
17 who performs clerical or support duties as an employee at the
18 direction of and subject to the supervision and instruction of
19 a person licensed or exempt from licensing under article
20 seventeen of this chapter.

21 (A) For purposes of this subsection, “clerical or support
22 duties” may include subsequent to the receipt of an
23 application: (i) The receipt, collection, distribution and
24 analysis of information common for the processing or
25 underwriting of a residential mortgage loan; and (ii)

26 communicating with a consumer to obtain the information
27 necessary for the processing or underwriting of a loan, to the
28 extent that such communication does not include offering or
29 negotiating loan rates or terms, or counseling consumers
30 about residential mortgage loan rates or terms.

31 (B) An individual engaging solely in loan processor or
32 underwriter activities shall not represent to the public,
33 through advertising or other means of communicating or
34 providing information, including the use of business cards,
35 stationery, brochures, signs, rate lists or other promotional
36 items, that such individual can or will perform any of the
37 activities of a mortgage loan originator.

38 (6) "Mortgage loan originator" means an individual who
39 for compensation or gain or in the expectation of
40 compensation or gain takes a residential mortgage loan
41 application or offers or negotiates terms of a residential
42 mortgage loan and is sponsored by a mortgage lender, broker
43 or regulated consumer lender licensed by the Division of
44 Banking.

45 (A) "Mortgage loan originator" does not include:

46 (i) An individual engaged solely as a loan processor or
47 underwriter except as otherwise provided in section three of
48 this article;

49 (ii) A person or entity that only performs real estate
50 brokerage activities and is licensed or registered in
51 accordance with West Virginia law, unless the person or
52 entity is compensated by a lender, a mortgage broker or other
53 mortgage loan originator or by any agent of such lender,
54 mortgage broker or other mortgage loan originator;

55 (iii) A person or entity solely involved in extensions of
56 credit relating to timeshare plans, as that term is defined in
57 Section 101(53D) of Title 11, United States Code; and

58 (iv) A manufactured or modular home retailer employee
59 who performs purely administrative or clerical tasks and who
60 receives only the customary salary or commission from the
61 employer in connection with the sales transaction.

62 (7) “Real estate brokerage activity” means any activity
63 that involves offering or providing real estate brokerage
64 services to the public, including:

65 (A) Acting as a real estate agent or real estate broker for
66 a buyer, seller, lessor or lessee of real property;

67 (B) Bringing together parties interested in the sale,
68 purchase, lease, rental or exchange of real property;

69 (C) Negotiating, on behalf of any party, any portion of a
70 contract relating to the sale, purchase, lease, rental or
71 exchange of real property other than in connection with
72 providing financing with respect to any such transaction;

73 (D) Engaging in any activity for which a person engaged
74 in the activity is required to be registered or licensed as a real
75 estate agent or real estate broker under any applicable law;
76 and

77 (E) Offering to engage in any activity, or act in any
78 capacity, described in subsection (1), (2), (3) or (4) of this
79 section.

80 (8) “Nationwide Mortgage Licensing System and
81 Registry” means a mortgage licensing system developed and
82 maintained by the Conference of State Bank Supervisors and
83 the American Association of Residential Mortgage
84 Regulators for the licensing and registration of mortgage
85 brokers and lenders licensed pursuant to article seventeen of
86 this chapter and mortgage loan originators licensed pursuant
87 to this article.

88 (9) “Nontraditional mortgage product” means any
89 mortgage product other than a fixed rate mortgage.

90 (10) “Person” means a natural person, corporation,
91 company, limited liability company, partnership or
92 association.

93 (11) “Registered mortgage loan originator” means any
94 individual who:

95 (A) Meets the definition of mortgage loan originator and
96 is an employee of:

97 (i) A depository institution;

98 (ii) A subsidiary that is:

99 (1) Owned and controlled by a depository institution; and

100 (2) Regulated by a federal banking agency; or

101 (iii) An institution regulated by the Farm Credit
102 Administration; and

103 (B) Is registered with, and maintains a unique identifier
104 through, the Nationwide Mortgage Licensing System and
105 Registry.

106 (12) “Residential mortgage loan” means any loan
107 primarily for personal, family or household use that is
108 secured by a mortgage, deed of trust or other equivalent
109 consensual security interest on a dwelling as defined in
110 Section 103(v) of the Truth in Lending Act or residential real
111 estate upon which is constructed or intended to be
112 constructed a dwelling.

113 (13) “Residential real estate” means any real property
114 located in West Virginia, upon which is constructed or
115 intended to be constructed a dwelling.

116 (14) “Unique identifier” means a number or other
117 identifier assigned by protocols established by the
118 Nationwide Mortgage Licensing System and Registry.

§31-17A-3. License and registration required.

1 (a) An individual, unless specifically exempted under
2 subsection (c) of this section, shall not engage in the business
3 of a mortgage loan originator with respect to any dwelling
4 located in this state without first obtaining and maintaining
5 annually a license under this article. Each licensed mortgage
6 loan originator must register with and maintain a valid unique
7 identifier issued by the Nationwide Mortgage Licensing
8 System and Registry.

9 (b) To facilitate an orderly transition to licensing and
10 minimize disruption in the mortgage marketplace, the
11 effective date for subsection (a) of this section:

12 (1) For all individuals other than individuals described in
13 subdivision (2) of this subsection shall be January 31, 2010;
14 and

15 (2) For all individuals licensed as mortgage loan
16 originators before July 1, 2009, shall be January 1, 2011.

17 (c) The following are exempt from this article:

18 (1) Registered Mortgage Loan Originators, when acting
19 for an entity described in subdivision (11), section two of this
20 article;

21 (2) Any individual who offers or negotiates terms of a
22 residential mortgage loan with or on behalf of an immediate
23 family member of the individual;

24 (3) Any individual who offers or negotiates terms of a
25 residential mortgage loan secured by a dwelling that served
26 as the individual's residence; and

27 (4) A licensed attorney who negotiates the terms of a
28 residential mortgage loan on behalf of a client as an ancillary
29 matter to the attorney's representation of the client, unless the
30 attorney is compensated by a lender, a mortgage broker or
31 other mortgage loan originator or by any agent of such
32 lender, mortgage broker or other mortgage loan originator.

33 (d) A loan processor or underwriter who is an
34 independent contractor may not engage in the activities of a
35 loan processor or underwriter unless such independent
36 contractor loan processor or underwriter obtains and
37 maintains a license under subsection (a) of this section. Each
38 independent contractor loan processor or underwriter licensed
39 as a mortgage loan originator must have and maintain a valid
40 unique identifier issued by the Nationwide Mortgage
41 Licensing System and Registry.

42 (e) To implement an orderly and efficient licensing and
43 transition process, the commissioner may establish interim
44 policies and procedures for licensing and acceptance of
45 applications as follows:

46 (1) Mortgage loan originators employed by or under
47 exclusive contract to licensed mortgage brokers after the
48 effective date of this article shall submit an application on a
49 form prescribed by the commissioner, including all necessary
50 information, fees and authorizations for investigation as the
51 commissioner may determine necessary, and must meet the
52 standards for licensure set forth in this article. Any license

53 issued under this subdivision and any license current as of the
54 effective date of this article will expire on December 31,
55 2010: *Provided*, That notwithstanding the licensing
56 requirements under this section, an individual acting
57 exclusively as an employee of a servicer who is engaging in
58 loss mitigation efforts with respect to an existing mortgage
59 transaction serviced by his or her employer is not required to
60 meet the education, testing, background and licensing
61 standards of this article until July 1, 2011, to the extent that
62 this extension of time is not denied by guideline, rule,
63 regulation or interpretive letter issued by the United States
64 Department of Housing and Urban Development. In the
65 event this extension of time is denied, such individuals shall
66 apply for a license under this section within ninety days of
67 the denial; and

68 (2) Mortgage loan originators employed by or under
69 exclusive contract to licensed mortgage lenders and regulated
70 consumer lenders shall comply with this article and submit
71 all applications through the Nationwide Mortgage Licensing
72 System and Registry on or before January 31, 2010.

§31-17A-4. State license application and issuance.

1 (a) Applicants for a license must apply in a form as
2 prescribed by the commissioner. Each form shall contain
3 content as set forth by instruction or procedure of the
4 commissioner and may be changed or updated as necessary
5 by the commissioner in order to carry out the purposes of this
6 article. The application must be submitted with an
7 application fee of \$50 plus the actual cost of fingerprint
8 processing, together with any processing fee assessed by the
9 Nationwide Mortgage Licensing System and Registry.

10 (b) The commissioner is authorized to establish
11 relationships or contracts with the Nationwide Mortgage
12 Licensing System and Registry or other entities designated by

13 the Nationwide Mortgage Licensing System and Registry to
14 collect and maintain records and process transaction fees or
15 other fees related to licensees or other persons subject to this
16 article.

17 (c) In connection with an application for licensing as a
18 mortgage loan originator, the applicant shall, at a minimum,
19 furnish to the Nationwide Mortgage Licensing System and
20 Registry information concerning the applicant's identity,
21 including:

22 (1) Fingerprints for submission to the Federal Bureau of
23 Investigation and any governmental agency or entity
24 authorized to receive such information for a state, national
25 and international criminal history background check; and

26 (2) Personal history and experience in a form prescribed
27 by the Nationwide Mortgage Licensing System and Registry
28 and the commissioner, including the submission of
29 authorization for the Nationwide Mortgage Licensing System
30 and Registry and the commissioner to obtain:

31 (A) An independent credit report obtained from a
32 consumer reporting agency described in Section 603(p) of the
33 Fair Credit Reporting Act; and

34 (B) Information related to any administrative, civil or
35 criminal findings by any governmental jurisdiction.

36 (d) To reduce the points of contact which the Federal
37 Bureau of Investigation may have to maintain, the
38 commissioner may use the Nationwide Mortgage Licensing
39 System and Registry or its designated vendor as a channeling
40 agent for requesting information from and distributing
41 information to the Department of Justice or any governmental
42 agency.

43 (e) To reduce the points of contact which the
44 commissioner may have to maintain, the commissioner may
45 use the Nationwide Mortgage Licensing System and Registry
46 as a channeling agent for requesting and distributing
47 information to and from any source so directed by the
48 commissioner.

49 (f) Nonresident mortgage loan originators licensed under
50 this article by their acceptance of the license acknowledge
51 that they are subject to the jurisdiction of the courts of West
52 Virginia and the service of process pursuant to section one
53 hundred thirty-seven, article two, chapter forty-six-a of this
54 code and section thirty-three, article three, chapter fifty-six of
55 this code.

§31-17A-5. Issuance of license.

1 The commissioner may not issue a mortgage loan
2 originator license unless the commissioner makes at a
3 minimum the following findings:

4 (a) The applicant has never had a mortgage loan
5 originator license revoked in any governmental jurisdiction,
6 except that a subsequent formal vacation of the revocation
7 may not be considered a revocation.

8 (b) The applicant has not been convicted of, or pled
9 guilty or nolo contendere to, a felony in a domestic, foreign
10 or military court: *Provided*, That any pardon of a conviction
11 may not be a conviction for purposes of this subsection:

12 (1) During the seven-year period preceding the date of
13 the application for licensing and registration; or

14 (2) At any time preceding the date of application if the
15 felony involved an act of fraud, dishonesty or a breach of
16 trust, or money laundering.

17 (c) The applicant has demonstrated financial
18 responsibility, character and general fitness such as to
19 command the confidence of the community and to warrant a
20 determination that the mortgage loan originator will operate
21 honestly, fairly and efficiently within the purposes of this
22 article.

23 For purposes of this subsection a person has shown that
24 he or she is not financially responsible when he or she has
25 shown a disregard in the management of his or her own
26 financial condition. The commissioner shall not use a credit
27 score as the sole basis for license denial. A determination
28 that an individual has not shown financial responsibility may
29 include, but not be limited to:

30 (1) Current outstanding judgments, except judgments
31 solely as a result of medical expenses;

32 (2) Current outstanding tax liens or other government
33 liens and filings;

34 (3) Foreclosures within the past three years; and

35 (4) A pattern of seriously delinquent accounts within the
36 past three years.

37 (d) The applicant has completed the prelicensing
38 education requirement described in section six of this article.

39 (e) The applicant has passed a written test that meets the
40 test requirement described in section seven of this article.

41 (f) The applicant has met the surety bond requirement as
42 required pursuant to section thirteen of this article.

**§31-17A-6. Prelicensing and relicensing education of loan
originators.**

1 (a) To meet the prelicensing education requirement, a
2 person must complete at least twenty hours of education
3 approved in accordance with subsection (b) of this section,
4 which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction
7 on fraud, consumer protection and fair lending issues;

8 (3) Two hours of training related to lending standards for
9 the nontraditional mortgage product marketplace; and

10 (4) Two hours of training related to West Virginia
11 mortgage and consumer laws or issues.

12 (b) For purposes of subsection (a) of this section,
13 prelicensing education courses shall be reviewed and
14 approved by the Nationwide Mortgage Licensing System and
15 Registry based upon reasonable standards. Review and
16 approval of a prelicensing education course shall include
17 review and approval of the course provider.

18 (c) Nothing in this section precludes any prelicensing
19 education course, as approved by the Nationwide Mortgage
20 Licensing System and Registry, that is provided by the
21 employer of the applicant or an entity which is affiliated with
22 the applicant by an agency contract, or any subsidiary or
23 affiliate of such employer or entity.

24 (d) Prelicensing education may be offered either in a
25 classroom, online or by any other means approved by the
26 Nationwide Mortgage Licensing System and Registry.

27 (e) The prelicensing education requirements approved by
28 the Nationwide Mortgage Licensing System and Registry in
29 subdivisions (1), (2), (3) and (4), subsection (a) of this

30 section for any state shall be accepted as credit towards
31 completion of prelicensing education requirements in West
32 Virginia.

33 (f) A person previously licensed under this article
34 subsequent to July 1, 2009, applying to be licensed again
35 must prove that they have completed all of the continuing
36 education requirements for the year in which the license was
37 last held.

§31-17A-7. Testing of loan originators.

1 (a) To meet the written test requirement, an individual
2 must pass, in accordance with the standards established under
3 this subsection, a qualified written test developed by the
4 Nationwide Mortgage Licensing System and Registry and
5 administered by a test provider approved by the Nationwide
6 Mortgage Licensing System and Registry based upon
7 reasonable standards.

8 (b) A written test may not be treated as a qualified written
9 test for purposes of subsection (a) of this section unless the
10 test adequately measures the applicant's knowledge and
11 comprehension in appropriate subject areas, including:

12 (1) Ethics;

13 (2) Federal law and regulation pertaining to mortgage
14 origination;

15 (3) State law and regulation pertaining to mortgage
16 origination; and

17 (4) Federal and state law and regulation, including
18 instruction on fraud, consumer protection, the nontraditional
19 mortgage marketplace and fair lending issues.

20 (c) Nothing in this section prohibits a test provider
21 approved by the Nationwide Mortgage Licensing System and
22 Registry from providing a test at the location of the employer
23 of the applicant or the location of any subsidiary or affiliate
24 of the employer of the applicant or the location of any entity
25 with which the applicant holds an exclusive arrangement to
26 conduct the business of a mortgage loan originator.

27 (d) An individual may not be considered to have passed
28 a qualified written test unless the individual achieves a test
29 score of not less than seventy-five percent correct answers to
30 questions.

31 (e) An individual may retake a test three consecutive
32 times with each consecutive taking occurring at least thirty
33 days after the preceding test. After failing three consecutive
34 tests, an individual must wait at least six months before
35 taking the test again.

36 (f) A licensed mortgage loan originator who fails to
37 maintain a valid license for a period of five consecutive years
38 or longer must retake the test, not taking into account any
39 time during which the individual is a registered mortgage
40 loan originator.

§31-17A-8. Standards for license renewal.

1 (a) The minimum standards for license renewal for
2 mortgage loan originators shall include the following:

3 (1) The mortgage loan originator continues to meet the
4 minimum standards for license issuance under section five of
5 this article;

6 (2) The mortgage loan originator has satisfied the annual
7 continuing education requirements described in section nine
8 of this article; and

9 (3) The mortgage loan originator has paid all required
10 fees for renewal of the license.

11 (b) The license of a mortgage loan originator failing to
12 satisfy the minimum standards for license renewal shall
13 expire. The commissioner may adopt procedures for the
14 reinstatement of expired licenses consistent with the
15 standards established by the Nationwide Mortgage Licensing
16 System and Registry.

§31-17A-9. Continuing education for mortgage loan originators.

1 (a) To meet the annual continuing education
2 requirements, a licensed mortgage loan originator must
3 complete at least eight hours of education approved in
4 accordance with subsection (b) of this section, which shall
5 include at least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards for
10 the nontraditional mortgage product marketplace; and

11 (4) One hour of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,
13 continuing education courses shall be reviewed and approved
14 by the Nationwide Mortgage Licensing System and Registry
15 based upon reasonable standards. Review and approval of a
16 continuing education course shall include review and
17 approval of the course provider.

18 (c) Nothing in this section precludes any education
19 course, as approved by the Nationwide Mortgage Licensing

20 System and Registry, that is provided by the employer of the
21 mortgage loan originator or an entity which is affiliated with
22 the mortgage loan originator by an agency contract, or any
23 subsidiary or affiliate of the employer or entity.

24 (d) Continuing education may be offered either in a
25 classroom, online or by any other means approved by the
26 Nationwide Mortgage Licensing System and Registry.

27 (e) A licensed mortgage loan originator:

28 (1) Except for subsection (b), section eight of this article
29 and subsection (i) of this section, may only receive credit for
30 a continuing education course in the year in which the course
31 is taken; and

32 (2) May not take the same approved course in the same
33 or successive years to meet the annual requirements for
34 continuing education.

35 (f) A licensed mortgage loan originator who is an
36 approved instructor of an approved continuing education
37 course may receive credit for the licensed mortgage loan
38 originator's own annual continuing education requirement at
39 the rate of two hours credit for every one hour taught.

40 (g) A person having successfully completed the education
41 requirements approved by the Nationwide Mortgage
42 Licensing System and Registry in subdivisions (1), (2) and
43 (3), subsection (a) of this section for any state shall be
44 accepted as credit towards completion of continuing
45 education requirements in West Virginia.

46 (h) A licensed mortgage loan originator who
47 subsequently becomes unlicensed must complete the
48 continuing education requirements for the last year in which

49 the license was held prior to issuance of a new or renewed
50 license.

51 (i) A person meeting the renewal requirements of
52 subsections (a)(1) and (3) of section eight may make up any
53 deficiency in continuing education as established by the
54 commissioner.

§31-17A-10. Authority to require license.

1 In addition to any other duties imposed upon the
2 commissioner by law, the commissioner shall require
3 mortgage loan originators to be licensed and registered
4 through the Nationwide Mortgage Licensing System and
5 Registry. The commissioner is authorized to participate in
6 the Nationwide Mortgage Licensing System and Registry to
7 carry out this requirement. The commissioner may establish
8 requirements as necessary, including, but not limited to:

9 (1) Background checks for:

10 (A) Criminal history through fingerprint or other
11 databases;

12 (B) Civil or administrative records;

13 (C) Credit history; or

14 (D) Any other information as deemed necessary by the
15 Nationwide Mortgage Licensing System and Registry.

16 (2) The payment of fees to apply for or renew licenses
17 through the Nationwide Mortgage Licensing System and
18 Registry;

19 (3) The setting or resetting as necessary of renewal or
20 reporting dates;

21 (4) Requirements for amending or surrendering a license;
22 and

23 (5) Any other activities the commissioner deems
24 necessary for participation in the Nationwide Mortgage
25 Licensing System and Registry.

**§31-17A-11. Nationwide Mortgage Licensing System and
Registry information challenge process.**

1 The commissioner shall establish a process in accordance
2 with the Administrative Procedures Act, provided in article
3 five, chapter twenty-nine-a of this code, whereby mortgage
4 loan originators may challenge information entered into the
5 Nationwide Mortgage Licensing System and Registry by the
6 commissioner.

§31-17A-12. Enforcement authorities, violations and penalties.

1 (a) To ensure the effective supervision and enforcement
2 of this article, the commissioner may:

3 (1) Deny, suspend, revoke, condition or decline to renew
4 a license issued under this article for a violation of this article
5 or rules or order or directive entered under this article;

6 (2) Deny, suspend, revoke, condition or decline to renew
7 a license if an applicant or licensee fails at any time to meet
8 the requirements of section five or eight of this article, or
9 withholds information or makes a material misstatement in an
10 application for a license or renewal of a license;

11 (3) Order restitution against persons subject to this article
12 for violations of this article;

13 (4) Impose civil administrative penalties on persons
14 subject to this article pursuant to subsections (b), (c) and (d)
15 of this section; and

16 (5) Issue orders or directives under this article as follows:

17 (A) Order or direct persons subject to this article to cease
18 and desist from conducting business, including immediate
19 temporary orders to cease and desist;

20 (B) Order or direct persons subject to this article to cease
21 any harmful activities or violations of this article, including
22 immediate temporary orders to cease and desist;

23 (C) Enter immediate temporary orders to cease business
24 under a license or interim license issued pursuant to the
25 authority granted under section three if the commissioner
26 determines that such license was erroneously issued or the
27 licensee is currently in violation of this article; and

28 (D) Order or direct such other affirmative action as the
29 commissioner deems necessary.

30 (b) The commissioner may impose a civil administrative
31 penalty on a mortgage loan originator or person subject to
32 this article if the commissioner finds, on the record after
33 notice and opportunity for hearing, that such mortgage loan
34 originator or person subject to this article has violated or
35 failed to comply with any requirement of this article or any
36 rule prescribed by the commissioner under this article or
37 order issued under authority of this article.

38 (c) The maximum amount of penalty for each act or
39 omission described in subsection (b) of this section shall be
40 \$25,000.

41 (d) Each violation or failure to comply with any directive
42 or order of the commissioner is a separate and distinct
43 violation or failure.

§31-17A-13. Surety bond required.

1 (a) Each mortgage loan originator must be covered by a
2 surety bond in accordance with this section in favor of the
3 state for the benefit of consumers or for a claim by the
4 commissioner for an unpaid civil administrative penalty or
5 unpaid examination invoice. If the mortgage loan originator
6 is an employee or exclusive agent of a person subject to this
7 article, article seventeen of this chapter, or article four,
8 chapter forty-six-a of this code, the surety bond of those other
9 such persons may be used in lieu of the mortgage loan
10 originator's individual surety bond requirement.

11 (1) The surety bond must provide coverage for each
12 mortgage loan originator in an amount as prescribed in
13 subsection (b) of this section.

14 (2) The surety bond shall be in a form as prescribed by
15 the commissioner.

16 (3) The commissioner may promulgate rules with respect
17 to the requirements for such surety bonds as are necessary to
18 accomplish the purposes of this article.

19 (b) The penal sum of the surety bond shall be maintained
20 in an amount as required by article seventeen of this chapter
21 for licensed mortgage lenders and brokers or article four,
22 chapter forty-six-a of this code for regulated consumer
23 lenders.

24 (c) When an action is commenced on a licensee's bond or
25 any bond covering the activities of a licensee under this

26 article, the commissioner may require the filing of a new
27 bond.

28 (d) Immediately upon recovery upon any action on a
29 bond covering any licensee under this article, a new bond
30 shall be filed.

§31-17A-14. Confidentiality.

1 (a) Except as otherwise provided in Public Law 110-289,
2 Section 1512, the requirements under any federal law or any
3 provision of this code regarding the privacy or confidentiality
4 of any information or material provided to the Nationwide
5 Mortgage Licensing System and Registry, and any privilege
6 arising under federal or state law, including the rules of any
7 federal or state court, with respect to the information or
8 material, shall continue to apply to the information or
9 material after the information or material has been disclosed
10 to the Nationwide Mortgage Licensing System and Registry.
11 This information and material may be shared with all state
12 and federal regulatory officials with mortgage industry
13 oversight authority without the loss of privilege or the loss of
14 confidentiality protections provided by federal law or any
15 provision of this code.

16 (b) For these purposes, the commissioner is authorized to
17 enter agreements or sharing arrangements with other
18 governmental agencies, the Conference of State Bank
19 Supervisors, the American Association of Residential
20 Mortgage Regulators or other associations representing
21 governmental agencies as established by rule or order of the
22 commissioner.

23 (c) Information or material that is subject to a privilege or
24 confidentiality under subsection (a) of this section may not be
25 subject to:

26 (1) Disclosure under any federal or state law governing
27 the disclosure to the public of information held by an officer
28 or an agency of the federal government or the respective
29 state; or

30 (2) Subpoena or discovery, or admission into evidence,
31 in any private civil action or administrative process, unless
32 with respect to any privilege held by the Nationwide
33 Mortgage Licensing System and Registry with respect to the
34 information or material, the person to whom the information
35 or material pertains waives, in whole or in part, in the
36 discretion of that person, the privilege.

37 (d) Any provision of this code relating to the disclosure
38 of confidential supervisory information or any information or
39 material described in subsection (a) of this section that is
40 inconsistent with said subsection shall be superseded by the
41 requirements of this section.

42 (e) This section does not apply with respect to the
43 information or material relating to the employment history of,
44 and publicly adjudicated disciplinary and enforcement
45 actions against, mortgage loan originators that is included in
46 the Nationwide Mortgage Licensing System and Registry for
47 access by the public.

§31-17A-15. Investigation and examination authority.

1 (a) For purposes of initial licensing, license renewal,
2 license suspension, license conditioning, license revocation
3 or termination, or general or specific inquiry or investigation
4 to determine compliance with this article, the commissioner
5 may access, receive and use any books, accounts, records,
6 files, documents, information or evidence including, but not
7 limited to:

8 (1) Criminal, civil and administrative history information,
9 including nonconviction data;

10 (2) Personal history and experience information including
11 independent credit reports obtained from a consumer
12 reporting agency described in Section 603(p) of the Fair
13 Credit Reporting Act; and

14 (3) Any other documents, information or evidence the
15 commissioner deems relevant to the inquiry or investigation
16 regardless of the location, possession, control or custody of
17 such documents, information or evidence.

18 (b) For the purposes of investigating violations or
19 complaints arising under this article, or for the purposes of
20 examination, the commissioner may review, investigate or
21 examine any licensee, individual or person subject to this
22 article and his or her employer or sponsoring company as
23 often as necessary. The commissioner may direct, subpoena
24 or order the attendance of and examine under oath all persons
25 whose testimony may be required about the loans or the
26 business or subject matter of any such examination or
27 investigation, and may direct, subpoena or order such person
28 to produce books, accounts, records, files and any other
29 documents the commissioner deems relevant to the inquiry.

30 (c) Each licensee, individual or person subject to this
31 article, including his or her employer or sponsoring company,
32 must make available to the commissioner upon request the
33 books and records relating to the operations of the licensee,
34 individual or person subject to this article. The commissioner
35 shall have access to the books and records and interview the
36 officers, principals, mortgage loan originators, employees,
37 independent contractors, agents and customers of the
38 licensee, individual or person subject to this article
39 concerning their business.

40 (d) Each licensee, individual or person subject to this
41 article, including his or her employer or sponsoring company,
42 shall make or compile reports or prepare other information as
43 directed by the commissioner in order to carry out the
44 purposes of this section, including, but not limited to:

45 (1) Accounting compilations;

46 (2) Information lists and data concerning loan
47 transactions in a format prescribed by the commissioner; or

48 (3) Such other information considered necessary to carry
49 out the purposes of this section.

50 (e) In making any examination or investigation
51 authorized by this article, the commissioner may control
52 access to any documents and records of the licensee or
53 person under examination or investigation. The
54 commissioner may take possession of the documents and
55 records or place a person in exclusive charge of the
56 documents and records in the place where they are usually
57 kept. During the period of control, an individual or person
58 may not remove or attempt to remove any of the documents
59 and records except pursuant to a court order or with the
60 consent of the commissioner. Unless the commissioner has
61 reasonable grounds to believe the documents or records of
62 the licensee have been, or are at risk of being, altered or
63 destroyed for purposes of concealing a violation of this
64 article, the licensee or owner of the documents and records
65 shall have access to the documents or records as necessary to
66 conduct its ordinary business affairs.

67 (f) In order to carry out the purposes of this section, the
68 commissioner may:

69 (1) Retain attorneys, accountants or other professionals
70 and specialists as examiners, auditors or investigators to

71 conduct or assist in the conduct of examinations or
72 investigations;

73 (2) Enter into agreements or relationships with other
74 government officials or regulatory associations in order to
75 improve efficiencies and reduce regulatory burden by sharing
76 resources, standardized or uniform methods or procedures
77 and documents, records, information or evidence obtained
78 under this section;

79 (3) Use, hire, contract or employ public or privately
80 available analytical systems, methods or software to examine
81 or investigate the licensee, individual or person subject to this
82 article;

83 (4) Accept and rely on examination or investigation
84 reports made by other government officials, within or without
85 this state; or

86 (5) Accept audit reports made by an independent certified
87 public accountant for the licensee, individual or person
88 subject to this article in the course of that part of the
89 examination covering the same general subject matter as the
90 audit and may incorporate the audit report in the report of the
91 examination, report of investigation or other writing of the
92 commissioner.

93 (g) The authority of this section shall remain in effect
94 whether a licensee, individual or person subject to this article
95 acts or claims to act under any licensing or registration law of
96 this state or claims to act without that authority.

97 (h) A licensee, individual or person subject to
98 investigation or examination under this section may not
99 knowingly withhold, abstract, remove, mutilate, destroy or
100 secrete any books, records, computer records or other
101 information.

§31-17A-16. Prohibited acts and practices.

1 It is a violation of this article for a person or individual
2 subject to this article to:

3 (1) Directly or indirectly employ any scheme, device or
4 artifice to defraud or mislead borrowers or lenders or to
5 defraud any person.

6 (2) Engage in any unfair or deceptive practice toward any
7 person.

8 (3) Obtain property by fraud or misrepresentation.

9 (4) Solicit or enter into a contract with a borrower that
10 provides in substance that the person or individual subject to
11 this article may earn a fee or commission through “best
12 efforts” to obtain a loan even though no loan is actually
13 obtained for the borrower.

14 (5) Solicit, advertise or enter into a contract for specific
15 interest rates, points, or other financing terms unless the
16 terms are actually available at the time of soliciting,
17 advertising or contracting.

18 (6) Conduct any business covered by this article without
19 holding a valid license as required under this article, or assist
20 or aide and abet any person in the conduct of business under
21 this article without a valid license as required under this
22 article.

23 (7) Fail to make disclosures as required by this article and
24 any other applicable state or federal law including rules and
25 regulations thereunder.

26 (8) Fail to comply with this article or rules promulgated
27 under this article, or fail to comply with any other state or

28 federal law, including the rules and regulations thereunder,
29 applicable to any business authorized or conducted under this
30 article.

31 (9) Make, in any manner, any false or deceptive
32 statement or representation with regard to the rates, points or
33 other financing terms or conditions for a residential mortgage
34 loan, or engage in bait and switch advertising.

35 (10) Negligently make any false statement or knowingly
36 and willfully make any omission of material fact in
37 connection with any information or reports filed with a
38 governmental agency or the Nationwide Mortgage Licensing
39 System and Registry or in connection with any investigation
40 conducted by the commissioner or another governmental
41 agency.

42 (11) Make any payment, threat or promise, directly or
43 indirectly, to any person for the purposes of influencing the
44 independent judgment of the person in connection with a
45 residential mortgage loan, or make any payment threat or
46 promise, directly or indirectly, to any appraiser of a property
47 for the purposes of influencing the independent judgment of
48 the appraiser with respect to the value of the property.

49 (12) Collect, charge, attempt to collect or charge or use
50 or propose any agreement purporting to collect or charge any
51 fee prohibited by this article.

52 (13) Cause or require a borrower to obtain property
53 insurance coverage in an amount that exceeds the
54 replacement cost of the improvements as established by the
55 property insurer.

56 (14) Fail to truthfully account for moneys belonging to a
57 party to a residential mortgage loan transaction.

§31-17A-17. Report to mortgage licensing system and registry.

1 The commissioner is required to report violations of this
2 act, as well as enforcement actions and other relevant
3 information to the Nationwide Mortgage Licensing System
4 and Registry subject to the provisions of section fourteen of
5 this article.

§31-17A-18. Unique identifier shown.

1 The unique identifier of any person originating a
2 residential mortgage loan must be clearly shown on all
3 residential mortgage loan application forms, solicitations or
4 advertisements, including business cards or websites, and any
5 other documents as established by rule or order of the
6 commissioner.

§31-17A-19. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the remainder of the
3 article or the application of the provision to other persons or
4 circumstances is not affected.

§31-17A-20. Effective date.

1 The effective date of this article shall be July 1, 2009.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.****ARTICLE 4. REGULATED CONSUMER LENDERS.****§46A-4-102. License to make regulated consumer loans.**

1 (1) The commissioner shall receive and act on all
2 applications for licenses to make regulated consumer loans

3 under this chapter. Applications shall be under oath, be filed
4 in the manner prescribed by the commissioner and contain
5 the information the commissioner requires to make an
6 evaluation of the financial responsibility, experience,
7 character and fitness of the applicant and the findings
8 required of him or her before he or she may issue a license.
9 At the time of the filing of the application, the sum of \$750
10 shall be paid to the commissioner as an investigation fee.

11 (2) A license may not be issued to a supervised financial
12 organization other than to one primarily engaged in the
13 business of making consumer loans through offices located
14 within this state or to one licensed under the provisions of the
15 West Virginia Mortgage Loan Act as contained in article
16 seventeen, chapter thirty-one of this code, or to any banking
17 institution as defined by the provisions of section two, article
18 one, chapter thirty-one-a of this code. A license will not be
19 granted to any office located outside this state: *Provided,*
20 That the limitation of licensing contained in this subsection
21 does not prevent any supervised financial organization from
22 making regulated consumer loans when the applicable state
23 or federal statute, law, rule or regulation permits. A license
24 may not be issued to any person unless the commissioner,
25 upon investigation, finds that the financial responsibility,
26 experience, character and fitness of the applicant, and of the
27 members thereof (if the applicant is a copartnership or
28 association) and of the officers and directors thereof (if the
29 applicant is a corporation), are such as to command the
30 confidence of the community and to warrant belief that the
31 business will be operated honestly, fairly and efficiently,
32 within the purposes of this chapter, and the applicant has
33 available for the operation of the business at least \$10,000 in
34 capital and has, for each specified location of operation,
35 assets of at least \$2,000.

36 (3) Upon written request, the applicant is entitled to a
37 hearing on the question of his or her qualifications for a
38 license if: (a) The commissioner has notified the applicant in
39 writing that his or her application has been denied; or (b) the
40 commissioner has not issued a license within sixty days after
41 the application for the license was filed. A request for a
42 hearing may not be made more than fifteen days after the
43 commissioner has mailed a writing to the applicant notifying
44 him or her that the application has been denied and stating in
45 substance the commissioner's findings supporting denial of
46 the application.

47 (4) Not more than one place of business shall be
48 maintained under the same license, but the commissioner
49 may issue more than one license to the same licensee upon
50 compliance with all the provisions of this article governing
51 an original issuance of a license for each such new license.
52 Each license shall remain in full force and effect until
53 surrendered, forfeited, suspended or revoked.

54 (5) Upon giving the commissioner at least fifteen days'
55 prior written notice, a licensee may: (a) Change the location
56 of any place of business located within a municipality to any
57 other location within that same municipality; or (b) change
58 the location of any place of business located outside of a
59 municipality to a location no more than five miles from the
60 originally licensed location, but in no case may a licensee
61 move any place of business located outside a municipality to
62 a location within a municipality. A licensee may not move
63 the location of any place of business located within a
64 municipality to any other location outside of that
65 municipality.

66 (6) A licensee may conduct the business of making
67 regulated consumer loans only at or from a place of business

68 for which he or she holds a license and not under any other
69 name than that stated in the license.

70 (7) A license issued under the provisions of this section
71 shall not be transferable or assignable.

72 (8) A licensee must be incorporated under the laws of this
73 state. The licensee may, however, be a subsidiary of an
74 out-of-state company or financial institution.

75 (9) All mortgage loan originators, as defined in article
76 seventeen-a, chapter thirty-one of this code, who are
77 employed by a licensed regulated consumer lender must be
78 licensed and issued a unique identifier by the Nationwide
79 Mortgage Licensing System and Registry pursuant to the
80 requirements provided in article seventeen-a, chapter
81 thirty-one of this code.

82 (10) All regulated consumer lenders must file with the
83 commissioner a bond in favor of the state for the benefit of
84 consumers or for a claim by the commissioner for an unpaid
85 civil administrative penalty or an unpaid examination invoice
86 in the amount of \$100,000 for licensees with West Virginia
87 mortgage loan originations of \$0 to \$3 million, \$150,000 for
88 West Virginia mortgage loan originations greater than \$3
89 million and up to \$10 million, and \$200,000 for West
90 Virginia mortgage loan originations over \$10 million in a
91 form and with conditions as the commissioner may prescribe
92 and executed by a surety company authorized to do business
93 in this state.

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CHAPTER 16

(S.B. 476 - By Senators Minard, Jenkins and Plymale)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §31A-2A-1 of the Code of West Virginia, 1931, as amended, relating to providing that the definition of “financial institution” includes regulated consumer lenders, residential mortgage lenders, brokers and servicers, licensed money services businesses and all entities which are by law under the jurisdiction and supervision of the Commissioner of Banking.

Be it enacted by the Legislature of West Virginia:

That §31A-2A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO
FINANCIAL RECORDS ACT.**

§31A-2A-1. Definitions.

- 1 As used in this article:
- 2 (a) "Customer" means any person or his or her duly
- 3 authorized representative who has transacted business with
- 4 or has used the services of a financial institution or for whom

5 a financial institution has acted as a fiduciary in relation to an
6 account maintained in such person's name;

7 (b) "Financial institution" means a bank, a savings and
8 loan association, a trust company or a credit union chartered
9 pursuant to any state or federal law, a regulated consumer
10 lender licensed under article four, chapter forty-six-a of this
11 code, a mortgage lender broker or servicer licensed under
12 article seventeen, chapter thirty-one of this code, a money
13 service business licensed under article two, chapter thirty-
14 two-a of this code or other institutions which are by law
15 under the jurisdiction and supervision of the Commissioner
16 of Banking;

17 (c) "Financial record" means the original or a copy of any
18 record or document held by a financial institution pertaining
19 to a customer of the financial institution, including any record
20 of a transaction conducted by means of a customer bank
21 communication terminal or other electronic device.
22 "Financial record" also means any information derived from
23 such records or documents;

24 (d) "Investigation" includes, but is not limited to, any
25 inquiry by a state or local law-enforcement officer, sheriff or
26 prosecuting attorney or any inquiry made by a state or local
27 governmental entity for the purpose of determining whether
28 there has been a violation of any law which is punishable by
29 imprisonment or by a fine or other monetary liability;

30 (e) "Person" means an individual, partnership,
31 corporation, limited liability company, association, trust or
32 any other legal entity;

33 (f) "State entity" means any state or local governmental
34 office, officer, department, division, bureau, board or
35 commission, including the Legislature, and any other state or

36 local government agency of West Virginia, its political
37 subdivisions and any agent thereof; and

38 (g) "Subpoena" includes a subpoena duces tecum or any
39 other lawful subpoena to compel testimony or the disclosure
40 or production of documents.



CHAPTER 17

**(Com. Sub. for S.B. 489 - By Senators Minard,
Jenkins and McCabe)**

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

AN ACT to amend and reenact §31A-3-1 of the Code of West Virginia, 1931, as amended, relating to providing reimbursement to members of Board of Banking and Financial Institutions for actual reasonable expenses for attending meetings in accordance with the regulations and policies of the State Purchasing Division.

Be it enacted by the Legislature of West Virginia:

That §31A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL
INSTITUTIONS.**

§31A-3-1. Board continued; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

1 (a) The West Virginia Board of Banking and Financial
2 Institutions is continued and shall consist of six members and
3 the commissioner, who shall be chairman. The six members
4 shall be appointed by the Governor, by and with the advice
5 and consent of the Senate. Three of the members shall be
6 executive officers of state banking institutions. When a
7 vacancy occurs among the executive officers of state banking
8 institutions, the commissioner shall list all state banking
9 institutions according to each bank's asset size and then
10 divide the list into three groups so that there is an equal
11 number of banking institutions in each group. The vacancy
12 shall then be filled from the appropriate group to ensure that
13 each group has a representative on the board. One member
14 shall be an executive officer of a financial institution other
15 than a banking institution. Two members shall represent the
16 public, neither of whom shall be an employee, officer,
17 trustee, director or owner of five percent or more of the
18 outstanding shares of any financial institution. A member
19 shall not hold any other office, employment or position with
20 the United States, any state, county, municipality or other
21 governmental entity or any of their instrumentalities or
22 agencies or with any political party.

23 (b) The members of the board shall be appointed for
24 overlapping terms of six years and in every instance shall
25 serve until their respective successors have been appointed
26 and qualified. Any member appointed for a full six-year term
27 may not be reappointed until two years after the expiration of
28 that term. Any member appointed for less than a full six-year
29 term is eligible for reappointment for a full term. Before
30 entering upon the performance of his or her duties, each
31 member shall take and subscribe to the oath required by

32 section five, article IV of the constitution of this state. The
33 Governor shall, within sixty days following the occurrence of
34 a vacancy on the board, fill the vacancy by appointing a
35 person for the unexpired term of, and meeting the same
36 requirements for membership as, the person vacating the
37 office. The Governor may remove any member in case of
38 incompetency, neglect of duty, gross immorality or
39 malfeasance in office.

40 (c) A majority of the members of the board constitutes a
41 quorum. The board shall meet at least once in each calendar
42 quarter on a date fixed by the board. The commissioner may,
43 upon his or her own motion, or shall upon the written request
44 of three members of the board, call additional meetings of the
45 board upon at least twenty-four hours' notice. A member
46 shall not participate in a proceeding before the board to
47 which a corporation, partnership or unincorporated
48 association is a party and of which he or she is, or was at any
49 time in the preceding twelve months, a director, officer,
50 owner, partner, employee, member or stockholder. A
51 member may disqualify himself or herself from participation
52 in a proceeding for any other cause determined by him or her
53 to be sufficient. Each member shall receive compensation in
54 an amount equal to that authorized by section five, article
55 two-a, chapter four of this code for members of the
56 Legislature for interim duties for each day or portion of a day
57 spent in attending meetings of the board and shall be
58 reimbursed for all reasonable and necessary actual expenses
59 incurred incident to his or her duties as a member of the
60 board as determined in accordance with regulations and
61 policies issued by the travel management unit of the state
62 Purchasing Division.

63 (d) The board shall keep an accurate record of all its
64 proceedings and make certificates thereupon as may be
65 required by law. The commissioner shall make available
66 necessary office space and secretarial and other assistance
67 required by the board.

CHAPTER 18

(S.B. 424 - By Senators Minard and Jenkins)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §31A-4A-1, §31A-4A-2, §31A-4A-3 and §31A-4A-4 of the Code of West Virginia, 1931, as amended, all relating to the conversion of banks and other financial institutions to a West Virginia state-chartered bank; and allowing any bank, thrift or credit union organized under the laws of the United States or any other state to convert into a state-chartered bank.

Be it enacted by the Legislature of West Virginia:

That §31A-4A-1, §31A-4A-2, §31A-4A-3 and §31A-4A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4A. CONVERSION OF OTHER FINANCIAL INSTITUTIONS TO STATE-CHARTERED BANKS.

- §31A-4A-1. Conversion of bank, thrift or credit union into state bank authorized.
- §31A-4A-2. Procedure for conversion of national bank into state bank.
- §31A-4A-3. Effect of conversion into state bank.
- §31A-4A-4. Filing of incorporation or organization.

§31A-4A-1. Conversion of bank, thrift or credit union into state bank authorized.

1 Any bank, thrift or credit union organized under the laws
2 of the United States or any other state may, by a majority
3 vote of its directors or other governing body, convert into a
4 state bank with any name approved by the Board of Banking
5 and Financial Institutions in accordance with this article.

§31A-4A-2. Procedure for conversion of national bank into state bank.

1 (a) A converting institution shall file an application with
2 the division on a form prescribed by the commissioner along
3 with articles of incorporation, bylaws for the proposed state
4 bank and a check for \$2,500. The application shall declare
5 that a majority of the converting institution's board of
6 directors or other governing body has authorized the
7 representatives of the converting institutions to make such
8 application and to convert into a state bank.

9 (b) The application to convert to a West Virginia state
10 bank shall be subject to the same requirements and
11 procedures as established for a newly organizing state bank
12 at sections five, six and seven, article four of this chapter.

13 (c) The examination and investigation by the Board of
14 Banking and Financial Institutions pursuant to section six,
15 article four of this chapter shall include an examination of the
16 safety and soundness of the applicant. The scope of the
17 examination shall be determined at the discretion of the
18 commissioner.

§31A-4A-3. Effect of conversion into state bank.

1 (a) When the Board of Banking and Financial Institutions
2 has provided the converting institution an order that this
3 article has been complied with, the converting institution and
4 all its stockholders or members, officers and employees shall
5 have the same powers and privileges and duties, liabilities

6 and regulations as shall have been prescribed for banks
7 originally organized under the laws of West Virginia.

8 (b) At the time when such conversion into a state bank
9 becomes effective, all the property of the converting
10 institution, including all its rights, title and interest in and to
11 all property of whatsoever kind, whether real, personal or
12 mixed, and things in action, and every right, privilege,
13 interest and asset of any conceivable value or benefit then
14 existing, belonging to it or which would inure to it, shall
15 immediately, by act of law and without any conveyance or
16 transfer and without any further act or deed, become the
17 property of the state bank, which shall have in its own right
18 as fully and to the same extent as if the same were possessed,
19 held and enjoyed by the converting institution.

20 (c) Upon such conversion becoming effective, the state
21 bank shall be considered to be a continuation of the entity
22 and of the identity of the converting institution and all the
23 rights, obligations and relations of the converting institution
24 to or in respect to any person, estate, creditor, depositor,
25 trustee or beneficiary of any trust shall remain unimpaired.
26 The state bank, as of the time the conversion takes place,
27 shall succeed to all such rights, obligations, relations and
28 trusts and the duties and liabilities connected therewith and
29 shall execute and perform each and every trust or relation in
30 the same manner as if the state bank had itself originally
31 assumed the trust or relation, including the obligations and
32 liabilities connected therewith.

33 (d) Any reference to the converting institution in any
34 contract, will or document shall be considered a reference to
35 the state bank unless expressly provided to the contrary in the
36 contract, will or document.

§31A-4A-4. Filing of incorporation or organization.

1 After the Board of Banking and Financial Institutions
2 issues an order granting a state charter to the converting
3 institution, the bank shall file in the office of the Secretary of
4 State a certificate of incorporation in compliance with chapter
5 thirty-one-d of this code or articles of organization in
6 compliance with chapter thirty-one-b of this code as
7 applicable under section five, article four of this chapter.

CHAPTER 19

(S.B. 503 - By Senators Minard, Jenkins and McCabe)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, all relating to branching procedures; and creating a definition for “sound financial condition”.

Be it enacted by the Legislature of West Virginia:

That §31A-8-12 and §31A-8-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

1 (a) A banking institution may not engage in business in
2 this state at any place other than at its principal office in this
3 state, at a branch bank in this state, at a customer bank
4 communication terminal permitted by section twelve-b of this
5 article or at any loan origination office permitted by section
6 twelve-c of this article:

7 (1) Acceptance of a deposit or allowing a withdrawal at
8 the banking offices of any subsidiary affiliate, as defined in
9 section one, article eight-a of this chapter, for credit or debit
10 to the customer's account at any other subsidiary of the same
11 bank holding company is permissible and does not constitute
12 branch banking. In addition, the conduct of activity at branch
13 offices as an agent for any bank subsidiary of the same bank
14 holding company shall be permitted to the same extent
15 allowed by federal law for national banks pursuant to 12 U.
16 S. C. §1828 and does not constitute branch banking; nor does
17 this activity constitute a violation of section forty-two, article
18 four of this chapter. However, a banking institution may not
19 utilize that agency relationship to evade state consumer
20 protection laws, including usury laws, or any other applicable
21 laws of this state or to conduct any activity that is not
22 financially related as that term is defined by section two,
23 article eight-c of this chapter;

24 (2) A banking institution located in a county where there
25 is also a higher educational institution as defined in section

26 two, article one, chapter eighteen-b of this code may establish
27 a temporary business office on the campus of any educational
28 institution located in the county for the limited purposes of
29 opening accounts and accepting deposits for a period not in
30 excess of four business days per semester, trimester or
31 quarter. However, prior to opening any temporary office, a
32 banking institution must first obtain written permission from
33 the institution of higher education. The term "business days",
34 for the purpose of this subsection, means days exclusive of
35 Saturdays, Sundays and legal holidays as defined in section
36 one, article two, chapter two of this code;

37 (3) Any banking institution which on January 1, 1984,
38 was authorized to operate an off-premises walk-in or drive-in
39 facility, pursuant to the law then in effect, may, as of June 7,
40 1984, operate such facility as a branch bank and it is not
41 necessary, for the continued operation of the branch bank, to
42 obtain additional approvals, notwithstanding the provisions
43 of subsection (d) of this section and subdivision (6),
44 subsection (b), section two, article three of this chapter.

45 (b) Except for a bank holding company, it is unlawful for
46 any individual, partnership, society, association, firm,
47 institution, trust, syndicate, public or private corporation, or
48 any other legal entity, or combination of entities acting in
49 concert, to directly or indirectly own, control or hold with
50 power to vote, twenty-five percent or more of the voting
51 shares of each of two or more banks, or to control in any
52 manner the election of a majority of the directors of two or
53 more banks.

54 (c) A banking institution may establish branch banks
55 either by:

56 (1) The construction, lease or acquisition of branch bank
57 facilities within any county of this state; or

58 (2) The purchase of the business and assets and
59 assumption of the liabilities of, or merger or consolidation
60 with, another banking institution.

61 (d) Subject to and in furtherance of the board's authority
62 under the provisions of subdivision (6), subsection (b),
63 section two, article three of this chapter and subsection (g) of
64 this section, the board, by order, may approve or disapprove
65 the application of any state banking institution to establish a
66 branch bank.

67 (e) The main office or a branch of a West Virginia state
68 banking institution may not be relocated without the approval
69 by order of the commissioner.

70 (f) Any banking institution which is authorized to
71 establish branch banks pursuant to this section may provide
72 the same banking services and exercise the same powers at
73 each such branch bank as may be provided and exercised at
74 its principal banking house.

75 (g) The board shall, upon receipt of any application to
76 establish a branch bank under the provisions of this section,
77 provide notice of the application to all banking institutions.
78 A banking institution may, within ten days after receipt of the
79 notice, file a petition to intervene and shall, if it files a
80 petition, thereupon become a party to any hearing relating
81 thereto before the board.

82 (h) The commissioner shall prescribe the form of the
83 application for a branch bank under the provisions of this
84 section and shall collect an examination and investigation fee
85 of \$500 for each filed application for a branch bank that is to
86 be established by the construction, lease or acquisition of a
87 branch bank facility and \$500 for a branch bank that is to be
88 established by the purchase of the business and assets and
89 assumption of the liabilities of or merger or consolidation

90 with another banking institution. Notwithstanding the above,
91 if the merger or consolidation is between an existing banking
92 institution and a bank newly incorporated solely for the
93 purpose of facilitating the acquisition of the existing banking
94 institution, the commissioner shall collect an examination and
95 investigation fee of \$100. The commissioner may require an
96 examination of a financial institution or an office of a
97 financial institution that is being merged into a state-
98 chartered bank. If an examination is required, the applicant
99 is responsible for paying the examination costs at a rate of
100 \$50 per examiner hour. The board shall complete the
101 examination and investigation within ninety days from the
102 date on which the application and fee are received, unless the
103 board requests in writing additional information and
104 disclosures concerning the proposed branch bank from the
105 applicant banking institution. If the board makes that
106 request, the ninety-day period shall be extended for an
107 additional period of thirty days plus the number of days
108 between the date of the request and the date the additional
109 information and disclosures are received.

110 (i) Upon completion of the examination and investigation
111 with respect to the application, the board shall, if a hearing be
112 required pursuant to subsection (j) of this section, forthwith
113 give notice and hold a hearing pursuant to the following
114 provisions:

115 (1) Notice of hearing must be given to the banking
116 institution with respect to which the hearing is to be
117 conducted in accordance with the provisions of section two,
118 article seven, chapter twenty-nine-a of this code and the
119 hearing and the administrative procedures in connection
120 therewith are governed by all of the provisions of article five,
121 chapter twenty-nine-a of this code and must be held at a time
122 and place set by the board but may not be less than ten nor
123 more than thirty days after the notice is given;

124 (2) At the hearing a party may represent himself or
125 herself or be represented by an attorney at law admitted to
126 practice before any circuit court of this state;

127 (3) After the hearing and consideration of all the
128 testimony and evidence, the board shall make and enter an
129 order approving or disapproving the application, which order
130 shall be accompanied by findings of fact and conclusions of
131 law as specified in section three, article five, chapter twenty-
132 nine-a of this code and a copy of the order and accompanying
133 findings and conclusions shall be served upon all parties to
134 the hearing and their attorneys of record, if any.

135 (j) A state banking institution may not establish a branch
136 bank until the board, following an examination, investigation,
137 notice and hearing, enters an order approving an application
138 for that branch bank. However, a hearing is not required with
139 respect to any application to establish a branch bank which is
140 approved by the board unless a banking institution has timely
141 filed a petition to intervene pursuant to subsection (g) of this
142 section. The order shall be accompanied by findings of fact
143 that:

144 (1) The applicant state-chartered banking institution
145 satisfies such reasonable and appropriate requirements as to
146 sound financial condition. For purposes of this subdivision,
147 "sound financial condition" means that a state banking
148 institution meets the required minimum level to be
149 adequately capitalized for each capital measure as determined
150 by its primary federal regulator and is not subject to
151 supervisory action by either a state or federal financial
152 regulatory agency;

153 (2) The establishment of the proposed branch bank would
154 not result in a monopoly, nor be in furtherance of any
155 combination or conspiracy to monopolize the business of
156 banking in any section of this state;

157 (3) The establishment of the proposed branch bank would
158 not have the effect in any section of the state of substantially
159 lessening competition, nor tend to create a monopoly or in
160 any other manner be in restraint of trade, unless the
161 anticompetitive effects of the establishment of that proposed
162 branch bank are clearly outweighed in the public interest by
163 the probable effect of the establishment of the proposed
164 branch bank in meeting the convenience and needs of the
165 community to be served by that proposed branch bank;

166 (4) The applicant state-chartered banking institution
167 meets a satisfactory standard of compliance with federal and
168 state community reinvestment act requirements as evidenced
169 by its most recent state or federal examination;

170 (5) The applicant state-chartered banking institution
171 meets a satisfactory standard of compliance with federal and
172 state consumer compliance law and regulations as evidenced
173 by its most recent state or federal regulatory examination;

174 (6) The applicant state-chartered banking institution
175 meets acceptable standards for investment in premises and
176 fixed assets as permitted by section thirteen, article four of
177 this chapter; and

178 (7) The applicant state-chartered banking institution does
179 not present a significant supervisory concern or raise a
180 significant legal or policy issue by filing the application.

181 (k) Any party who is adversely affected by the order of
182 the board is entitled to judicial review thereof in the manner
183 provided in section four, article five, chapter twenty-nine-a
184 of this code. Any such party adversely affected by a final
185 judgment of a circuit court following judicial review as
186 provided in the foregoing sentence may seek review thereof
187 by appeal to the Supreme Court of Appeals in the manner
188 provided in article six, chapter twenty-nine-a of this code.

189 (l) Pursuant to the resolution of its board of directors and
190 with the prior written approval of the commissioner, a state
191 banking institution may discontinue the operation of a branch
192 bank upon at least thirty days' prior public notice given in
193 such form and manner as the commissioner prescribes.

194 (m) Any violation of any provision of this section is a
195 misdemeanor offense punishable by applicable penalties as
196 provided in section fifteen of this article.

**§31A-8-12d. Expedited procedure for authorization of de novo
branch banks.**

1 (a) As an alternative to using the procedures established
2 in subdivisions (g) through (j), section twelve of this article,
3 a banking institution desiring to establish a branch bank by de
4 novo construction or lease may file a notice, containing
5 information as prescribed by the commissioner, of its intent
6 which must be received by the commissioner at least thirty-
7 five days prior to the date on which the proposed branch will
8 be established accompanied by a fee of \$250. The
9 commissioner must provide written notice of his or her
10 acceptance or rejection of the branch notice prior to the
11 expiration of the 35-day period. However, if the
12 commissioner requests additional information from the
13 branching institution, the period for the commissioner's
14 consideration of the notice shall be extended an additional
15 fifteen days from the time the information requested is
16 received by the commissioner.

17 (b) A state banking institution may not establish a branch
18 bank under this section until the commissioner provides
19 written approval of the notice for that branch bank. The
20 commissioner's approval or rejection of the notice must be
21 accompanied by findings of fact on whether the applicant
22 bank:

23 (1) Satisfies such reasonable and appropriate
24 requirements as to sound financial condition. For purposes
25 of this subdivision, "sound financial condition" means that a
26 state banking institution meets the required minimum level to
27 be well capitalized for each capital measure as determined by
28 its primary federal regulator and is not subject to supervisory
29 action by either a state or federal financial regulatory agency;

30 (2) Meets a satisfactory standard of compliance with
31 federal and state community reinvestment act requirements
32 as evidenced by its most recent state or federal examination;

33 (3) Meets a satisfactory standard of compliance with
34 federal and state consumer compliance law and regulations
35 as evidenced by its most recent state or federal regulatory
36 examination;

37 (4) Meets the acceptable standards for investment in
38 premises and fixed assets as permitted by section thirteen,
39 article four of this chapter; and

40 (5) Does not present a significant supervisory concern or
41 raise a significant legal or policy issue by filing the
42 application.

43 (c) Any party who is adversely affected by an action of
44 the commissioner taken pursuant to the criteria established by
45 subsection (b) of this section may appeal within ten business
46 days of the commissioner's decision to the Board of Banking
47 and Financial Institutions which must, after holding a hearing
48 pursuant to the provisions of subdivision (12), subsection (b),
49 section two, article three of this chapter, affirm, reverse or
50 modify the order of the commissioner. Any party who is
51 adversely affected by an order of the Board of Banking and
52 Financial Institutions issued pursuant to the provisions of this
53 subsection is entitled to judicial review in the same manner
54 as provided by the provisions of subsection (k), section
55 twelve of this article.

●

CHAPTER 20

(Com. Sub. for H.B. 2719 - By Delegates Morgan and Doyle)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended, relating to “nonintoxicating beer”; defining “nonintoxicating craft beer”; including “nonintoxicating craft beer with the definition of “nonintoxicating beer”; and increasing the maximum alcohol level in the stated definition of “nonintoxicating beer.”

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 to read as follows:

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) "Commissioner" means the West Virginia Alcohol
14 Beverage Control Commissioner.

15 (4) "Distributor" means and includes any person jobbing
16 or distributing nonintoxicating beer to retailers at wholesale
17 and whose warehouse and chief place of business shall be
18 within this state.

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

32 (6) "Nonintoxicating craft beer" means any beverage
33 obtained by the fermentation of barley, malt, hops or any
34 other similar product or substitute and containing not less
35 than one half of one percent by volume and not more than
36 twelve percent alcohol by volume or nine and six-tenths
37 percent alcohol by weight.

38 (7) "Original container" means the container used by the
39 brewer at the place of manufacturing, bottling or otherwise
40 producing nonintoxicating beer for sale at wholesale.

41 (8) "Person" means and includes an individual, firm,
42 partnership, limited partnership, association or corporation.

43 (9) "Resident brewer" means any person, firm,
44 association, partnership, or corporation whose principal place
45 of business is within the state.

46 (10) "Retailer" means any person selling, serving, or
47 otherwise dispensing nonintoxicating beer and all products
48 regulated by this article, including, but not limited to, any
49 malt cooler, at his or her established and licensed place of
50 business.

51 (11) "Tax Commissioner" means the Tax Commissioner
52 of the State of West Virginia or the commissioner's designee.



CHAPTER 21

**(H.B. 3083 - By Delegates Andes, Border, Anderson, Perdue,
Hamilton, Caputo, Perry, Miley, Hatfield, Wooton and Webster)**

[Passed March 26, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2009.]

AN ACT to amend and reenact §16-21-1 of the Code of West Virginia, 1931, as amended, relating to donating blood by persons sixteen years of age with parental consent.

Be it enacted by the Legislature of West Virginia:

That §16-21-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. BLOOD DONATIONS.

§16-21-1. Donations by seventeen year old minors without parental permission.

1 Notwithstanding any other provision of law to the
2 contrary, any person seventeen years of age or older may
3 donate blood without the permission or authorization of a
4 parent or guardian and any person sixteen years of age may
5 donate blood with the permission or authorization of a parent
6 or legal guardian: *Provided*, That a parent or guardian may
7 not be liable for any medical expense which may occur as a
8 result of a minor donating blood under the provisions of this
9 section: *Provided, however*, That nothing herein may be
10 construed as permitting a minor of age seventeen or older, or
11 a minor of age sixteen, to give blood for compensation in any
12 form.

CHAPTER 22

(S.B. 588 - By Senator Bowman)

[Passed April 6, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §5-16-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5F-2-1 of said code, relating to abolishing the Public Insurance Agency Advisory Board.

Be it enacted by the Legislature of West Virginia:

That §5-16-6 of the Code of West Virginia, 1931, as amended, be repealed; and that §5F-2-1 of said code be amended and reenacted to read as follows:

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and funds
3 associated with any agency or board, are incorporated in and
4 administered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter
6 five of this code;

7 (2) Public Employees Insurance Agency provided in
8 article sixteen, chapter five of this code;

9 (3) Governor's Mansion Advisory Committee provided
10 in article five, chapter five-a of this code;

11 (4) Commission on Uniform State Laws provided in
12 article one-a, chapter twenty-nine of this code;

13 (5) West Virginia Public Employees Grievance Board
14 provided in article three, chapter six-c of this code;

15 (6) Board of Risk and Insurance Management provided
16 in article twelve, chapter twenty-nine of this code;

17 (7) Boundary Commission provided in article twenty-
18 three, chapter twenty-nine of this code;

19 (8) Public Defender Services provided in article twenty-
20 one, chapter twenty-nine of this code;

21 (9) Division of Personnel provided in article six, chapter
22 twenty-nine of this code;

23 (10) The West Virginia Ethics Commission provided in
24 article two, chapter six-b of this code;

25 (11) Consolidated Public Retirement Board provided in
26 article ten-d, chapter five of this code; and

27 (12) Real Estate Division provided in article ten, chapter
28 five-a of this code.

29 (b) The following agencies and boards, including all of
30 the allied, advisory, affiliated or related entities and funds
31 associated with any agency or board, are incorporated in and
32 administered as a part of the Department of Commerce:

33 (1) Division of Labor provided in article one, chapter
34 twenty-one of this code, which includes:

35 (A) Occupational Safety and Health Review Commission
36 provided in article three-a, chapter twenty-one of this code;
37 and

38 (B) Board of Manufactured Housing Construction and
39 Safety provided in article nine, chapter twenty-one of this
40 code;

41 (2) Office of Miners' Health, Safety and Training
42 provided in article one, chapter twenty-two-a of this code.
43 The following boards are transferred to the Office of Miners'
44 Health, Safety and Training for purposes of administrative
45 support and liaison with the office of the Governor:

46 (A) Board of Coal Mine Health and Safety and Coal
47 Mine Safety and Technical Review Committee provided in
48 article six, chapter twenty-two-a of this code;

49 (B) Board of Miner Training, Education and Certification
50 provided in article seven, chapter twenty-two-a of this code;
51 and

52 (C) Mine Inspectors' Examining Board provided in article
53 nine, chapter twenty-two-a of this code;

54 (3) The West Virginia Development Office, which
55 includes the Division of Tourism and the Tourism
56 Commission provided in article two, chapter five-b of this
57 code;

58 (4) Division of Natural Resources and Natural Resources
59 Commission provided in article one, chapter twenty of this
60 code;

61 (5) Division of Forestry provided in article one-a, chapter
62 nineteen of this code;

63 (6) Geological and Economic Survey provided in article
64 two, chapter twenty-nine of this code; and

65 (7) Workforce West Virginia provided in chapter twenty-
66 one-a of this code, which includes:

67 (A) Division of Unemployment Compensation;

68 (B) Division of Employment Services;

69 (C) Division of Workforce Development; and

70 (D) Division of Research, Information and Analysis; and

71 (8) Division of Energy provided in article two-f, chapter
72 five-b of this code.

73 (c) The Economic Development Authority provided in
74 article fifteen, chapter thirty-one of this code is continued as
75 an independent agency within the executive branch.

76 (d) The Water Development Authority and Board
77 provided in article one, chapter twenty-two-c of this code is
78 continued as an independent agency within the executive
79 branch.

80 (e) The following agencies and boards, including all of
81 the allied, advisory and affiliated entities, are transferred to
82 the Department of Environmental Protection for purposes of
83 administrative support and liaison with the office of the
84 Governor:

85 (1) Air Quality Board provided in article two, chapter
86 twenty-two-b of this code;

87 (2) Solid Waste Management Board provided in article
88 three, chapter twenty-two-c of this code;

89 (3) Environmental Quality Board, or its successor board,
90 provided in article three, chapter twenty-two-b of this code;

91 (4) Surface Mine Board provided in article four, chapter
92 twenty-two-b of this code;

93 (5) Oil and Gas Inspectors' Examining Board provided in
94 article seven, chapter twenty-two-c of this code;

95 (6) Shallow Gas Well Review Board provided in article
96 eight, chapter twenty-two-c of this code; and

97 (7) Oil and Gas Conservation Commission provided in
98 article nine, chapter twenty-two-c of this code.

99 (f) The following agencies and boards, including all of
100 the allied, advisory, affiliated or related entities and funds
101 associated with any agency or board, are incorporated in and
102 administered as a part of the Department of Education and
103 the Arts:

104 (1) Library Commission provided in article one, chapter
105 ten of this code;

106 (2) Educational Broadcasting Authority provided in
107 article five, chapter ten of this code;

108 (3) Division of Culture and History provided in article
109 one, chapter twenty-nine of this code;

110 (4) Division of Rehabilitation Services provided in
111 section two, article ten-a, chapter eighteen of this code.

112 (g) The following agencies and boards, including all of
113 the allied, advisory, affiliated or related entities and funds
114 associated with any agency or board, are incorporated in and
115 administered as a part of the Department of Health and
116 Human Resources:

117 (1) Human Rights Commission provided in article eleven,
118 chapter five of this code;

119 (2) Division of Human Services provided in article two,
120 chapter nine of this code;

121 (3) Bureau for Public Health provided in article one,
122 chapter sixteen of this code;

123 (4) Office of Emergency Medical Services and Advisory
124 Council provided in article four-c, chapter sixteen of this
125 code;

126 (5) Health Care Authority provided in article twenty-
127 nine-b, chapter sixteen of this code;

128 (6) Commission on Mental Retardation provided in
129 article fifteen, chapter twenty-nine of this code;

130 (7) Women's Commission provided in article twenty,
131 chapter twenty-nine of this code; and

132 (8) The Child Support Enforcement Division provided in
133 chapter forty-eight of this code.

134 (h) The following agencies and boards, including all of
135 the allied, advisory, affiliated or related entities and funds
136 associated with any agency or board, are incorporated in and
137 administered as a part of the Department of Military Affairs
138 and Public Safety:

139 (1) Adjutant General's Department provided in article
140 one-a, chapter fifteen of this code;

141 (2) Armory Board provided in article six, chapter fifteen
142 of this code;

143 (3) Military Awards Board provided in article one-g,
144 chapter fifteen of this code;

145 (4) West Virginia State Police provided in article two,
146 chapter fifteen of this code;

147 (5) Division of Homeland Security and Emergency
148 Management and Disaster Recovery Board provided in
149 article five, chapter fifteen of this code and Emergency
150 Response Commission provided in article five-a of said
151 chapter;

152 (6) Sheriffs' Bureau provided in article eight, chapter
153 fifteen of this code;

154 (7) Division of Corrections provided in chapter twenty-
155 five of this code;

156 (8) Fire Commission provided in article three, chapter
157 twenty-nine of this code;

158 (9) Regional Jail and Correctional Facility Authority
159 provided in article twenty, chapter thirty-one of this code;

160 (10) Board of Probation and Parole provided in article
161 twelve, chapter sixty-two of this code; and

162 (11) Division of Veterans' Affairs and Veterans' Council
163 provided in article one, chapter nine-a of this code.

164 (i) The following agencies and boards, including all of
165 the allied, advisory, affiliated or related entities and funds
166 associated with any agency or board, are incorporated in and
167 administered as a part of the Department of Revenue:

168 (1) Tax Division provided in article one, chapter eleven
169 of this code;

170 (2) Racing Commission provided in article twenty-three,
171 chapter nineteen of this code;

172 (3) Lottery Commission and position of Lottery Director
173 provided in article twenty-two, chapter twenty-nine of this
174 code;

175 (4) Agency of Insurance Commissioner provided in
176 article two, chapter thirty-three of this code;

177 (5) Office of Alcohol Beverage Control Commissioner
178 provided in article sixteen, chapter eleven of this code and
179 article two, chapter sixty of this code;

180 (6) Board of Banking and Financial Institutions provided
181 in article three, chapter thirty-one-a of this code;

182 (7) Lending and Credit Rate Board provided in chapter
183 forty-seven-a of this code;

184 (8) Division of Banking provided in article two, chapter
185 thirty-one-a of this code;

186 (9) The State Budget Office provided in article two of
187 this chapter;

188 (10) The Municipal Bond Commission provided in article
189 three, chapter thirteen of this code;

190 (11) The Office of Tax Appeals provided in article ten-a,
191 chapter eleven of this code; and

192 (12) The State Athletic Commission provided in article
193 five-a, chapter twenty-nine of this code.

194 (j) The following agencies and boards, including all of
195 the allied, advisory, affiliated or related entities and funds
196 associated with any agency or board, are incorporated in and
197 administered as a part of the Department of Transportation:

198 (1) Division of Highways provided in article two-a,
199 chapter seventeen of this code;

200 (2) Parkways, Economic Development and Tourism
201 Authority provided in article sixteen-a, chapter seventeen of
202 this code;

203 (3) Division of Motor Vehicles provided in article two,
204 chapter seventeen-a of this code;

205 (4) Driver's Licensing Advisory Board provided in article
206 two, chapter seventeen-b of this code;

207 (5) Aeronautics Commission provided in article two-a,
208 chapter twenty-nine of this code;

209 (6) State Rail Authority provided in article eighteen,
210 chapter twenty-nine of this code; and

211 (7) Port Authority provided in article sixteen-b, chapter
212 seventeen of this code.

213 (k) Except for powers, authority and duties that have been
214 delegated to the secretaries of the departments by the
215 provisions of section two of this article, the position of

216 administrator and the powers, authority and duties of each
217 administrator and agency are not affected by the enactment
218 of this chapter.

219 (l) Except for powers, authority and duties that have been
220 delegated to the secretaries of the departments by the
221 provisions of section two of this article, the existence,
222 powers, authority and duties of boards and the membership,
223 terms and qualifications of members of the boards are not
224 affected by the enactment of this chapter. All boards that are
225 appellate bodies or are independent decision makers shall not
226 have their appellate or independent decision-making status
227 affected by the enactment of this chapter.

228 (m) Any department previously transferred to and
229 incorporated in a department by prior enactment of this
230 section means a division of the appropriate department.
231 Wherever reference is made to any department transferred to
232 and incorporated in a department created in section two,
233 article one of this chapter, the reference means a division of
234 the appropriate department and any reference to a division of
235 a department so transferred and incorporated means a section
236 of the appropriate division of the department.

237 (n) When an agency, board or commission is transferred
238 under a bureau or agency other than a department headed by
239 a secretary pursuant to this section, that transfer is solely for
240 purposes of administrative support and liaison with the Office
241 of the Governor, a department secretary or a bureau. Nothing
242 in this section extends the powers of department secretaries
243 under section two of this article to any person other than a
244 department secretary and nothing limits or abridges the
245 statutory powers and duties of statutory commissioners or
246 officers pursuant to this code.

CHAPTER 23

**(Com. Sub. for S.B. 243 - By Senators McCabe, Caruth,
Plymale and Prezioso)**

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

AN ACT to repeal §13-1-18 of the Code of West Virginia, 1931, as amended; and to amend and reenact §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code, all relating to updating the code for consistency with the current practices and procedures required for issuing general obligation bonds through competitive sale and the West Virginia Constitution; providing that the issuer is not required to designate the series of bonds in the election order; providing that the bond resolution does not have to set forth the date of issuance, the denominations of the bonds, the medium with which the bonds are payable or the terms of redemption; allowing issuers to establish a maximum rate of interest in the bond resolution; allowing issuers to make semiannual payments on principal and interest; lengthening the time an issuer is required to begin making debt service payments by a year from the date of issuance; requiring issuers to register bonds and eliminating reference to coupon bonds; allowing issuers to accept electronic bids; and allowing an issuer to publish an abbreviated sale of notice when advertising the sale of bonds.

Be it enacted by the Legislature of West Virginia:

That §13-1-18 of the Code of West Virginia, 1931, as amended, be repealed; and that §13-1-4, §13-1-14, §13-1-15, §13-1-15a, §13-1-16, §13-1-17, §13-1-19 and §13-1-21 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

- §13-1-4. Bond issue proposal to be submitted to voters; election order.
- §13-1-14. Resolution authorizing issuance and fixing terms of bonds.
- §13-1-15. Bonds to be payable in annual or semiannual installments.
- §13-1-15a. Bonds may be subject to redemption.
- §13-1-16. Recital of certification that bonds are issued in conformity with constitution and statutes; effect thereof with Attorney General's endorsement.
- §13-1-17. Bonds shall be registered.
- §13-1-19. Signing, sealing and delivery of bonds.
- §13-1-21. Advertisement and sale of bonds.

§13-1-4. Bond issue proposal to be submitted to voters; election order.

1 No debt shall be contracted or bonds issued under this
 2 article until all questions connected with the same are first
 3 submitted to a vote of the qualified electors of the political
 4 division for which the bonds are to be issued, and receive
 5 three fifths of all the votes cast for and against the same:
 6 *Provided*, That a county board of education may contract
 7 indebtedness and issue bonds for public school purposes
 8 when submitted to a vote of the people of the county if the
 9 question of contracting indebtedness and issuing bonds is
 10 approved by a majority of all the votes cast for and against
 11 the same pursuant to section ten, article X of the constitution.
 12 The governing body of any political division referred to in
 13 this article may, and when requested so to do by a petition in
 14 writing, praying that bonds be issued and stating the purpose
 15 and amount thereof, signed by legal voters of the political
 16 division equal to twenty percent of the votes cast in a county
 17 for Governor, or in a municipal corporation or school district
 18 for mayor or member of the board of education, as the case
 19 may be, shall, by order entered of record, direct that an
 20 election be held for the purpose of submitting to the voters of

21 the political division all questions connected with the
22 contracting of debt and the issuing of bonds. The order shall
23 state:

24 (a) The necessity for issuing the bonds or, if a petition
25 has been filed as provided herein, that the petition has been
26 filed;

27 (b) If for the construction of a county-district road or
28 bridge thereon, a summary of the engineer's report provided
29 for in the following section setting forth the approximate
30 extent and the estimated cost of the proposed improvement
31 and the kind or class of work to be done thereon;

32 (c) Purpose or purposes for which the proceeds of bonds
33 are to be expended;

34 (d) Valuation of the taxable property as shown by the last
35 assessment thereof for state and county purposes;

36 (e) Indebtedness, bonded or otherwise;

37 (f) Amount of the proposed bond issue;

38 (g) Maximum term of bonds;

39 (h) Maximum rate of interest;

40 (i) Date of election;

41 (j) That the levying body is authorized to lay a sufficient
42 levy annually to provide funds for the payment of the interest
43 upon the bonds and the principal at maturity and the
44 approximate rate of levy necessary for this purpose;

45 (k) In the case of school bonds, that the bonds, together
46 with all existing bonded indebtedness, will not exceed in the

47 aggregate five percent of the value of the taxable property in
48 the school district ascertained in accordance with section
49 eight, article X of the constitution; and that the bonds will be
50 payable from a direct annual tax levied and collected in each
51 year on all taxable property in the school district sufficient to
52 pay the principal and the interest maturing on the bonds in
53 that year, together with any deficiencies for prior years,
54 within, and not exceeding thirty-four years, which tax levies
55 will be laid separate and apart and in addition to the
56 maximum rates provided for tax levies by school districts on
57 the several classes of property in section one, article X of the
58 constitution, but in the same proportions as the maximum
59 rates are levied on the several classes of property; and the tax
60 may be levied outside the limits fixed by section one, article
61 X of the constitution.

62 Any other provision which does not violate any provision
63 of law, or transgress any principle of public policy, may be
64 incorporated in the order.

**§13-1-14. Resolution authorizing issuance and fixing terms of
bonds.**

1 If the required amount of all the votes, pursuant to
2 section four of this article, cast for and against the
3 proposition to incur debt and issue negotiable bonds is in
4 favor of the same, the governing body of the political
5 division shall, by resolution, authorize the issuance of the
6 bonds in an amount not exceeding the amount stated in the
7 proposition; establish the maximum rate or rates of interest
8 which the bonds shall bear within the maximum rate stated in
9 the proposition submitted to vote; require that the bonds shall
10 be made payable at the office of the Municipal Bond
11 Commission and at any other place or places as the body
12 issuing the same designates; provide for a sufficient levy to
13 pay the annual interest on the bonds and the principal at
14 maturity; fix the times within the maximum period, as

15 contained in the proposition submitted to vote, when the
16 bonds shall become payable, which shall not exceed
17 thirty-four years from the date thereof; determine whether all
18 or a portion of the bonds will be subject to redemption prior
19 to the maturity thereof; and prescribe a form for executing
20 the bonds authorized.

§13-1-15. Bonds to be payable in annual or semiannual installments.

1 Bonds shall be made payable in annual or semiannual
2 installments beginning not more than three years after the
3 date thereof and the amount payable in each year may be so
4 fixed that when the annual interest is added to the principal
5 amount to be paid, the total amount payable in each year in
6 which part of the principal is payable shall be as nearly equal
7 as practicable. Once principal payments commence, it shall
8 be an immaterial variance if the difference between the
9 largest and smallest amounts of principal and interest payable
10 annually or semiannually during the term of the bonds shall
11 not exceed five percent of the total authorized issue. Bonds
12 may be payable in annual or semiannual installments
13 beginning not more than three years after the date thereof,
14 each installment being as nearly equal in principal amount as
15 practicable.

§13-1-15a. Bonds may be subject to redemption.

1 All or a portion of the bonds may be subject to
2 redemption prior to the maturity thereof at the option of the
3 body issuing the same as established by resolution of the
4 governing body authorizing the bonds. The body issuing the
5 bonds may not levy taxes in connection with the redemption
6 of any bonds in excess of the taxes that would have been
7 levied for the payment of principal of and interest on the
8 bonds in any year.

§13-1-16. Recital of certification that bonds are issued in conformity with constitution and statutes; effect thereof with Attorney General's endorsement.

1 The resolution authorizing the bonds provided for in
2 section fourteen of this article may direct that they contain
3 the following recital:

4 "It is certified that this bond is authorized by and is
5 issued in conformity with the requirements of the
6 Constitution and Statutes of the State of West Virginia."

7 The recital, when the bonds have been endorsed by the
8 Attorney General as provided in section twenty-eight of this
9 article, are considered an authorized declaration by the
10 governing body of the political division and to import that
11 there is constitutional and statutory authority for incurring the
12 debts and issuing the bonds; that all the proceedings therefor
13 are regular; that all the acts, conditions and things required to
14 exist, happen and be performed precedent to and in the
15 issuance of the bonds have existed, happened and been
16 performed in due time, form and manner as required by law;
17 that the amount of the bond and the issue of which it forms
18 a part, together with all other indebtedness, does not exceed
19 any limit or limits prescribed by the constitution or statutes
20 of this state; and that all questions connected with incurring
21 the debt and issuing the bonds have been first submitted to a
22 vote of the people and have received the required amount of
23 all the votes, pursuant to section four of this article, cast for
24 and against the same at an election regularly called and held
25 for the purpose after notice published and posted in the
26 manner required by law. If any bond be issued containing
27 the recital, and also containing the endorsement of the
28 Attorney General as aforesaid, it shall be conclusively
29 presumed that the recital, construed according to the import
30 hereby declared, is true and neither the political division nor
31 any taxpayer thereof shall be permitted to question the

32 validity or regularity of the obligation in any court or in any
33 action or proceeding.

§13-1-17. Bonds shall be registered.

1 The bonds issued hereunder shall be issued only in fully
2 registered form and shall carry registration privileges as set
3 forth in the resolution authorizing the bonds.

§13-1-19. Signing, sealing and delivery of bonds.

1 All bonds issued under this article by any county shall be
2 signed by the president of the county commission and
3 countersigned by the clerk of the county commission; bonds
4 issued by any municipality shall be signed by the mayor or
5 other chief executive and countersigned by the clerk, recorder
6 or secretary; bonds issued by a county board of education
7 shall be signed by the president of the board of education and
8 countersigned by the secretary thereof. The seal of the
9 political division shall be affixed to the bonds. The delivery
10 of any bonds so executed at any time thereafter shall be valid,
11 although before the date of delivery the person signing the
12 bonds shall have ceased to hold office.

§13-1-21. Advertisement and sale of bonds.

1 The governing body of the political division issuing
2 bonds pursuant to this article shall sell the same and collect
3 the proceeds, which proceeds shall be deposited with its
4 treasurer. The governing body of the political division shall
5 advertise such bonds for sale, on sealed bids or electronic
6 bids if the governing body elects to utilize an electronic
7 bidding procedure, which advertisement shall be published
8 as a Class II legal advertisement in compliance with the
9 provisions of article three, chapter fifty-nine of this code and
10 the publication area for the publication shall be the political
11 division. The first publication shall be made at least fourteen

12 days before the date fixed for the reception of bids. The
13 advertisement shall also be published in the *Bond Buyer* or
14 similar publication and the advertisement may be published
15 electronically: *Provided*, That all advertisements required by
16 this section may consist of an abbreviated notice of the sale
17 of the bonds. The governing body may reject any and all
18 bids. If the bonds are not sold pursuant to the advertisement,
19 they may, within one hundred twenty days after the date
20 advertised for the reception of bids, be sold by the governing
21 body at private sale, but no private sale shall be made at a
22 price less than the highest bid which is received. If not sold,
23 the bonds shall be readvertised in the manner herein
24 provided. In no event shall bonds be sold for less than their
25 par value.

CHAPTER 24

**(H.B. 3189 - By Delegates Morgan, Boggs, Caputo, Fragale,
White, Webster and M. Poling)**

[Passed April 7, 2009; in effect from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §4-8-1 of the Code of West Virginia,
1931, as amended, relating to adding members to the Capitol
Building Commission.

Be it enacted by the Legislature of West Virginia:

That §4-8-1 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.

1 (a) The Capitol Building Commission is continued, and
2 is composed of nine members, five of which are appointed by
3 the Governor, with the advice and consent of the Senate.

4 (b) One member is appointed by the President of the
5 Senate, one member is appointed by the Speaker of the
6 House of Delegates, one member is appointed by the
7 Supreme Court of Appeals, plus the Secretary of the
8 Department of Administration, who are all nonvoting
9 members.

10 (c) Of the members appointed by the Governor, no more
11 than three members may be of the same political party. One
12 member shall be an architect selected from three persons
13 recommended by the Board of Architects, one member shall
14 be a registered professional engineer selected from three
15 persons recommended by the Board of Engineers, one
16 member is the Commissioner of the Division of Culture and
17 History, who is the chairperson of the commission. Two
18 members shall be selected from the public at large.



CHAPTER 25

**(Com. Sub. for S.B. 715 - By Senators Snyder, Unger,
Helmick, McCabe, Plymale and Kessler)**

[Amended and again passed May 29, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §22-11-30, relating
to the protection of the Chesapeake Bay Watershed;

establishing a nutrient trading and offset program; proposing nutrient performance standards for wastewater treatment facilities; and recommending a program to fund capital improvements needed to meet nutrient removal 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 §22-11-30, to read as follows:

ARTICLE 11. WEST VIRGINIA WATER POLLUTION CONTROL ACT.

§22-11-30. Chesapeake Bay Restoration Initiative.

1 (a) The Legislature finds and declares that:

2 (1) The Chesapeake Bay and its tributaries are valuable
3 natural resources providing both recreational and economic
4 opportunities to citizens living in and around the Chesapeake
5 Bay watershed. Eight West Virginia counties, and a
6 collective population of more than two hundred thousand
7 citizens, are within the Chesapeake Bay watershed. The
8 protection and promotion of the environmental health and
9 integrity of the Chesapeake Bay is accordingly in the best
10 interests of the State of West Virginia.

11 (2) The Chesapeake Bay has been identified by the
12 United States Environmental Protection Agency as an
13 impaired water due to excess nitrogen and phosphorous
14 entering the bay from its various tributaries. These
15 pollutants, commonly referred to as nutrients, result in
16 depleted dissolved oxygen supplies and other factors which
17 impact the overall health of the Chesapeake Bay and its
18 watershed.

19 (b) West Virginia is among six states from which
20 nutrients flow into the Chesapeake Bay. In order to restore
21 the Chesapeake Bay, these states have agreed to reduce the
22 amount of nutrients contributed to the Chesapeake Bay by
23 sources located within their respective jurisdictions.

24 (c) Among the sources of nutrients discharged into the
25 Chesapeake Bay watershed are wastewater discharged by
26 West Virginia wastewater treatment facilities, stormwater
27 discharged from various sources, wastewater discharged
28 from agriculture-related activities and other sources of
29 wastewater related to both natural and man-made impacts
30 which are not specifically set forth herein.

31 (d) The need to provide and maintain affordable and
32 high-quality public infrastructure services and to safeguard
33 existing industrial and agricultural sectors of the economy in
34 the Chesapeake Bay watershed are essential to the continued
35 economic growth and quality of life of West Virginia
36 communities within the watershed. Protection of these
37 communities' economic vitality and the Chesapeake Bay are
38 critical interests of the state. The capital costs of nutrient
39 removal processes, if borne by individual rate customers of
40 sewer services or by individual business owners, would result
41 in significant increases in rates for an essential public service,
42 deferral or cancellation of other critical infrastructure
43 extensions and/or improvements and act as a disincentive for
44 business growth, both commercial and agricultural, in these
45 communities, if not the shrinking of industrial and
46 agricultural activity in the watershed. Therefore, a holistic
47 program, while assuring the protection of the Chesapeake
48 Bay, must include: (1) A nutrient trading and off-set program
49 to allow for efficiencies within the watershed to assure that
50 public moneys are placed to best use; and (2) a capital
51 improvement program to assist those required to install
52 capital improvements to obtain the reductions in nutrients
53 previously agreed to by the state.

54 (e) The secretary, in consultation with affected
55 stakeholders, is hereby directed to establish no later than June
56 1, 2011, a program of nutrient trading and off-sets. Pending
57 establishment of such a program, the secretary is authorized
58 to consider and implement interim trading and offset
59 programs as necessary and appropriate for individual
60 permittees in order to protect the Chesapeake Bay and its
61 tributaries.

62 (f) The secretary is hereby directed, no later than June 1,
63 2010, and in consultation with affected stakeholders, to
64 report to the Joint Legislative Commission on State Water
65 Resources the status of proposed performance standards
66 necessary for wastewater treatment facilities in the
67 Chesapeake Bay watershed for any reduction of nutrients in
68 the watershed required to protect water quality in the Bay.

69 (g) The secretary and stakeholders shall, no later than
70 June 1, 2010, consider and recommend to the Legislature a
71 program establishing a new and independent source of
72 funding for capital improvements for public facilities made
73 necessary by the imposition of nutrient removal
74 requirements.

75 (h) Should it be determined based upon new information
76 or the issuance of a final total maximum daily load for the
77 Chesapeake Bay that modifications to nutrient loading
78 requirements contained in West Virginia/National Pollutant
79 Discharge Elimination System permits are necessary to be
80 consistent with this new information or the final total
81 maximum daily load, the secretary shall recalculate such
82 loading requirements and modify such permits consistent
83 with this information.

CHAPTER 26

**(Com. Sub. for S.B. 498 - By Senators Plymale, Prezioso, Kessler,
Wells, Foster, Jenkins, Stollings and Unger)**

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

AN ACT to amend and reenact §18-5-44 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4, all relating to early childhood; requiring county boards to report certain information to the Secretary of the Department of Health and Human Resources and the state superintendent relating to the use of community-based programs to provide early childhood education services; quality rating and improvement system applicable to certain child care providers; findings and intent; Secretary of Department of Health and Human Resources rules; Quality Rating and Improvement System Advisory Council; statewide quality rating system rules; statewide implementation; system components; review, reduction, suspension or disqualification; statewide quality improvement system; financial plan for implementation and quality improvement; plan components; pilot projects; third-party evaluator; reports to Legislature; gradual implementation; conditioning requirements on legislative appropriation; prioritization of components for funding; and PIECES advisory council.

Be it enacted by the Legislature of West Virginia:

That §18-5-44 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 §49-2E-1, §49-2E-2, §49-2E-3 and §49-2E-4, all to read as follows:

Chapter

18. Education.

49. Child Welfare.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-44. Early childhood education programs.

1 (a) For the purposes of this section, “early childhood
2 education” means programs for children who have attained
3 the age of four prior to September 1 of the school year in
4 which the pupil enters the program created in this section.

5 (b) *Findings.* --

6 (1) Among other positive outcomes, early childhood
7 education programs have been determined to:

8 (A) Improve overall readiness when children enter
9 school;

10 (B) Decrease behavioral problems;

11 (C) Improve student attendance;

12 (D) Increase scores on achievement tests;

13 (E) Decrease the percentage of students repeating a
14 grade; and

15 (F) Decrease the number of students placed in special
16 education programs;

17 (2) Quality early childhood education programs improve
18 school performance and low-quality early childhood
19 education programs may have negative effects, especially for
20 at-risk children;

21 (3) West Virginia has the lowest percentage of its adult
22 population twenty-five years of age or older with a bachelor's
23 degree and the education level of parents is a strong indicator
24 of how their children will perform in school;

25 (4) During the 2006-2007 school year, West Virginia
26 ranked thirty-ninth among the fifty states in the percentage of
27 school children eligible for free and reduced lunches and this
28 percentage is a strong indicator of how the children will
29 perform in school;

30 (5) For the school year 2008-2009, thirteen thousand one
31 hundred thirty-five students were enrolled in prekindergarten,
32 a number equal to approximately sixty-three percent of the
33 number of students enrolled in kindergarten;

34 (6) Excluding projected increases due to increases in
35 enrollment in the early childhood education program,
36 projections indicate that total student enrollment in West
37 Virginia will decline by one percent, or by approximately
38 two thousand seven hundred four students, by the school year
39 2012-2013;

40 (7) In part, because of the dynamics of the state aid
41 formula, county boards will continue to enroll four-year old
42 students to offset the declining enrollments;

43 (8) West Virginia has a comprehensive kindergarten
44 program for five-year olds, but the program was established
45 in a manner that resulted in unequal implementation among
46 the counties which helped create deficit financial situations
47 for several county boards;

48 (9) Expansion of current efforts to implement a
49 comprehensive early childhood education program should
50 avoid the problems encountered in kindergarten
51 implementation;

52 (10) Because of the dynamics of the state aid formula,
53 counties experiencing growth are at a disadvantage in
54 implementing comprehensive early childhood education
55 programs; and

56 (11) West Virginia citizens will benefit from the
57 establishment of quality comprehensive early childhood
58 education programs.

59 (c) Beginning no later than the school year 2012-2013,
60 and continuing thereafter, county boards shall provide early
61 childhood education programs for all children who have
62 attained the age of four prior to September 1 of the school
63 year in which the pupil enters the early childhood education
64 program.

65 (d) The program shall meet the following criteria:

66 (1) It shall be voluntary, except, upon enrollment, the
67 provisions of section one, article eight of this chapter apply
68 to an enrolled student; and

69 (2) It may be for fewer than five days per week and may
70 be less than full day.

71 (e) Enrollment of students in Head Start, in any other
72 program approved by the state superintendent as provided in
73 subsection (k) of this section shall be counted toward
74 satisfying the requirement of subsection (c) of this section.

75 (f) For the purposes of implementation financing, all
76 counties are encouraged to make use of funds from existing
77 sources, including:

78 (1) Federal funds provided under the Elementary and
79 Secondary Education Act pursuant to 20 U. S. C. §6301, *et*
80 *seq.*;

81 (2) Federal funds provided for Head Start pursuant to 42
82 U. S. C. §9831, *et seq.*;

83 (3) Federal funds for temporary assistance to needy
84 families pursuant to 42 U. S. C. §601, *et seq.*;

85 (4) Funds provided by the School Building Authority
86 pursuant to article nine-d of this chapter;

87 (5) In the case of counties with declining enrollments,
88 funds from the state aid formula above the amount indicated
89 for the number of students actually enrolled in any school
90 year; and

91 (6) Any other public or private funds.

92 (g) Each county board shall develop a plan for
93 implementing the program required by this section. The plan
94 shall include the following elements:

95 (1) An analysis of the demographics of the county related
96 to early childhood education program implementation;

97 (2) An analysis of facility and personnel needs;

98 (3) Financial requirements for implementation and
99 potential sources of funding to assist implementation;

100 (4) Details of how the county board will cooperate and
101 collaborate with other early childhood education programs
102 including, but not limited to, Head Start, to maximize federal
103 and other sources of revenue;

104 (5) Specific time lines for implementation; and

105 (6) Any other items the state board may require by
106 policy.

107 (h) A county board shall submit its plan to the Secretary
108 of the Department of Health and Human Resources. The
109 secretary shall approve the plan if the following conditions
110 are met:

111 (1) The county board has maximized the use of federal
112 and other available funds for early childhood programs;

113 (2) The county board has provided for the maximum
114 implementation of Head Start programs and other public and
115 private programs approved by the state superintendent
116 pursuant to the terms of subsection (k) of this section; and

117 (3) If the Secretary of the Department of Health and
118 Human Resources finds that the county board has not met
119 one or more of the requirements of this subsection, but that
120 the county board has acted in good faith and the failure to
121 comply was not the primary fault of the county board, then
122 the secretary shall approve the plan. Any denial by the
123 secretary may be appealed to the circuit court of the county
124 in which the county board is located.

125 (i) The county board shall submit its plan for approval to
126 the state board. The state board shall approve the plan if the
127 county board has complied substantially with the
128 requirements of subsection (g) of this section and has
129 obtained the approval required in subsection (h) of this
130 section.

131 (j) Every county board shall submit its plan for
132 reapproval by the Secretary of the Department of Health and
133 Human Resources and by the state board at least every two
134 years after the initial approval of the plan and until full
135 implementation of the early childhood education program in
136 the county. As part of the submission, the county board shall

137 provide a detailed statement of the progress made in
138 implementing its plan. The standards and procedures
139 provided for the original approval of the plan apply to any
140 reapproval.

141 (k) A county board may not increase the total number of
142 students enrolled in the county in an early childhood program
143 until its program is approved by the Secretary of the
144 Department of Health and Human Resources and the state
145 board.

146 (l) The state board annually may grant a county board a
147 waiver for total or partial implementation if the state board
148 finds that all of the following conditions exist:

149 (1) The county board is unable to comply either because:

150 (A) It does not have sufficient facilities available; or

151 (B) It does not and has not had available funds sufficient
152 to implement the program;

153 (2) The county has not experienced a decline in
154 enrollment at least equal to the total number of students to be
155 enrolled; and

156 (3) Other agencies of government have not made
157 sufficient funds or facilities available to assist in
158 implementation.

159 Any county board seeking a waiver shall apply with the
160 supporting data to meet the criteria for which they are
161 eligible on or before March 25 for the following school year.
162 The state superintendent shall grant or deny the requested
163 waiver on or before April 15 of that same year.

164 (m) The provisions of subsections (b), (c) and (d), section
165 eighteen of this article relating to kindergarten apply to early

166 childhood education programs in the same manner in which
167 they apply to kindergarten programs.

168 (n) Annually, the state board shall report to the
169 Legislative Oversight Commission on Education
170 Accountability on the progress of implementation of this
171 section.

172 (o) Except as required by federal law or regulation, no
173 county board may enroll students who will be less than four
174 years of age prior to September 1 for the year they enter
175 school.

176 (p) Neither the state board nor the state department may
177 provide any funds to any county board for the purpose of
178 implementing this section unless the county board has a plan
179 approved pursuant to subsections (h), (i) and (j) of this
180 section.

181 (q) The state board shall promulgate a rule in accordance
182 with the provisions of article three-b, chapter twenty-nine-a
183 of this code for the purposes of implementing the provisions
184 of this section. The state board shall consult with the
185 Secretary of the Department of Health and Human Resources
186 in the preparation of the rule. The rule shall contain the
187 following:

188 (1) Standards for curriculum;

189 (2) Standards for preparing students;

190 (3) Attendance requirements;

191 (4) Standards for personnel; and

192 (5) Any other terms necessary to implement the
193 provisions of this section.

194 (r) The rule shall include the following elements relating
195 to curriculum standards:

196 (1) A requirement that the curriculum be designed to
197 address the developmental needs of four-year old children,
198 consistent with prevailing research on how children learn;

199 (2) A requirement that the curriculum be designed to
200 achieve long-range goals for the social, emotional, physical
201 and academic development of young children;

202 (3) A method for including a broad range of content that
203 is relevant, engaging and meaningful to young children;

204 (4) A requirement that the curriculum incorporate a wide
205 variety of learning experiences, materials and equipment, and
206 instructional strategies to respond to differences in prior
207 experience, maturation rates and learning styles that young
208 children bring to the classroom;

209 (5) A requirement that the curriculum be designed to
210 build on what children already know in order to consolidate
211 their learning and foster their acquisition of new concepts and
212 skills;

213 (6) A requirement that the curriculum meet the
214 recognized standards of the relevant subject matter
215 disciplines;

216 (7) A requirement that the curriculum engage children
217 actively in the learning process and provide them with
218 opportunities to make meaningful choices;

219 (8) A requirement that the curriculum emphasize the
220 development of thinking, reasoning, decisionmaking and
221 problem-solving skills;

222 (9) A set of clear guidelines for communicating with
223 parents and involving them in decisions about the
224 instructional needs of their children; and

225 (10) A systematic plan for evaluating program success in
226 meeting the needs of young children and for helping them to
227 be ready to succeed in school.

228 (s) The secretary and the state superintendent shall
229 submit a report to the Legislative Oversight Commission on
230 Education Accountability and the Joint Committee on
231 Government and Finance which addresses, at a minimum, the
232 following issues:

233 (1) A summary of the approved county plans for
234 providing the early childhood education programs pursuant
235 to this section;

236 (2) An analysis of the total cost to the state and county
237 boards of implementing the plans;

238 (3) A separate analysis of the impact of the plans on
239 counties with increasing enrollment; and

240 (4) An analysis of the effect of the programs on the
241 maximization of the use of federal funds for early childhood
242 programs.

243 The intent of this subsection is to enable the Legislature
244 to proceed in a fiscally responsible manner, make any
245 necessary program improvements based on reported
246 information prior to implementation of the early childhood
247 education programs.

248 (t) After the school year 2012-2013, on or before July 1
249 of each year, each county board shall report the following
250 information to the Secretary of the Department of Health and
251 Human Resources and the state superintendent:

252 (1) Documentation indicating the extent to which county
 253 boards are maximizing resources by using the existing
 254 capacity of community-based programs, including, but not
 255 limited to Head Start and child care; and

256 (2) For those county boards that are including eligible
 257 children attending approved, contracted community-based
 258 programs in their net enrollment for the purposes of
 259 calculating state aid pursuant to article nine-a of this chapter,
 260 documentation that the county board is equitably distributing
 261 funding for all children regardless of setting.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2E. QUALITY RATING AND IMPROVEMENT SYSTEM.

§49-2E-1. Findings and intent; advisory council.

§49-2E-2. Creation of statewide quality rating system; legislative rule required; minimum provisions.

§49-2E-3. Creation of statewide quality improvement system; financial plan to support implementation and quality improvement required as part of rules.

§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.

§49-2E-1. Findings and intent; advisory council.

1 (a) The Legislature finds that:

2 (1) High quality early childhood development
 3 substantially improves the intellectual and social potential of
 4 children and reduces societal costs;

5 (2) A child care program quality rating and improvement
 6 system provides incentives and resources to improve the
 7 quality child care programs; and

8 (3) A child care program quality rating and improvement
 9 system provides information about the quality of child care

10 programs to parents so they may make more informed
11 decisions about the placement of their children.

12 (b) It is the intent of the Legislature to require the
13 Secretary of the Department of Health and Human Resources
14 promulgate a legislative rule and establish a plan for the
15 phased implementation of a child care program quality rating
16 and improvement system not inconsistent with the provisions
17 of this article.

18 (c) The Secretary of the Department of Health and
19 Human Resources shall create a Quality Rating and
20 Improvement System Advisory Council to provide advice on
21 the development of the rule and plan for the phased
22 implementation of a child care program quality rating and
23 improvement system and the ongoing program review and
24 policies for quality improvement. The secretary shall
25 facilitate meetings of the advisory council. The advisory
26 council shall include representatives from the provider
27 community, advocacy groups, the Legislature, providers of
28 professional development services for the early childhood
29 community, regulatory agencies and others who may be
30 impacted by the creation of a quality rating and improvement
31 system.

32 (d) Nothing in this article requires an appropriation, or
33 any specific level of appropriation, by the Legislature.

**§49-2E-2. Creation of statewide quality rating system;
legislative rule required; minimum provisions.**

1 (a) The Secretary of the Department of Health and
2 Human Resources shall propose rules for legislative approval
3 in accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to implement a quality rating and
5 improvement system. The quality rating and improvement
6 system shall be applicable to licensed child care centers and
7 facilities and registered family child care homes. If other

8 types of child care settings such as school-age child care
9 programs become licensed after the implementation of a
10 statewide quality rating and improvement system, the
11 secretary may develop quality criteria and incentives that will
12 allow the other types of child care settings to participate in
13 the quality rating and improvement system. The rules shall
14 include, but are not limited to, the following:

15 (1) A four-star rating system for registered family child
16 care homes and a four-star rating system for all licensed
17 programs, including family child care facilities and child care
18 centers, to easily communicate to consumers four
19 progressively higher levels of quality child care. One star
20 indicating meeting the minimum acceptable standard and
21 four stars indicating meeting or exceeding the highest
22 standard. The system shall reflect the cumulative attainment
23 of the standards at each level and all lesser levels: *Provided*,
24 That any program accredited by the National Association for
25 the Education of Young Children or the National Association
26 for Family Child Care, as applicable, shall automatically be
27 awarded four-star status;

28 (2) Program standards for registered family child care
29 homes and program standards for all licensed programs,
30 including family child care facilities and child care centers,
31 that are each divided into four levels of attributes that
32 progressively improve the quality of child care beginning
33 with basic state registration and licensing requirements at
34 level one, through achievement of a national accreditation by
35 the appropriate organization at level four. Participation
36 beyond the first level is voluntary. The program standards
37 shall be categorized using the West Virginia State Training
38 and Registry System Core Knowledge Areas or its
39 equivalent;

40 (3) Accountability measures that provide for a fair, valid,
41 accurate and reliable assessment of compliance with quality
42 standards, including, but not limited to:

43 (A) Evaluations conducted by trained evaluators with
44 appropriate early childhood education and training on the
45 selected assessment tool and with a demonstrated inter-rater
46 reliability of eighty-five percent or higher. The evaluations
47 shall include an on-site inspection conducted at least annually
48 to determine whether programs are rated correctly and
49 continue to meet the appropriate standards. The evaluations
50 and observations shall be conducted on at least a statistically
51 valid percentage of center classrooms, with a minimum of
52 one class per age group;

53 (B) The use of valid and reliable observation and
54 assessment tools, such as environmental rating scales for
55 early childhood, infant and toddler, school-age care and
56 family child care as appropriate for the particular setting and
57 age group;

58 (C) An annual self-assessment using the proper
59 observation and assessment tool for programs rated at two
60 stars; and

61 (D) Model program improvement planning shall be
62 designed to help programs improve their evaluation results
63 and level of program quality.

64 (b) The rules required pursuant to this section shall
65 include policies relating to the review, reduction, suspension
66 or disqualification of child care programs from the quality
67 rating and improvement system.

68 (c) The rules shall provide for implementation of the
69 statewide quality rating system effective July 1, 2011, subject
70 to section four of this article.

**§49-2E-3. Creation of statewide quality improvement system;
financial plan to support implementation and
quality improvement required as part of rules.**

1 Attached to the proposed rules required in section two of
2 this article, the Secretary of the Department of Health and
3 Human Resources shall submit a financial plan to support the
4 implementation of a statewide quality rating and
5 improvement system and help promote quality improvement.
6 The financial plan shall be considered a part of the rule and
7 shall include specific proposals for implementation of the
8 provisions of this section as determined by the Secretary.
9 The plan shall address, but is not limited to, the following:

10 (1) State agency staffing requirements, including, but not
11 limited to:

12 (A) Highly trained evaluators to monitor the assessment
13 process and ensure inter-rater reliability of eighty-five
14 percent or higher;

15 (B) Technical assistance staff responsible for career
16 advising, accreditation support services, improvement
17 planning, portfolio development and evaluations for
18 improvement planning only. The goal for technical
19 assistance staffing is to ensure that individualized technical
20 assistance is available to participating programs;

21 (C) A person within the department to collaborate with
22 other professional development providers to maximize
23 funding for training, scholarships and professional
24 development. The person filling this position also shall
25 encourage community and technical colleges to provide
26 courses through nontraditional means such as online training,
27 evening classes and off-campus training;

28 (D) Additional infant and toddler specialists to provide
29 high level professional development for staff caring for
30 infants and to provide on-site assistance with infant and
31 toddler issues;

32 (E) At least one additional training specialist at each of
33 the child care resource and referral agencies to support new
34 training topics and to provide training for school-age child
35 care programs. Training providers such as the child care
36 resource and referral agencies shall purchase new training
37 programs on topics such as business management, the
38 Devereux Resiliency Training and Mind in the Making; and

39 (F) Additional staff necessary for program
40 administration;

41 (2) Implementation of a broad public awareness
42 campaign and communication strategies that may include,
43 but are not limited to:

44 (A) Brochures, internet sites, posters, banners,
45 certificates, decals and pins to educate parents; and

46 (B) Strategies such as earned media campaigns, paid
47 advertising campaigns, e-mail and internet-based outreach,
48 face-to-face communication with key civic groups and
49 grassroots organizing techniques; and

50 (3) Implementation of an internet-based management
51 information system that meets the following requirements:

52 (A) The system shall allow for multiple agencies to
53 access and input data;

54 (B) The system shall provide the data necessary to
55 determine if the quality enhancements result in improved
56 care and better outcomes for children;

57 (C) The system shall allow access by Department of
58 Health and Human Resources subsidy and licensing staff,
59 child care resource and referral agencies, the agencies that
60 provide training and scholarships, evaluators and the child
61 care programs;

62 (D) The system shall include different security levels in
63 order to comply with the numerous confidentiality
64 requirements;

65 (E) The system shall assist in informing practice;
66 determining training needs; and tracking changes in
67 availability of care, cost of care, changes in wages and
68 education levels; and

69 (F) The system shall provide accountability for child care
70 programs and recipients and assure funds are being used
71 effectively;

72 (4) Financial assistance for child care programs needed
73 to improve learning environments, attain high ratings and
74 sustain long-term quality without passing additional costs on
75 to families that may include, but are not limited to:

76 (A) Assistance to programs in assessment and individual
77 program improvement planning and providing the necessary
78 information, coaching and resources to assist programs to
79 increase their level of quality;

80 (B) Subsidizing participating programs for providing
81 child care services to children of low-income families in
82 accordance with the following:

83 (i) Base payment rates shall be established at the seventy-
84 fifth percentile of market rate; and

85 (ii) A system of tiered reimbursement shall be established
86 which increases the payment rates by a certain amount above
87 the base payment rates in accordance with the rating tier of
88 the child care program;

89 (C) Two types of grants shall be awarded to child care
90 programs in accordance with the following:

91 (i) An incentive grant shall be awarded based on the type
92 of child care program and the level at which the child care
93 program is rated with the types of child care programs having
94 more children and child care programs rated at higher tiers
95 being awarded a larger grant than the types of child care
96 programs having less children and child care programs rated
97 at lower tiers; and

98 (ii) Grants for helping with the cost of national
99 accreditation shall be awarded on an equitable basis.

100 (5) Support for increased salaries and benefits for
101 program staff to increase educational levels essential to
102 improving the quality of care that may include, but are not
103 limited to:

104 (A) Wage supports and benefits provided as an incentive
105 to increase child care programs ratings and as an incentive to
106 increase staff qualifications in accordance with the following:

107 (i) The cost of salary supplements shall be phased in over
108 a five-year period;

109 (ii) The Secretary of the Department of Health and
110 Human Resources shall establish a salary scale for each of
111 the top three rating tiers that varies the salary support based
112 on the education of the care giver and the rating tier of the
113 program; and

114 (iii) Any center with at least a tier two rating that
115 employs at least one staff person participating in the
116 scholarship program required pursuant to paragraph (B) of
117 this subsection or employs degree staff may apply to the
118 Secretary of the Department of Health and Human Resources
119 for funding to provide health care benefits based on the
120 Teacher Education and Compensation Helps model in which
121 insurance costs are shared among the employees, the
122 employer and the state; and

123 (B) The provision of scholarships and establishment of
124 professional development plans for center staff that would
125 promote increasing the credentials of center staff over a
126 five-year period; and

127 (6) Financial assistance to the child care consumers
128 whose income is at two hundred percent of the federal
129 poverty level or under to help them afford the increased
130 market price of child care resulting from increased quality.

§49-2E-4. Quality rating and improvement system pilot projects; independent third-party evaluation; modification of proposed rule and financial plan; report to Legislature; limitations on implementation.

1 (a) The Secretary of the Department of Health and
2 Human Resources may promulgate emergency rules in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code to implement a quality rating and
5 improvement system in up to five counties as pilot projects
6 beginning July 1, 2009. The pilot quality rating and
7 improvement systems shall be in accordance with the
8 provisions of this article for the statewide system. The
9 purpose of the pilot projects is to test the rating system,
10 assess the quality of existing child care providers, provide a
11 basis for estimating the financial requirements of the various
12 elements of a statewide system as set forth in this article and
13 to inform future policy decisions. Notwithstanding any
14 provision of this article to the contrary, the rating or potential
15 rating of a child care provider participating in the study may
16 not be individually disclosed. The secretary may modify and
17 develop additional policies consistent with this article as
18 appropriate.

19 (b) The secretary shall contract with an independent
20 third-party evaluator to assist the department and the Quality

21 Rating and Improvement System Advisory Council with
22 establishing and evaluating the pilot project quality rating
23 and improvement system and conducting research on
24 statewide implementation. The secretary also may contract
25 with the evaluator for ongoing evaluation and research for
26 quality improvement. The evaluator shall have access to all
27 project data including data in the management information
28 system provided for in section two of this article.

29 (c) The secretary shall report annually to the Legislature
30 on the progress on development and implementation of a
31 child care quality rating and improvement system and its
32 impact on improving the quality of child care in the state.
33 The secretary may propose amendments to the rules and
34 financial plan necessary to promote implementation of the
35 quality rating and improvement system and improve the
36 quality of child care and may recommend needed legislation.
37 Nothing in this article requires the implementation of a
38 quality rating and improvement system unless funds are
39 appropriated therefore. The secretary may prioritize the
40 components of the financial plan for implementation and
41 quality improvement for funding purposes. If insufficient
42 funds are appropriated for full implementation of the quality
43 rating and improvement system beginning on July 1, 2011,
44 the rules shall provide for gradual implementation over a
45 period of several years.

46 (d) The Legislature recognizes that expenditures,
47 especially one-time types of expenditures or expenditures of
48 a limited duration, may be funded with moneys derived
49 through the American Recovery and Reinvestment Act of
50 2009. A study of the cost of implementing a quality rating
51 and improvement system statewide is expected to be
52 conducted over the next two years.

CHAPTER 27

**(Com. Sub. for H.B. 2569 - By Delegates Perry, Boggs,
Morgan and Ellem)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5B-5a, relating to creating the Juvenile Services Reimbursement Offender 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 §49-5B-5a, to read as follows:

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-5a. Creating the Juvenile Services Reimbursement Offender Fund.

1 There is hereby created within the State Treasury a
2 special revenue account designated “The Juvenile Services
3 Status Offender Fund” within and for the benefit of the
4 Division of Juvenile Services for expenses incurred in
5 housing juvenile status offenders in need of stabilization and
6 specialized supervision due to chronic runaway behavior.

7 Moneys shall be paid into the account by the Department of
8 Health and Human Resources based upon an established per
9 diem rate. The Department of Health and Human Resources
10 and the Division of Juvenile Services shall jointly establish
11 the per diem rate to be paid into the fund by the Department
12 of Health and Human Resources for each juvenile status
13 offender in need of stabilization and specialized supervision
14 due to chronic runaway behavior housed in a Division of
15 Juvenile Services staff secure facility pursuant to the
16 provisions of this article and by cooperative agreement. The
17 Director of Juvenile Services is authorized to make
18 expenditures from the fund in accordance with the provisions
19 of article three, chapter twelve of this code to offset expenses
20 incurred by the Division of Juvenile Services in housing,
21 treatment and caring for juvenile offenders.



CHAPTER 28

(Com. Sub. for S.B. 341 - By Senators Kessler and White)

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §49-7-32 of the Code of West Virginia, 1931, as amended, relating to transferring the authority to administer the juvenile justice database from the Department of Military Affairs and Public Safety to the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That §49-7-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. GENERAL PROVISIONS.**§49-7-32. Juvenile justice database.**

1 The West Virginia Supreme Court of Appeals is
2 responsible for collecting, compiling and disseminating
3 information in the juvenile justice database. Notwithstanding
4 any other provision of this code to the contrary, the court
5 shall grant the Division of Criminal Justice Services access
6 to confidential juvenile records for the limited purpose of the
7 collection and analysis of statistical data: *Provided*, That the
8 division shall keep the records confidential and not publish
9 any information that would identify any individual juvenile.

**CHAPTER 29****(Com. Sub. for S.B. 456 - By Senators Foster, Kessler and Unger)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-25-1, §47-25-2, §47-25-3, §47-25-4, §47-25-5, §47-25-6, §47-25-7, §47-25-8, §47-25-9, §47-25-10, §47-25-11, §47-25-12 and §47-25-13, all relating to establishing a cigarette fire safety standard for cigarettes sold in the state; defining terms; setting a reduced cigarette ignition propensity performance test and standard; requiring compliance certification by manufacturers; setting certification fees; requiring manufacturers to maintain records; requiring certain packaging markings; establishing civil penalties; establishing a special penalty fund; requiring the

State Fire Marshal to review effectiveness of the law and report to the Legislature; providing the State Fire Marshal with rule-making authority; authorizing inspections by State Tax Commissioner; authorizing the sale of existing inventory; permitting manufacturers to sell noncompliant cigarettes to other states and foreign countries; preemption if federal law or regulations establish a national standard; preemption of local regulations; and establishing effective dates.

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 §47-25-1, §47-25-2, §47-25-3, §47-25-4, §47-25-5, §47-25-6, §47-25-7, §47-25-8, §47-25-9, §47-25-10, 47-25-11, §47-25-12 and §47-25-13, all to read as follows:

ARTICLE 25. REDUCED CIGARETTE IGNITION PROPENSITY.

§47-25-1. Short title.

§47-25-2. Definitions.

§47-25-3. Test method and performance standard.

§47-25-4. Certification and product change.

§47-25-5. Marking of cigarette packaging.

§47-25-6. Penalties.

§47-25-7. Implementation.

§47-25-8. Inspection.

§47-25-9. Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund.

§47-25-10. Sales outside of West Virginia.

§47-25-11. Preemption.

§47-25-12. Local regulation.

§47-25-13. Effective date.

§47-25-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 Reduced Cigarette Ignition Propensity Standard and Fire
- 3 Prevention Act.

§47-25-2. Definitions.

1 (a) "Agent" means any person authorized by the State
2 Tax Commissioner to purchase and affix stamps on packages
3 of cigarettes.

4 (b) "Cigarette" means:

5 (1) Any roll of tobacco wrapped in paper or in any
6 substance not containing tobacco; and

7 (2) Any roll of tobacco wrapped in any substance
8 containing tobacco which, because of its appearance, the type
9 of tobacco used in the filler, or its packaging and labeling, is
10 likely to be offered to, or purchased by, consumers as a
11 cigarette as described in this subsection.

12 (c) "Manufacturer" means:

13 (1) Any entity which manufactures or otherwise produces
14 cigarettes or causes cigarettes to be manufactured or
15 produced anywhere that the manufacturer intends to be sold
16 in this state, including cigarettes intended to be sold in the
17 United States through an importer;

18 (2) The first purchaser anywhere that intends to resell in
19 the United States cigarettes manufactured anywhere that the
20 original manufacturer or maker does not intend to be sold in
21 the United States; or

22 (3) Any entity that becomes a successor of an entity
23 described in subdivision (1) or (2) of this subsection.

24 (d) "Quality control and quality assurance program"
25 means the laboratory procedures implemented to ensure that
26 operator bias, systematic and nonsystematic methodological
27 errors and equipment- related problems do not affect the

28 results of the testing. The program shall ensure that the
29 testing repeatability remains within the required repeatability
30 values stated in subdivision (6), subsection (a), section three
31 of this article for all test trials used to certify cigarettes in
32 accordance with this article.

33 (e) "Repeatability" means the range of values within
34 which the repeat results of cigarette test trials from a single
35 laboratory will fall ninety-five percent of the time.

36 (f) "Retail dealer" has the same meaning as in section
37 two, article seventeen, chapter eleven of this code.

38 (g) "Sale" has the same meaning as in section two, article
39 seventeen, chapter eleven of this code.

40 (h) "Wholesale dealer" means any person other than a
41 manufacturer who sells cigarettes or tobacco products to
42 retail dealers or other persons for purposes of resale and any
43 person who owns, operates or maintains one or more
44 cigarette or tobacco product vending machines in, at or upon
45 premises owned or occupied by any other person.

§47-25-3. Test method and performance standard.

1 (a) Except as provided in subsection (g) of this section
2 and in section ten of this article, no cigarettes may be sold or
3 offered for sale in this state or offered for sale or sold to
4 persons located in this state, unless: (i) The cigarettes have
5 been tested in accordance with the test method and meet the
6 performance standard specified in this section; (ii) a written
7 certification has been filed by the manufacturer with the State
8 Fire Marshal in accordance with section four of this article;
9 and (iii) the cigarettes have been marked in accordance with
10 section five of this article.

11 (1) Testing of cigarettes shall be conducted in accordance
12 with the American Society of Testing and Materials (ASTM)

13 standard E2187-04, standard test method for measuring the
14 ignition strength of cigarettes.

15 (2) Testing shall be conducted on ten layers of filter
16 paper.

17 (3) No more than twenty-five percent of the cigarettes
18 tested in a test trial in accordance with this section may
19 exhibit full-length burns. Forty replicate tests shall comprise
20 a complete test trial for each cigarette tested.

21 (4) The performance standard required by this section
22 shall only be applied to a complete test trial.

23 (5) Written certifications shall be based upon testing
24 conducted by a laboratory that has been accredited pursuant
25 to standard ISO/IEC 17025 of the International Organization
26 for Standardization (ISO) or other comparable accreditation
27 standard.

28 (6) Laboratories conducting testing in accordance with
29 this section shall implement a quality control and quality
30 assurance program that includes a procedure that will
31 determine the repeatability of the testing results. The
32 repeatability value shall be no greater than 0.19.

33 (7) This section does not require additional testing if
34 cigarettes are tested consistent with this article for any other
35 purpose.

36 (8) Testing performed to determine a cigarette's
37 compliance with the performance standard required by this
38 section shall be conducted in accordance with this section.

39 (b) Each cigarette listed in a certification submitted
40 pursuant to section four of this article that uses lowered
41 permeability bands in the cigarette paper to achieve

42 compliance with the performance standard set forth in this
43 section shall have at least two nominally identical bands on
44 the paper surrounding the tobacco column. At least one
45 complete band shall be located at least fifteen millimeters
46 from the lighting end of the cigarette. For cigarettes on which
47 the bands are positioned by design, there shall be at least two
48 bands fully located at least fifteen millimeters from the
49 lighting end and ten millimeters from the filter end of the
50 tobacco column, or ten millimeters from the labeled end of
51 the tobacco column for nonfiltered cigarettes.

52 (c) A manufacturer of a cigarette that cannot be tested in
53 accordance with the test method prescribed in subdivision
54 (1), subsection (a) of this section shall propose a test method
55 and performance standard for the cigarette to the State Fire
56 Marshal. If the performance standard proposed by the
57 manufacturer is equivalent to the performance standard
58 prescribed in subdivision (3) of said subsection, the
59 manufacturer may employ that test method and performance
60 standard to certify the cigarette pursuant to section four of
61 this article. If another state has enacted reduced cigarette
62 ignition propensity standards that include a test method and
63 performance standard that are the same as those contained in
64 this article and the officials responsible for implementing
65 those requirements have approved the proposed alternative
66 test method and performance standard for a particular
67 cigarette proposed by a manufacturer as meeting the fire
68 safety standards of that state's law or regulation under a legal
69 provision comparable to this section, then the manufacturer
70 may employ the alternative test method and performance
71 standard to certify cigarettes for sale in this state, unless the
72 State Fire Marshal demonstrates a reasonable basis why the
73 alternative test should not be accepted under this article. All
74 other applicable requirements of this section apply to the
75 manufacturer.

76 (d) Each manufacturer shall maintain copies of the
77 reports of all tests conducted on all cigarettes offered for sale

78 for a period of three years and shall make copies of these
79 reports available to the State Fire Marshal upon written
80 request. Any manufacturer who fails to make copies of these
81 reports available within sixty days of receiving a written
82 request is subject to a civil penalty not to exceed \$10,000 for
83 each day after the sixtieth day that the manufacturer does not
84 make the copies available.

85 (e) A subsequent ASTM standard test method for
86 measuring the ignition propensity of cigarettes may be used,
87 if the subsequent method does not result in a change in the
88 percentage of full-length burns exhibited by any tested
89 cigarette when compared to the percentage of full-length
90 burns the same cigarette would exhibit when tested in
91 accordance with ASTM Standard E2187-04 and the
92 performance standard in subdivision (3), subsection (a) of
93 this section.

94 (f) The State Fire Marshal shall review the effectiveness
95 of this section and report every three years to the Legislature,
96 if appropriate, recommendations for legislation to improve
97 the effectiveness of this article. The report and legislative
98 recommendations shall be submitted no later than June 30
99 following the conclusion of each three-year period.

100 (g) The requirements of subsection (a) of this section
101 shall not prohibit:

102 (1) Wholesale or retail dealers from selling their existing
103 inventory of cigarettes on or after the effective date of this
104 article if the wholesale or retail dealer can establish that state
105 tax stamps were affixed to the cigarettes prior to the effective
106 date and the wholesale or retail dealer can establish that the
107 inventory was purchased prior to the effective date in
108 comparable quantity to the inventory purchased during the
109 same period of the prior year; or

110 (2) The sale of cigarettes solely for the purpose of
111 consumer testing. For purposes of this subsection, the term
112 "consumer testing" means an assessment of cigarettes that is
113 conducted by a manufacturer (or under the control and
114 direction of a manufacturer), for the purpose of evaluating
115 consumer acceptance of those cigarettes, using only the
116 quantity of cigarettes that is reasonably necessary for the
117 assessment.

118 (h) This article shall be implemented and construed as to
119 effectuate its general purpose to make uniform the law of
120 those states that have enacted reduced cigarette ignition
121 propensity laws.

§47-25-4. Certification and product change.

1 (a) Each manufacturer shall submit to the State Fire
2 Marshal a written certification attesting that:

3 (1) Each cigarette listed in the certification has been
4 tested in accordance with section three of this article; and

5 (2) Each cigarette listed in the certification meets the
6 performance standard set forth in section three of this article.

7 (b) Each cigarette listed in the certification shall be
8 described with the following information:

9 (1) Brand or trade name on the package;

10 (2) Style, such as light or ultra light;

11 (3) Length in millimeters;

12 (4) Circumference in millimeters;

13 (5) Flavor, if applicable;

- 14 (6) Filter or nonfilter;
- 15 (7) Package description, such as soft pack or box;
- 16 (8) Marking pursuant to section five of this article;
- 17 (9) The name, address and telephone number of the
18 laboratory, if different from the manufacturer that conducted
19 the test; and
- 20 (10) The date that the testing occurred.
- 21 (c) The certifications shall be made available to the State
22 Fire Marshal for the purposes of ensuring compliance with
23 this section.
- 24 (d) Each cigarette certified under this section shall be
25 recertified every three years.
- 26 (e) At the time it submits a written certification under this
27 section, a manufacturer shall pay a fee of \$1,000 to the State
28 Fire Marshal for each brand family of cigarettes listed in the
29 certification. The fee shall apply to all cigarettes within the
30 brand family certified and shall include any new cigarette
31 certified within the brand family during the three-year
32 certification period.
- 33 (f) All moneys collected as certification fees submitted
34 by manufacturers shall be deposited in a special account in
35 the State Treasury to be known as the Reduced Cigarette
36 Ignition Propensity Standard and Fire Prevention Act Fund.
37 The fund shall be administered by the Tax
38 Commissioner. Expenditures from the fund are not
39 authorized from collections, but are to be made only in
40 accordance with appropriation by the Legislature and in
41 accordance with the provisions of article three, chapter
42 twelve of this code and upon the fulfillment of the provisions

43 set forth in article two, chapter eleven-b of this code:
44 *Provided*, That for the fiscal year ending June 30, 2010,
45 expenditures are authorized from collections rather than
46 pursuant to an appropriation by the Legislature. The fund
47 shall, in addition to any other moneys made available for
48 those purposes, be equally divided and distributed without
49 appropriation between the State Fire Marshal and the State
50 Tax Commissioner to support fire prevention activities and
51 processing, testing, enforcement and oversight activities
52 under this article.

53 (g) If a manufacturer has certified a cigarette pursuant to
54 this section and thereafter makes any change to the cigarette
55 that is likely to alter the cigarette's compliance with the
56 reduced cigarette ignition propensity standards required by
57 this article, that cigarette shall not be sold or offered for sale
58 in this state until the manufacturer retests the cigarette in
59 accordance with the testing standards set forth in section
60 three of this article and maintains records of that retesting as
61 required by section three of this article. Any altered cigarette
62 which does not meet the performance standard set forth in
63 section three of this article may not be sold in this state.

§47-25-5. Marking of cigarette packaging.

1 (a) Cigarettes that are certified by a manufacturer in
2 accordance with section four of this article shall be marked
3 to indicate compliance with the requirements of section three
4 of this article. The marking shall be in eight-point type or
5 larger and consist of:

6 (1) Modification of the product UPC code to include a
7 visible mark printed at or around the area of the UPC code.
8 The mark may consist of alphanumeric or symbolic
9 characters permanently stamped, engraved, embossed or
10 printed in conjunction with the UPC;

11 (2) Any visible combination of alphanumeric or symbolic
12 characters permanently stamped, engraved or embossed upon
13 the cigarette package or cellophane wrap; or

14 (3) Printed, stamped, engraved or embossed text that
15 indicates that the cigarettes meet the standards of this article.

16 (b) A manufacturer shall use only one marking and shall
17 apply this marking uniformly for all packages, including, but
18 not limited to, packs, cartons and cases, and brands marketed
19 by that manufacturer.

20 (c) The State Tax Commissioner shall be notified as to
21 the marking that is selected.

22 (d) Prior to the certification of any cigarette, a
23 manufacturer shall submit its proposed marking to the State
24 Tax Commissioner for approval. Upon receipt of the request,
25 the State Tax Commissioner shall approve or disapprove the
26 marking offered, except that the State Tax Commissioner
27 shall approve:

28 (1) Any marking in use and approved for sale in another
29 state; or

30 (2) The letters "FSC", which signifies fire standards
31 compliant, appearing in eight-point type or larger and
32 permanently printed, stamped, engraved or embossed on the
33 package at or near the UPC code.

34 (e) A manufacturer shall not modify its approved
35 marking unless the modification has been approved by the
36 State Tax Commissioner in accordance with this section.

37 (f) Manufacturers certifying cigarettes in accordance with
38 section four of this article shall provide a copy of the
39 certifications to all wholesale dealers and agents to which

40 they sell cigarettes and shall also provide sufficient copies of
41 an illustration of the package marking used by the
42 manufacturer pursuant to this section for each retail dealer to
43 which the wholesale dealers or agents sell cigarettes.
44 Wholesale dealers and agents shall provide a copy of these
45 package markings received from manufacturers to all retail
46 dealers to which they sell cigarettes. Wholesale dealers,
47 agents and retail dealers shall permit the State Tax
48 Commissioner and its agents to inspect markings of cigarette
49 packaging marked in accordance with this section.

§47-25-6. Penalties.

1 (a) A manufacturer, wholesale dealer, agent or any other
2 person or entity who knowingly sells or offers to sell
3 cigarettes, other than through retail sale, in violation of
4 section three of this article, is subject to a civil penalty not to
5 exceed \$100 for each pack of the cigarettes sold or offered
6 for sale: *Provided*, That in no case shall the penalty against
7 that person or entity exceed \$100,000 during any thirty-day
8 period.

9 (b) A retail dealer who knowingly sells or offers to sell
10 cigarettes in violation of section three of this article is subject
11 to a civil penalty not to exceed \$100 for each pack of the
12 cigarettes sold or offered for sale: *Provided*, That in no case
13 shall the penalty against that retail dealer exceed \$25,000 for
14 sales or offers to sell during any thirty-day period.

15 (c) In addition to any penalty prescribed by law, any
16 manufacturer of cigarettes that knowingly makes a false
17 certification pursuant to section four of this article is subject
18 to a civil penalty of at least \$75,000 and not to exceed
19 \$250,000 for each false certification.

20 (d) Any person violating any other provision in this
21 article is subject to a civil penalty for a first offense not to

22 exceed \$1,000 and for a subsequent offense, subject to a civil
23 penalty not to exceed \$5,000 for each violation.

24 (e) In addition to any other remedy provided by law, the
25 State Fire Marshal or the State Tax Commissioner may file
26 an action in circuit court for a violation of this article,
27 including petitioning for injunctive relief against any
28 manufacturer, importer, wholesale dealer, retail dealer, agent
29 or any other person or entity to enjoin that entity from
30 selling, offering to sell, or affixing tax stamps to any cigarette
31 that does not comply with the requirements of this article, or
32 to recover any costs or damages suffered by the state because
33 of a violation of this article, including enforcement costs
34 relating to the specific violation and attorney's fees. Each
35 violation of this article or of rules promulgated under this
36 article constitutes a separate civil violation for which the
37 State Fire Marshal or the State Tax Commissioner may
38 obtain relief. Upon obtaining injunctive relief under this
39 section, the State Fire Marshal or the State Tax
40 Commissioner shall provide a copy of the judgment to all
41 wholesale dealers and agents to which the cigarette has been
42 sold.

43 (f) Whenever any law-enforcement personnel or duly
44 authorized representative of the State Tax Commissioner
45 discovers any cigarettes for which no certification has been
46 filed as required by section four of this article or that have
47 not been marked in the manner required by section five of
48 this article, they may seize and take possession of the
49 cigarettes. The cigarettes shall be forfeited to the state. The
50 State Tax Commissioner shall destroy any cigarettes seized
51 pursuant to this section: *Provided*, That prior to the
52 destruction of any cigarette seized pursuant to these
53 provisions, the true holder of the trademark rights in the
54 cigarette brand may inspect the cigarette.

§47-25-7. Implementation.

1 (a) The State Fire Marshal or the State Tax
2 Commissioner may promulgate rules, pursuant to the
3 Administrative Procedures Act, chapter twenty-nine-a of this
4 code, necessary to effectuate the purposes of this article.

5 (b) The State Tax Commissioner in the regular course of
6 conducting inspections of wholesale dealers, agents and retail
7 dealers, as authorized under article seventeen, chapter eleven
8 of this code, may inspect the cigarettes to determine if the
9 cigarettes are marked as required by section five of this
10 article.

§47-25-8. Inspection.

1 To enforce the provisions of this article, the State Tax
2 Commissioner and its duly authorized representatives may
3 examine the books, papers, invoices and other records of any
4 person in possession, control or occupancy of any premises
5 where cigarettes are placed, stored, sold or offered for sale,
6 as well as the stock of cigarettes on the premises. Every
7 person in the possession, control or occupancy of any
8 premises where cigarettes are placed, sold or offered for sale,
9 shall give the State Tax Commissioner and its duly
10 authorized representatives the means, facilities and
11 opportunity for the examinations authorized by this section.

§47-25-9. Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund.

1 All moneys collected as civil penalties under section six
2 of this article shall be deposited in a special account in the
3 State Treasury to be known as the Reduced Cigarette Ignition
4 Propensity Standard and Fire Prevention Act Fund. The
5 moneys shall be deposited to the credit of the fund and shall,
6 in addition to any other moneys made available for that

7 purpose, be equally divided between the State Fire Marshal
8 and the State Tax Commissioner to support fire safety and
9 prevention programs and tax department enforcement
10 activities.

§47-25-10. Sales outside of West Virginia.

1 Nothing in this article shall be construed to prohibit any
2 person or entity from manufacturing or selling cigarettes that
3 do not meet the requirements of section three of this article,
4 if the cigarettes are or will be stamped for sale in another
5 state or are packaged for sale outside the United States and
6 that person or entity has taken reasonable steps to ensure that
7 the cigarettes will not be sold or offered for sale to persons
8 located in this state.

§47-25-11. Preemption.

1 This article shall have no force and effect if a federal law
2 or regulation establishing a national reduced cigarette
3 ignition propensity standard is adopted and becomes
4 effective.

§47-25-12. Local regulation.

1 Notwithstanding any other provision of law, the local
2 governmental units of this state may neither enact nor enforce
3 any ordinance or other local law or regulation relating to
4 cigarette fire safety standards conflicting with any provision
5 of this article.

§47-25-13. Effective date.

1 Except as otherwise specifically provided in this section,
2 the provisions of this article take effect on January 1, 2010.
3 The provisions of section twelve of this article take effect on
4 the effective date of this article.



CHAPTER 30

(S.B. 473 - By Senators Bowman, Snyder and D. Facemire)

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

AN ACT to amend and reenact §29-6-24 of the Code of West Virginia, 1931, as amended, relating to clarifying provisions relating to postings of job openings after a vacancy is created.

Be it enacted by the Legislature of West Virginia:

That §29-6-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-24. Posting of job openings.

1 (a) Whenever a job opening occurs within the classified
2 service, the appointing authority shall, in addition to any
3 other requirement of law or regulation for the posting of job
4 opening notices, at least ten days before making an
5 appointment to fill the job opening, post a notice within the
6 building or facility where the duties of the job will be
7 performed and throughout the agency, which notice states
8 that a job opening has occurred and describes the duties to be
9 performed by a person employed in that position.

10 (b) If an individual selected for a posted vacancy within
11 the first ten work days of employment: (1) Refuses the offer

12 of employment; (2) fails to report to work; or (3) resigns or
13 otherwise separates from employment, the appointing
14 authority is not required to repost the vacancy prior to
15 another appointment to the position if the appointment is
16 made within thirty days and the selection is made from the
17 pool of eligible applicants from which the first employee was
18 hired.

CHAPTER 31

**(Com. Sub. for S.B. 404 - By Senators Unger, Tomblin, Mr.
President, Snyder, Foster, McCabe, Stollings and White)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-13-1, §4-13-2, §4-13-3, §4-13-4, §4-13-5, §4-13-6 and §4-13-7, all relating to establishing a West Virginia Sesquicentennial of the American Civil War Commission; establishing findings and purpose; setting forth membership and terms; providing for compensation and expense reimbursement; defining quorums; requiring meeting to be held in accordance with the Open Governmental Proceedings Act; authorizing the commission to establish an advisory council; setting forth powers and duties of the commission; limiting duration of contracts; and providing for the termination of the commission.

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 §4-13-1, §4-13-2,

§4-13-3, §4-13-4, §4-13-5, §4-13-6 and §4-13-7, all to read as follows:

ARTICLE 13. WEST VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION AND FUND.

- §4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War Commission established; purpose.
- §4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.
- §4-13-3. Expense reimbursement.
- §4-13-4. Quorum; meetings.
- §4-13-5. Advisory council.
- §4-13-6. Powers; duties; limitation on duration of contracts.
- §4-13-7. Termination of the commission.

§4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War Commission established; purpose.

1 (a) The Legislature finds that the role of West Virginia,
2 its creation as a state and the roles of individual West
3 Virginians in the American Civil War, from the time of John
4 Brown's Raid through the formation of the State of West
5 Virginia and the conclusion of the American Civil War, are
6 of such historical significance as to warrant their
7 commemoration.

8 (b) There is hereby created the West Virginia
9 Sesquicentennial of the American Civil War Commission.

10 (c) The purpose of the commission is to prepare for and
11 commemorate the sesquicentennial of West Virginia's
12 participation in the American Civil War.

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

1 (a) The Governor shall appoint eleven members as
2 follows:

- 3 (1) Three academic historians;
- 4 (2) The Secretary of the Department of Education and the
5 Arts, or a designee;
- 6 (3) One representative of the Division of Culture and
7 History;
- 8 (4) One representative of the Division of Tourism;
- 9 (5) Five citizens members, no more than one of whom
10 may be from any one state senatorial district;
- 11 (6) One member of the House of Delegates, to be
12 appointed by the Speaker of the House of Delegates, who
13 shall serve as an ex officio nonvoting member of the
14 commission; and
- 15 (7) One member of the Senate, to be appointed by the
16 President of the Senate, who shall serve as an ex officio
17 nonvoting member of the commission.
- 18 (b) The members shall serve until July 1, 2021.
- 19 (c) Appointments to fill vacancies shall be for the
20 unexpired terms. Vacancies shall be filled in the same
21 manner as the original appointments.
- 22 (d) The commission shall elect a chair and a vice chair
23 from among its members.

§4-13-3. Expense reimbursement.

- 1 (a) Members shall serve without compensation.
- 2 (b) The commission may reimburse members for all
3 reasonable and necessary expenses actually incurred in the
4 performance of his or her duties as a commission member, in
5 a manner consistent with the guidelines of the travel

6 management office of the Department of Administration,
7 subject to availability of funds received pursuant to
8 subdivision (1), subsection (a), section six of this article. No
9 provision of this section may be construed to require any
10 appropriation of funds by the Legislature.

§4-13-4. Quorum; meetings.

1 (a) A simple majority of the members serving on the
2 board at a given time constitutes a quorum for the transaction
3 of business.

4 (b) Meetings shall be held in accordance with the
5 provisions of article nine-a, chapter six of this code.

§4-13-5. Advisory council.

1 The commission may establish an advisory council
2 composed of citizens at large who have knowledge of
3 American Civil War history and interest in its
4 sesquicentennial celebration to assist the commission in its
5 work.

§4-13-6. Powers; duties; limitation on duration of contracts.

1 (a) The commission may:

2 (1) Solicit, accept, use and dispose of gifts, grants,
3 donations, bequests or other funds or real or personal
4 property for the purpose of aiding or facilitating the work of
5 the commission, upon compliance with the provisions of
6 section two, article two, chapter twelve of this code;

7 (2) Procure supplies, services and property and make or
8 enter into contracts, leases or other legal agreement as
9 necessary to carry out its duties: *Provided*, That no contract,
10 lease or other legal agreement may be entered into by the
11 commission with terms which would extend beyond the
12 termination date of the commission;

13 (3) Plan, develop and carry out programs and activities
14 appropriate to commemorate the sesquicentennial of the
15 American Civil War;

16 (4) Encourage civic, historical, educational, economic
17 and other organizations throughout West Virginia to organize
18 and participate in activities to expand the understanding and
19 appreciation of the American Civil War;

20 (5) Provide technical assistance to localities and nonprofit
21 organizations to further the commemoration of the
22 sesquicentennial of the American Civil War;

23 (6) Develop programs and facilities to ensure that the
24 sesquicentennial commemoration of the American Civil War
25 result in a positive legacy and long-term public benefit;

26 (7) Encourage the development and conduct of programs
27 designed to involve all citizens in activities that
28 commemorate the sesquicentennial of the American Civil
29 War; and

30 (8) Focus its activities on the role of West Virginia and
31 its creation as a state and the roles of individual West
32 Virginians in the American Civil War.

33 (b) The commission shall report to the Legislature at each
34 regular session and at the same time report to the Governor
35 concerning the action taken by the commission during the
36 previous year in carrying out the provisions of this article and
37 make such special reports as may be required by the
38 Legislature and Governor.

§4-13-7. Termination of the commission.

1 The commission shall terminate on June 30, 2021.



CHAPTER 32

**(Com. Sub. for H.B. 3196 - By Delegates Marshall, Iaquinta,
Craig, Manchin, Evans and Anderson)**

[Passed April 8, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Environmental Protection; Department of Health and Human Resources; Division of Banking; Division of Corrections; Division of Highways; Division of Motor Vehicles; Division of Personnel; Division of Tourism; Insurance Commission; Public Service Commission; Regional Jail and Correctional Facility Authority and the State Fire Commission to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
2 recommendations reported to it by the Court of Claims
3 concerning various claims against the state and agencies
4 thereof and in respect to each of the following claims, the
5 Legislature adopts those findings of fact as its own and in

6 respect of certain claims herein, the Legislature has
 7 independently made findings of fact and determinations of
 8 award and hereby declares it to be the moral obligation of the
 9 state to pay each such claim in the amount specified below
 10 and directs the Auditor to issue warrants for the payment
 11 thereof out of any fund appropriated and available for the
 12 purpose.

13 *Claims against the Department of Administration:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15 (1) Fort Henry Realty Inc. dba Advanced
 16 Communications Company \$13,266.78

17 (TO BE PAID FROM SPECIAL REVENUE FUND)

18 (2) Infoprint Solutions Company \$187,763.14

19 (b) *Claim against the Department of Environmental*
 20 *Protection:*

21 (TO BE PAID FROM SPECIAL REVENUE FUND)

22 (1) Groundworks Reclamation Inc. \$12,000.00

23 (c) *Claim against the Department of Health and Human*
 24 *Resources:*

25 (TO BE PAID FROM SPECIAL REVENUE FUND)

26 (1) Laboratory Corporation of America
 27 Holdings \$34,043.38

28 (d) *Claim against the Division of Banking:*

29	(TO BE PAID FROM SPECIAL REVENUE FUND)	
30	(1) Federal Deposit Insurance Corporation . .	\$551.24
31	(e) <i>Claims against the Division of Corrections:</i>	
32	(TO BE PAID FROM GENERAL REVENUE FUND)	
33	(1) Automotive Rentals Inc.	\$949.95
34	(2) John Earl Crider Jr.	\$611.22
35	(3) Timothy J. Kittle	\$48.92
36	(4) Verizon	\$3,705.75
37	(5) Curtis Yanko	\$36.00
38	(f) <i>Claims against the Division of Highways:</i>	
39	(TO BE PAID FROM STATE ROAD FUND)	
40	(1) Rita Affolter	\$273.39
41	(2) James O. Andrews	\$451.55
42	(3) Mark Angelucci	
43	and Kathy S. Angelucci	\$250.00
44	(4) Alicia Ashcraft and Bobby Gutierrez II . .	\$475.89
45	(5) Norvell Ray Atkins Sr.	\$418.58
46	(6) Betty R. Badzek	\$450.00
47	(7) Melissa M. Baker	
48	and Daniel J. Baker Jr.	\$872.78

49	(8) Shawn R. Beegle	\$677.83
50	(9) Denise Berdine	\$2,272.92
51	(10) Charles Bishop Jr.	\$71.88
52	(11) Hazel C. Brown	\$250.00
53	(12) Wayne Brown	\$874.13
54	(13) Eric W. Caldwell	\$160.85
55	(14) Ernest W. Capp	\$500.00
56	(15) Richard L. Carey	\$362.00
57	(16) Daisy Mae Carte	
58	and Harold Larry Carte Jr.	\$1,100.00
59	(17) Amberlee Christey and Karen Hinkle ..	\$278.55
60	(18) Gobel Lee Conn	\$200.00
61	(19) Russell G. Cook	
62	and Rebecca G. Cook	\$250.00
63	(20) Sarah M. Copley	\$500.00
64	(21) William J. Crago	\$381.99
65	(22) CSX Transportation Inc.	\$303,992.88
66	(23) Jessie L. Cutlip and Charles E. Cutlip ..	\$500.00
67	(24) Mildred Davis	\$12,000.00
68	(25) Jason Donahue	\$342.42

69	(26) Martin Edward Downey	\$390.74
70	(27) Danny Lee Estep	\$500.00
71	(28) Joseph C. Evano	
72	and Patricia Ann Evano	\$960.47
73	(29) Christopher Evans	\$500.00
74	(30) Deborah Fisher	\$500.00
75	(31) Harold E. Ford Jr.	\$250.00
76	(32) Larry D. Ford	\$1,000.00
77	(33) Brenda A. Fortney	\$2,015.58
78	(34) Carrie L. Gaskins	
79	and Jeffrey Paul Gaskins	\$328.68
80	(35) Kelly D. George	\$65.83
81	(36) Lisa Godwin	\$428.78
82	(37) David F. Golash	
83	and Debra M. Golash	\$1,000.00
84	(38) Damon K. Gooch	
85	and Angela H. Gooch	\$6,842.81
86	(39) John Haid and Amber Haid	\$498.91
87	(40) Sandra L. Hall, Personal Rep. of the	
88	Estate of Jamie Hall	\$40,000.00
89	(41) E. Ralph Handley	\$300.00

90	(42) David Karl Hansen	\$546.71
91	(43) Jennifer Harman and Vickye Galford . .	\$934.77
92	(44) Elvis D. Harris	\$425.00
93	(45) Bryan Hilt	\$408.52
94	(46) Leah M. Hoffman	\$247.36
95	(47) Jack K. Housman	\$500.00
96	(48) Todd Hoy and Autumn L. Hoy	\$169.70
97	(49) Carmen Johnson	\$344.95
98	(50) Roger L. Lambert	
99	and Katherine V. Lambert	\$326.14
100	(51) Cecil E. Lancaster	\$250.00
101	(52) Frederick C. Langille Jr.	\$246.49
102	(53) Patricia J. Legg	\$60.04
103	(54) Priscilla Lester, Admin. of the	
104	Estate of Stanley Lester	\$85,000.00
105	(55) Lynn Levinson	\$500.00
106	(56) David Linger	\$1,696.00
107	(57) Brenda Lee MacEwan	\$367.20
108	(58) Kenneth R. Maston	\$120.17

109	(59) Christopher Maynor	
110	and Anna L. Maynor	\$261.87
111	(60) Doris McCallister	\$259.70
112	(61) Jeremy W. McCarty	
113	and Janice L. McCarty	\$909.93
114	(62) Delmas F. McClung	
115	and Waltraud McClung	\$272.65
116	(63) Sherry A. McCumbers	\$78.64
117	(64) Bradley T. Meadows	\$138.00
118	(65) Alan J. Miller and Debra A. Miller	\$500.00
119	(66) James Mills and Sharon Mills	\$5,582.97
120	(67) Carol Lynn Minor	
121	and Randy Lee Minor	\$2,100.33
122	(68) Raymond E. Mohr	\$250.00
123	(69) Becky L. Mongold	\$250.00
124	(70) Lawrence R. Moore	
125	and Rosemary Kinder Moore	\$265.51
126	(71) Mary E. Mullens	\$226.76
127	(72) Melissa J. Mullins	\$134.85
128	(73) Joginder Nath	\$76.27
129	(74) Bruce L. Orsborn Jr.	\$442.07

408	CLAIMS	[Ch. 32
130	(75) Amy Petcovic	\$311.02
131	(76) Janet E. Phillips and Dusty Phillips	\$362.09
132	(77) Roger B. Pill	\$500.00
133	(78) Paula J. Powell	\$500.00
134	(79) Katie Bennett Reed	\$450.00
135	(80) Georgia Roush	\$4,500.00
136	(81) Matthew G. Roush	
137	and Leesha M. Roush	\$380.17
138	(82) Emmogene Samples	
139	and Robert Samples	\$185.29
140	(83) Elmer Sandreth and Rebecca Sandreth ..	\$466.80
141	(84) Joseph Serian	\$90.10
142	(85) Robert D. Shuman, dba	
143	Premier Body Works	\$3,165.00
144	(86) Andrew Sikula Sr. and Judith Sikula ..	\$1,000.00
145	(87) Penny Sisk	\$793.51
146	(88) Joseph Skalican	\$400.00
147	(89) Thomas L. Skidgel	\$733.72
148	(90) V. Christine Smith and Ray A. Smith ..	\$166.42
149	(91) Alan J. Spitz	\$250.00

150	(92) Frank L. Starks	\$100.00
151	(93) Rebecca Stewart	
152	and Robert D. Stewart	\$327.42
153	(94) Richard W. Sydnor	\$1,253.95
154	(95) Jabbar K. Thomas	\$1,000.00
155	(96) Larry A. Tickle	
156	and Sharon Marie Tickle	\$200.00
157	(97) Shawna Rae Tolpa	
158	and Edward R. Tolpa Jr.	\$100.00
159	(98) Theresa M. Twigg	\$169.43
160	(99) Roberta Vanness	\$78.03
161	(100) Dawn E. Warfield	
162	and Thomas M. Knight	\$250.00
163	(101) William J. Waskevich	
164	and Jessica Waskevich	\$169.00
165	(102) Angela R. Weikle	\$837.84
166	(103) Kimberly Ann Wilcox	\$714.71
167	(104) David Josh Williams	\$1,183.37
168	(105) Carl W. Withrow II	\$61.37
169	(106) Brandy Womack	\$500.00
170	(g) <i>Claim against the Division of Motor Vehicles:</i>	

410	CLAIMS	[Ch. 32
171	(TO BE PAID FROM STATE ROAD FUND)	
172	(1) Brenda F. Hayworth	\$164.00
173	(h) <i>Claim against Division of Personnel:</i>	
174	(TO BE PAID FROM SPECIAL REVENUE FUND)	
175	(1) Debra A. Dangerfield	\$600.00
176	(i) <i>Claim against the Division of Tourism:</i>	
177	(TO BE PAID FROM SPECIAL REVENUE FUND)	
178	(1) Cambridge Center LLC	\$12,472.42
179	(j) <i>Claims against the Insurance Commission:</i>	
180	(TO BE PAID FROM SPECIAL REVENUE FUND)	
181	(1) Konica Minolta Business Solutions	\$4,042.12
182	(2) Sandra Koutsunis, dba	
183	AAA Court Reporting	\$237.20
184	(k) <i>Claims against the Public Service Commission:</i>	
185	(TO BE PAID FROM SPECIAL REVENUE FUND)	
186	(1) David J. Ellis	\$2,250.00
187	(2) William Carl Freeman	\$39.96
188	(3) Pomeroy IT Solutions Sales	
189	Company Inc.	\$1,639.83
190	(4) Royal Automotive Company	\$3,533.58

191 (5) James C. Weimer \$145.39

192 (1) *Claims against the Regional Jail and Correctional*
193 *Facility Authority:*

194 (TO BE PAID FROM SPECIAL REVENUE FUND)

195 (1) Marvin D. Adams \$150.00

196 (2) Mark A. Held \$1,035.00

197 (3) Jaime Navarrete Ortiz \$1,200.00

198 (4) Paul Twyman \$190.00

199 (5) Josh Webster \$100.00

200 (m) *Claim against the state Fire Commission:*

201 (TO BE PAID FROM SPECIAL REVENUE FUND)

202 (1) Pomeroy IT Solutions Sales

203 Company Inc. \$154.81

204 The Legislature finds that the above moral obligations
205 and the appropriations made in satisfaction thereof shall be
206 the full compensation for all claimants and that prior to the
207 payments to any claimant provided in this bill, the Court of
208 Claims shall receive a release from said claimant releasing
209 any and all claims for moral obligations arising from the
210 matters considered by the Legislature in the finding of the
211 moral obligations and the making of the appropriations for
212 said claimant. The Court of Claims shall deliver all releases
213 obtained from claimants to the department against which the
214 claim was allowed.

CHAPTER 33

**(S.B. 636 - By Senators Fanning, Edgell, White,
Sypolt and Oliverio)**

[Passed April 9, 2009; in effect from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Division of Corrections and the Division of Natural Resources to be moral obligations of the state and directing payments thereof.

1 The Legislature has heretofore made findings of fact that
2 the state has received the benefit of the commodities received
3 and/or services rendered by certain claimants herein and has
4 considered these claims against the state, and agencies
5 thereof, which have arisen due to overexpenditures of the
6 departmental appropriations by officers of the state spending
7 units, the claims having been previously considered by the
8 Court of Claims which also found that the state has received
9 the benefit of the commodities received and/or services
10 rendered by the claimants, but were denied by the Court of

11 Claims on the purely statutory grounds that to allow the
 12 claims would be condoning illegal acts contrary to the laws
 13 of the state. The Legislature, pursuant to its findings of fact
 14 and also by the adoption of the findings of fact by the Court
 15 of Claims as its own, while not condoning such illegal acts,
 16 hereby declares it to be the moral obligation of the state to
 17 pay these claims in the amounts specified below and directs
 18 the Auditor to issue warrants upon receipt of properly
 19 executed requisitions supported by itemized invoices,
 20 statements or other satisfactory documents as required by
 21 section ten, article three, chapter twelve of the Code of West
 22 Virginia, 1931, as amended, for the payments thereof out of
 23 any fund appropriated and available for the purpose.

24 (a) *Claims against the Division of Corrections:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) Camden-Clark Memorial Hospital	\$	4,372.43
27	(2) Monongalia General Hospital	\$	477.60
28	(3) Montgomery General Hospital	\$	19,360.21
29	(4) Montgomery Medcorp	\$	3,598.00
30	(5) West Virginia University Hospitals, Inc.	\$	40,247.49
31	(6) WVU Medical Corporation dba		
32	University Health Associates	\$	2,507.00
33	(7) WVU Physicians of Charleston	\$	5,027.00

34 (b) *Claim against the Division of Natural Resources:*

35 (TO BE PAID FROM SPECIAL REVENUE FUND)

36	(1) Harry Lee Scott dba H & J Superette	\$	30,584.00
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CHAPTER 34**(S.B. 572 - By Senator Bowman)**

[Passed April 6, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to repeal §5A-1-10 of the Code of West Virginia, 1931, as amended, relating to abolishing the Public Employee Leave Benefit Analysis Board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**§1. Repeal of section relation to the Public Employees Leave Benefit Analysis Board.**

- 1 Section ten, article one, chapter five-a of the Code of
- 2 West Virginia, 1931, as amended, is hereby repealed.

CHAPTER 35**(H.B. 3011 - By Delegates Brown, Guthrie and Hatfield)**

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

AN ACT to repeal §18-10A-11 of the Code of West Virginia, 1931, as amended, relating to limitation on political activity of officers or employees in the administration of the Vocational Rehabilitation Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. REHABILITATION SERVICES.

§1. Repeal of section relating to limitation on political activity.

1 §18-10A-11 of the Code of West Virginia, 1931, as
2 amended, is hereby repealed.



CHAPTER 36

**(H.B. 2652 - By Delegates Talbott, Argento, Pethtel, Swartzmiller,
Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)**

[Passed April 7, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to repeal §19-2G-1, §19-2G-2, §19-2G-3, §19-2G-6, §19-2G-7, §19-2G-9 and §19-2G-10 of the Code of West Virginia, 1931, as amended; relating to the tree fruit industry self-improvement act of 1984.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the tree fruit industry self-improvement act of 1984.

1 That §19-2G-1, §19-2G-2, §19-2G-3, §19-2G-6, §19-2G-
2 7, §19-2G-9 and §19-2G-10 of the Code of West Virginia,
3 1931, as amended, are repealed.

CHAPTER 37

(H.B. 2651 - By Delegates Talbott, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to repeal §19-10-1, §19-10-2, §19-10-3, §19-10-4, §19-10-5, §19-10-6, §19-10-7, §19-10-8, §19-10-9, §19-10-10, §19-10-11, §19-10-12 and §19-10-13 of the Code of West Virginia, 1931, as amended; relating to male breeding animals.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article regulating male breeding animals.

1 That §19-10-1, §19-10-2, §19-10-3, §19-10-4, §19-10-5,
2 §19-10-6, §19-10-7, §19-10-8, §19-10-9, §19-10-10, §19-10-
3 11, §19-10-12 and §19-10-13 of the Code of West Virginia,
4 1931, as amended, are repealed.

CHAPTER 38

(H.B. 2742 - By Delegates Talbott, Argento, Pethtel, Swartzmiller, Tabb, Beach, Williams, Anderson, Evans, Schoen and C. Miller)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to repeal §19-22-1, §19-22-2, §19-22-3, §19-22-4, §19-22-5, §19-22-6 and §19-22-7 of the Code of West Virginia, 1931, as amended, all relating to vinegars.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article regulating vinegars.

1 §19-22-1, §19-22-2, §19-22-3, §19-22-4, §19-22-5,
2 §19-22-6 and §19-22-7 of the Code of West Virginia, 1931,
3 as amended, are hereby repealed.

CHAPTER 39

(S.B. 425 - By Senators Minard, Jenkins and Deem)

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

AN ACT to amend and reenact §46A-4-111 of the Code of West Virginia, 1931, as amended, relating to refinancing or consolidation of certain loans or consumer credit sales by regulated consumer lenders; requiring disclosure of a higher annual percentage rate in any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale; and requiring documentation of a reasonable, net tangible benefit to the borrower of any refinancing or consolidation of a nonrevolving consumer loan or consumer credit sale secured by residential real estate.

Be it enacted by the Legislature of West Virginia:

That §46A-4-111 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-111. Disclosure of higher annual percentage rate upon refinancing of a loan not secured by real estate at higher rate; requiring documentation of a reasonable net tangible benefit to the borrower of any refinancing of a real estate secured loan.

1 (1) Any nonrevolving consumer loan or consumer credit
2 sale that is not secured by residential real estate that is
3 refinanced or consolidated with a new loan under this article
4 after September 1, 2009, at a higher annual percentage rate
5 than the consumer loan or consumer credit sale being
6 refinanced must provide the consumer the following
7 disclosures:

8 "If you do agree to refinance or consolidate your existing
9 obligation, you will be paying an annual percentage rate of
10 _____% on the existing balance of \$_____, instead of the
11 annual percentage rate of _____% which you are now
12 paying.

13 I acknowledge receipt of this information _____
14 (initials of borrower)."

15 Nothing in this subsection shall prohibit the receipt of
16 goods or services by the borrower at the time the
17 consolidated loan agreement is made, nor shall this
18 subsection prohibit or pertain to any loan where the
19 refinancing or consolidation results in the consumer paying
20 the same or a lower annual percentage rate.

21 (2) No nonrevolving consumer loan or consumer credit
22 sale that is secured by residential real estate may be
23 refinanced or consolidated with a new loan secured by
24 residential real estate and made under this article unless the
25 new loan has a reasonable, tangible net benefit to the
26 borrower considering all of the circumstances, including the
27 terms of both the new and the refinanced loans, the cost of

28 the new loan and the borrower's circumstances. The
29 reasonable, tangible net benefit shall be documented in
30 writing on a form prescribed by the commissioner and
31 maintained in the loan file.



CHAPTER 40

**(Com. Sub. for H.B. 2407 - By Delegates Perry, Boggs,
Morgan, Ellem and Webster)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, all relating to trustee accounts and funds; providing for disposition of certain earnings and personal property of inmates; authorizing uses of moneys in the inmate benefit fund.

Be it enacted by the Legislature of West Virginia:

That §25-1-3a and §25-1-3b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

§25-1-3b. Inmate benefit funds.

**§25-1-3a. Trustee accounts and funds, earnings and personal
property of inmates.**

1 (a) The Commissioner of Corrections is authorized to
2 establish at each institution under his or her jurisdiction a
3 “Trustee Fund”. The warden or administrator of each
4 institution shall receive and take charge of the money and
5 personal property, as defined by policy, of all inmates in his
6 or her institution and all money or personal property, as
7 defined by policy, sent to the inmates or earned by the
8 inmates as compensation for work performed while they are
9 domiciled there. The warden or administrator shall credit the
10 money and earnings to the inmate entitled to it and shall keep
11 an accurate account of all the money and personal property
12 so received, which account is subject to examination by the
13 Commissioner of Corrections. The warden or administrator
14 shall deposit the moneys in one or more responsible banks in
15 accounts to be designated a “Trustee Fund”.

16 (b) For all inmates, except those serving life without
17 mercy and those the warden determines are likely to serve the
18 remainder of their natural lives in the custody of the Division
19 of Corrections due to their age and the length of their
20 sentences, the warden or administrator shall keep in an
21 account at least ten percent of all money earned during the
22 inmate’s incarceration and pay the money to the inmate at the
23 time of the inmate’s release. The warden may authorize the
24 inmate to withdraw money from his or her mandatory savings
25 for the purpose of preparing the inmate for reentry into
26 society.

27 (c) The Commissioner of Corrections may direct that
28 offenders who work in community work programs, including
29 work release inmates who have obtained employment, make
30 reimbursement to the state toward the cost of his or her
31 incarceration.

32 (d)(1) Prior to ordering an incarcerated offender to make
33 reimbursement toward the costs of his or her incarceration,
34 the commissioner, or his or her designee, shall consider the
35 following:

- 36 (A) The offender's ability to pay;
- 37 (B) The nature and extent of the offender's
38 responsibilities to his or her dependents, if any;
- 39 (C) The length of probable incarceration under the court's
40 sentence; and
- 41 (D) The effect, if any, that reimbursement might have on
42 the offender's rehabilitation.
- 43 (2) No order of reimbursement entered pursuant to this
44 section may exceed \$500 per month unless the offender gives
45 his or her express consent.
- 46 (3) The Commissioner of Corrections shall, prior to the
47 beginning of each fiscal year, prepare a report that details the
48 average cost per inmate incurred by the division for the care
49 and supervision of those individuals in his or her custody.
- 50 (e) The chief executive officer of any correctional
51 institution, on request of an inmate, may expend up to one
52 half of the money earned by the inmate on behalf of the
53 family of the inmate if the ten percent mandatory savings has
54 first been set aside and other fees owed by the inmate have
55 been paid. The remainder of the money earned, after
56 deducting amounts expended as authorized, shall be
57 accumulated to the credit of the inmate and be paid to the
58 inmate at times as may be prescribed by rules. The funds so
59 accumulated on behalf of inmates shall be held by the chief
60 executive officer of each institution under a bond approved
61 by the Attorney General.
- 62 (f) The warden or administrator shall deliver to the
63 inmate at the time he or she leaves the institution, or as soon
64 as practicable after departure, all personal property, moneys
65 and earnings then credited to the inmate, or in case of the
66 death of the inmate before authorized release from the
67 institution, the warden or administrator shall deliver the

68 property to the inmate's personal representative. In case a
69 conservator is appointed for the inmate while he or she is
70 domiciled at the institution, the warden or administrator shall
71 deliver to the conservator, upon proper demand, all moneys
72 and personal property belonging to the inmate that are in the
73 custody of the warden or administrator.

74 (g) If any money is credited to a former inmate after
75 remittance of the sum of money as provided in subsection (f),
76 the Commissioner shall notify the former inmate within thirty
77 days of receipt of the money. The former inmate will be
78 afforded the opportunity to collect the money if he or she
79 pays the cost of the transaction. If the former inmate does
80 not claim the money within thirty days of receiving the notice
81 and the sum of money is less than \$10, the Commissioner
82 may place the money into the inmate benefit fund.

§25-1-3b. Inmate benefit funds.

1 (a) The Commissioner of Corrections shall establish an
2 inmate benefit fund for each of the institutions under his or
3 her jurisdiction. The inmate benefit fund is a fund held by
4 the institutions for the benefit and welfare of inmates
5 incarcerated in state correctional facilities and for the benefit
6 of victims.

7 (b) There is continued a special revenue account in the
8 State Treasury for each inmate benefit fund established by
9 the commissioner. Moneys received by an institution for
10 deposit in an inmate benefit fund shall be deposited with the
11 State Treasurer to be credited to the special revenue account
12 created for the institution's inmate benefit fund. Moneys in
13 a special revenue account established for an inmate benefit
14 fund may be expended by the institution for the purposes set
15 forth in this section. Moneys to be deposited into an inmate
16 benefit fund consist of:

17 (1) All profit from the exchange or commissary operation
18 and if the commissary is operated by a vendor, whether a

19 public or private entity, the profit is the negotiated
20 commission paid to the Division of Corrections by the
21 vendor;

22 (2) All net proceeds from vending machines used for
23 inmate visitation;

24 (3) All proceeds from contracted inmate telephone
25 commissions;

26 (4) Any funds that may be assigned by inmates or
27 donated to the institution by the general public or an inmate
28 service organization on behalf of all inmates;

29 (5) Any funds confiscated considered contraband; and

30 (6) Any unexpended balances in individual inmate trustee
31 funds if designated by the inmate upon his or her discharge
32 from the institution.

33 (c) The inmate benefit fund may only be used for the
34 following purposes at correctional facilities:

35 (1) Open-house visitation functions or other nonroutine
36 inmate functions;

37 (2) Holiday functions which may include decorations and
38 gifts for children of inmates;

39 (3) Cable television service;

40 (4) Rental of video cassettes;

41 (5) Payment of video license;

42 (6) Recreational supplies, equipment or area surfacing;

43 (7) Reimbursement of employee wages for overtime
44 incurred during open-house visitations and holiday functions;

- 45 (8) Postsecondary education classes;
- 46 (9) Reimbursement of a pro rata share of inmate work
47 compensation;
- 48 (10) Household equipment and supplies in day rooms or
49 units as approved by chief executive officers of institutions,
50 excluding supplies used in the daily maintenance and
51 sanitation of the unit;
- 52 (11) Christmas or other holidays gift certificates for each
53 inmate to be used at the exchange or commissary;
- 54 (12) Any expense associated with the operation of the
55 fund;
- 56 (13) Expenditures necessary to properly operate an
57 automated inmate family and victim information notification
58 system;
- 59 (14) Any expense for improvement of the facility which
60 will benefit the inmate population that is not otherwise
61 funded;
- 62 (15) Any expense related to the installation, operation
63 and maintenance of the inmate telephone system; and
- 64 (16) For restitution of any negative balance on any
65 inmate's trustee account for inmate medical copay, legal and
66 ancillary related postage, and photocopy fees that are due the
67 State of West Virginia, if the balance is uncollectible from an
68 inmate after one calendar year from an inmate's release on
69 parole or discharge date.
- 70 (d) The institution shall compile a monthly report that
71 specifically documents inmate benefit fund receipts and
72 expenditures and a yearly report for the previous fiscal year
73 by September 1 of each year and submit the reports to the
74 commissioner.

CHAPTER 41

(Com. Sub. for S.B. 263 - By Senators Green, White and Palumbo)

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

AN ACT to amend and reenact §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, all relating to monitoring of inmate telephone calls and mail; procedures and restrictions; authorizing disclosure under certain circumstances; and providing for retention, maintenance and destruction of telephone recordings and mail.

Be it enacted by the Legislature of West Virginia:

That §25-1-17 and §25-1-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

- 1 (a) The Commissioner of Corrections or his or her
- 2 designee is authorized to monitor, intercept, record and

3 disclose telephone calls to or from adult inmates of state
4 correctional institutions in accordance with the following
5 provisions:

6 (1) All adult inmates of state correctional institutions
7 shall be notified in writing that their telephone conversations
8 may be monitored, intercepted, recorded and disclosed;

9 (2) Only the commissioner, warden, administrator or their
10 designee shall have access to recordings of inmates'
11 telephone calls unless disclosed pursuant to subdivision (4)
12 of this subsection;

13 (3) Notice shall be prominently placed on or immediately
14 near every telephone that may be monitored;

15 (4) The contents of inmates' telephone calls may be
16 disclosed to an appropriate law-enforcement agency pursuant
17 to an order of a court or administrative tribunal when
18 disclosure is necessary for the investigation, prevention or
19 prosecution of a crime or to safeguard the orderly operation
20 of the correctional institution. Disclosure may be made in
21 civil or administrative proceedings pursuant to an order of a
22 court or an administrative tribunal when the disclosure is:

23 (A) Necessary to safeguard and protect the orderly
24 operation of the correctional institution; or

25 (B) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All recordings of telephone calls shall be retained for
28 at least three years and maintained and destroyed in
29 accordance with the record retention policy of the Division
30 of Corrections adopted pursuant to section one, article eight,
31 chapter five-a of this code, *et seq.*; or

32 (6) To safeguard the sanctity of the attorney-client
33 privilege, a telephone line that is not monitored shall be made

34 available for telephone calls to or from an attorney. These
35 calls shall not be monitored, intercepted, recorded or
36 disclosed in any matter.

37 (b) The commissioner shall propose legislative rules in
38 accordance with the provisions of article three, chapter
39 twenty-nine-a of this code to effectuate the provisions of this
40 section.

41 (c) The provisions of this section shall apply only to
42 those persons serving a sentence of incarceration in the
43 custody of the Commissioner of Corrections.

**§25-1-18. Monitoring inmate mail; procedures and restrictions;
identifying mail from a state correctional
institution; mail to or from attorneys excepted.**

1 (a) The Commissioner of Corrections or his or her
2 designee is authorized to monitor, open, review, copy and
3 disclose mail sent to adult inmates of state correctional
4 institutions in accordance with the following provisions:

5 (1) All adult inmates of state correctional institutions
6 shall be notified in writing that their mail may be monitored,
7 opened, reviewed, copied and disclosed;

8 (2) Only the commissioner and his or her designee shall
9 have access to copies of inmates' mail unless disclosed
10 pursuant to subdivision (4) of this subsection;

11 (3) Notice that the mail may be monitored shall be
12 prominently placed on or immediately near every mail
13 receptacle or other designated area for the collection or
14 delivery of mail;

15 (4) The contents of inmates' mail may be disclosed to an
16 appropriate law-enforcement agency pursuant to an order of
17 a court or administrative tribunal when disclosure is

18 necessary for the investigation, prevention or prosecution of
19 a crime or to safeguard the orderly operation of the
20 correctional institution. Disclosure may be made in civil or
21 administrative proceedings pursuant to an order of a court or
22 administrative tribunal when the disclosure is:

23 (A) Necessary to safeguard and protect the orderly
24 operation of the correctional institution; or

25 (B) Necessary to protect persons from physical harm or
26 the threat of physical harm;

27 (5) All copies of mail shall be retained for at least three
28 years and maintained and destroyed in accordance with the
29 records retention policy of the Division of Corrections
30 adopted pursuant to section one, article eight, chapter five-a
31 of this code, *et seq.*; or

32 (6) The inmate whose mail has been copied and disclosed
33 under this section shall be given a copy of all such mail when
34 it is determined by the commissioner, warden or
35 administrator not to jeopardize the safe and secure operation
36 of the facility or to be detrimental to an ongoing investigation
37 or administrative action.

38 (b) To safeguard the sanctity of the attorney-client
39 privilege, mail to or from an inmate's attorney shall not be
40 monitored, reviewed, copied or disclosed in any manner
41 unless required by an order of a court of competent
42 jurisdiction. However, such mail may be checked for
43 weapons, drugs and other contraband provided it is done in
44 the presence of the inmate and there is a reasonable basis to
45 believe that any weapon, drug or other contraband exists in
46 the mail.

47 (c) All inmates' outgoing mail must be clearly identified
48 as being sent from an inmate at a state correctional institution

49 and must include on the face of the envelope the name and
50 full address of the institution.

51 (d) The Commissioner of Corrections or his or her
52 designee is authorized to open, monitor, review, copy and
53 disclose an inmate's outgoing mail in accordance with the
54 provisions of subsection (a) of this section.

55 (e) The commissioner shall propose legislative rules in
56 accordance with the provisions of article three, chapter
57 twenty-nine-a of this code to effectuate the provisions of this
58 section.

59 (f) The provisions of this section shall apply only to those
60 persons serving a sentence of incarceration in the custody of
61 the Commissioner of Corrections.

CHAPTER 42

(Com. Sub. for S.B. 99 - By Senator White)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §25-4-6 of the Code of West Virginia, 1931, as amended, relating to providing a judge has the discretion to impose the original sentence on a youthful offender who has completed the treatment program at a juvenile center but commits another crime before returning to the court for the sentencing hearing; and providing for the offender to receive credit for time served.

Be it enacted by the Legislature of West Virginia:

That §25-4-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

1 The judge of any court with original criminal jurisdiction
2 may suspend the imposition of sentence of any young adult,
3 as defined in this section, convicted of or pleading guilty to
4 a felony offense, other than an offense punishable by life
5 imprisonment, including, but not limited to, felony violations
6 of the provisions of chapter seventeen-c of this code, who has
7 attained his or her eighteenth birthday but has not reached his
8 or her twenty-third birthday at the time of the sentencing by
9 the court and commit the young adult to the custody of the
10 West Virginia Commissioner of Corrections to be assigned
11 to a center. Young adult offenders who have previously been
12 committed to a young adult offender center are not eligible
13 for commitment to this program. The period of confinement
14 in the center shall be for a period of not less than six months
15 but not more than two years to successfully complete the
16 program requirements set by the warden. The court shall
17 order a presentence investigation to be conducted and
18 provide the warden with a copy of the presentence
19 investigation report, along with the commitment order.

20 If, in the opinion of the warden, the young adult offender
21 is an unfit person to remain in the center, the offender shall
22 be returned to the committing court to be dealt with further
23 according to law. The offender is entitled to a hearing before
24 the committing court to review the warden's determination.

25 The standard for review is whether the warden, considering
26 the offender's overall record at the center and the offender's
27 compliance with the center's rules, policies, procedures,
28 programs and services, abused his or her discretion in
29 determining that the offender is an unfit person to remain in
30 the center. At the hearing before the committing court, the
31 state need not offer independent proof of the offender's
32 disciplinary infractions contained in the record of the center
33 when opportunity for an administrative hearing on those
34 infractions was previously made available at the institution.
35 If the court upholds the warden's determination, the court
36 may sentence the offender for the crime for which the
37 offender was convicted. In his or her discretion, the judge
38 may allow the defendant credit on the sentence for time the
39 offender spent in the center.

40 A young adult offender shall be returned to the
41 jurisdiction of the court which originally committed the
42 offender when, in the opinion of the warden, the young adult
43 offender has satisfactorily completed the center training
44 program. The offender is then eligible for probation for the
45 offense the offender was convicted of or plead guilty to and
46 the judge of the court shall immediately place the offender on
47 probation. If the court finds there is reasonable cause to
48 believe that the offender has engaged in new criminal
49 conduct between his or her release from the center and the
50 sentencing hearing for the crime for which the offender was
51 ordered to the center, the judge may sentence the offender for
52 the crime for which the offender was first convicted, with
53 credit for the time spent at the center. In the event the
54 offender's probation is subsequently revoked, the judge shall
55 impose the sentence the young adult offender would have
56 originally received had the offender not been committed to
57 the center and subsequently placed on probation. The court
58 shall, however, give the offender credit on his or her sentence
59 for the time spent in the center.

CHAPTER 43

(Com. Sub. for S.B. 280 - By Senators Green, White and Chafin)

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 12, 2009.]

AN ACT to repeal §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all relating to enacting the Correctional Industries Act of 2009; authorizing the Commissioner of the Division of Corrections to enter into correctional industries contracts, develop a marketing plan, create catalogues and a website and determine prices; purchasing inmate-made articles and products by state agencies mandatory; providing exceptions; creating the Correctional Industries Account; prohibiting sale of inmate-made goods on the open market; providing penalties; authorizing the establishment of prison industry enhancement certification programs pursuant to Title 18 U. S. C. §1761(c); providing for agreements between private entities and the commissioner or the Director of the Division of Juvenile Services to establish the federal programs; providing for the contents of the agreements; and updating certain terms.

Be it enacted by the Legislature of West Virginia:

That §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all to read as follows:

ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.

- §25-7-1. Legislative findings.
- §25-7-2. Citation of article.
- §25-7-3. Establishment of industries at correctional facilities; purposes and extent.
- §25-7-4. Correctional industries service contracts.
- §25-7-5. Purchase of inmate-made goods by state agencies.
- §25-7-6. Exceptions to mandatory purchase requirement.
- §25-7-7. Catalogues and a website of articles and products made and produced.
- §25-7-8. Commissioner to determine prices.
- §25-7-9. Annual statements by the commissioner.
- §25-7-10. Indebtedness for capital outlay projects.
- §25-7-11. Correctional industries account.
- §25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.
- §25-7-13. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of inmates by private persons; lease of land and improvements.
- §25-7-14. Agreement between Commissioner and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; inmate participation on voluntary basis; and workers' compensation.
- §25-7-15. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of juvenile residents by private persons; lease of land and improvements.
- §25-7-16. Agreement between director and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; resident participation on voluntary basis; workers' compensation and unemployment compensation.

§25-7-1. Legislative findings.

1 The Legislature finds that the means now provided for
2 the use of inmate labor are inadequate to furnish a sufficient
3 number of inmates with employment. It is the intent of this
4 article:

5 (a) To provide more adequate, regular and suitable
6 employment for the inmates and confined juvenile or
7 youthful offenders of this state;

8 (b) To use the labor of inmates and confined juvenile or
9 youthful offenders for self-maintenance and to reimburse this
10 state for expenses incurred by reason of their crimes and
11 confinement;

12 (c) To provide for the requisition and distribution of
13 correctional industries articles and products directly through
14 established state authorities, with no possibility of private
15 profit except for those specific articles and products
16 manufactured and sold pursuant to 18 U. S. C. §1761(c), the
17 Prison Industry Enhancement (PIE) Certification Program,
18 and pursuant to sections thirteen, fourteen, fifteen and sixteen
19 of this article; and

20 (d) To provide for correctional industries to be profitable
21 in view of the fact that it is a self-sufficient authority.

§25-7-2. Citation of article.

1 This article may be cited as the Correctional Industries
2 Act of 2009.

**§25-7-3. Establishment of industries at correctional facilities;
purposes and extent.**

1 The Commissioner of the Division of Corrections or the
2 commissioner's designee has exclusive authority to execute
3 contracts for the sale of products manufactured or serviced at
4 state correctional facilities, as necessary to carry out the
5 provisions of this article. The commissioner or designee is
6 authorized to purchase equipment, raw materials and supplies
7 and to employ necessary supervisory personnel to establish
8 and maintain, at state correctional facilities and institutions
9 under the commissioner's control, industries which use the

10 services of inmates to manufacture and produce articles and
11 products for use by any office, department, institution or
12 agency supported, in whole or in part, by this state or its
13 political subdivisions.

§25-7-4. Correctional industries service contracts.

1 (a) The commissioner may enter into contracts with
2 private entities under which inmate or resident labor is
3 provided through correctional industries for work involving
4 the delivery of products or for service work. Service work
5 means work which includes, but is not limited to, repairs,
6 replacement of original manufactured items, packaging,
7 sorting, recycling, labeling or similar work that is not original
8 equipment manufacturing. The use of inmate or resident
9 labor may not result in the displacement of civilian workers
10 employed in the local region where the work is performed.
11 The division may negotiate the wage for inmate or resident
12 labor under correctional industries contracts and, except as
13 provided in sections thirteen, fourteen, fifteen and sixteen of
14 this article, the wage may be less than the prevailing wage for
15 work of a similar nature in the private sector.

16 (b) The Division of Corrections, in cooperation with the
17 Department of Commerce, shall develop and maintain a
18 marketing plan encouraging private sector businesses to
19 employ inmates through the correctional industries program.

§25-7-5. Purchase of inmate-made goods by state agencies.

1 (a) On and after the effective date of this article, all
2 offices, departments, institutions and agencies of this state
3 supported, in whole or in part, by state funds shall purchase
4 all articles or products which they require from the
5 commissioner, if those articles or products are produced or
6 manufactured by correctional industries, as provided by this
7 article. No state office, department, institution or agency
8 may purchase an article or product which correctional

9 industries produces from any other source, unless specifically
10 excepted from the provisions of this section pursuant to
11 section six of this article.

12 (b) Purchases of correctional industries articles or
13 products by state offices, departments, institutions and
14 agencies shall be made on requisition by the office,
15 department, institution or agency requiring the articles or
16 products.

17 (c) Political subdivisions, not-for-profit corporations and
18 charitable agencies chartered in West Virginia, units of the
19 federal government and units of government of other states
20 may purchase articles and products produced by correctional
21 industries. Entities which contract with the state, its political
22 subdivisions, its agencies or its public institutions may
23 purchase from correctional industries articles and products
24 used in the performance of their contracts.

§25-7-6. Exceptions to mandatory purchase requirement.

1 Exceptions from the mandatory purchase provisions of
2 section five of this article may be granted when a correctional
3 industries article or product does not meet the reasonable
4 requirements of the requesting state office, department,
5 institution or agency, or when the requisition cannot be
6 fulfilled because of insufficient supply or other reason. No
7 state office, department, institution or agency may evade the
8 requirements of section five of this article, or of this section,
9 making insubstantial variations from the characteristics of
10 correctional industries products or articles.

**§25-7-7. Catalogues and a website of articles and products
made and produced.**

1 The commissioner shall arrange for the creation and
2 updating of catalogues and a website containing descriptions
3 of the correctional industries articles and products

4 manufactured or produced pursuant to the provisions of this
5 article. The commissioner shall make copies of the catalogue
6 and the website address available to entities eligible to
7 acquire correctional industries articles and products.

§25-7-8. Commissioner to determine prices.

1 The commissioner or the commissioner's designee shall
2 determine the prices of correctional industries articles and
3 products. The prices shall be uniform for all and as near as
4 is practicable to the fair market price.

§25-7-9. Annual statements by the commissioner.

1 At the close of each fiscal year, the commissioner shall
2 prepare a financial report on the financial condition of the
3 correctional industries operation, in accordance with
4 generally accepted accounting principles. Within sixty days
5 after the end of the fiscal year, the commissioner shall file the
6 report with the Secretary of the Department of Military
7 Affairs and Public Safety, the Secretary of the Department of
8 Administration and the Office of the Legislative Auditor.

§25-7-10. Indebtedness for capital outlay projects.

1 To carry out the provisions of this article, the
2 commissioner is authorized to enter into contracts to acquire
3 and purchase equipment, tools, supplies and materials, with
4 payment to be made over a period not exceeding five years.

§25-7-11. Correctional industries account.

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated the Correctional Industries
3 Account. All funds collected from the sale or disposition of
4 articles and products manufactured or produced by
5 correctional industries in accordance with this article shall be
6 deposited in this account.

7 (b) Except as provided in subsection (c) of this section,
8 funds collected and deposited may be used only to purchase
9 manufacturing supplies, equipment, machinery and materials
10 used to carry out the purposes of this article; to pay necessary
11 personnel; and to defray necessary expenses, including
12 inmate earnings, all of which are under the direction of the
13 commissioner and subject to the commissioner's approval.

14 (c) The Correctional Industries Account may not be
15 maintained in excess of the amount necessary to efficiently
16 and properly carry out the purposes of this article. In no
17 event may the Correctional Industries Account be maintained
18 in excess of \$1,500,000. Any moneys in the account
19 exceeding \$1,500,000 shall be transferred to the State
20 Treasury and credited to the General Revenue Fund of the
21 state.

§25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.

1 (a) Subject to the provisions of subsections (e) and (f) of
2 this section and section five of this article, it is unlawful to
3 sell or offer for sale on the open market any articles or
4 products manufactured or produced, wholly or in part, by
5 inmates of this state or any other state. This section does not
6 apply to articles or products manufactured and sold pursuant
7 to sections thirteen, fourteen, fifteen and sixteen of this
8 article; pursuant to the requirements of 18 U. S. C. §1761(c),
9 the Prison Industry Enhancement (PIE) Certification
10 Program; or products made with waste tires. Any person
11 violating the provisions of this subsection is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not
13 less than \$200 nor more than \$5,000 or confined not less than
14 three months nor more than one year, or both. Each sale or
15 offer for sale shall constitute a separate offense under this
16 subsection.

17 (b) Any use of waste tires shall comply with applicable
18 laws and with the rules of the Division of Environmental
19 Protection.

20 (c) Products made by inmates from waste tires and sold
21 on the open market must be competitively priced with
22 privately produced goods of the same nature and may not be
23 sold at a loss.

24 (d) Profits earned from the sale of products made by
25 inmates from waste tires shall be deposited in the
26 Correctional Industries Account to reimburse funds expended
27 collecting waste tires and producing waste tire products, and
28 to cover the reasonable cost of periodic replacement of
29 outdated, obsolete or inoperable machinery or equipment
30 used in such collection or production. Any funds remaining
31 shall be divided equally between the Correctional Industries
32 Account and the Crime Victims Compensation Fund created
33 by article two-a, chapter fourteen of this code.

34 (e) Notwithstanding the provisions of subsection (a) of
35 this section, any article or product manufactured or produced,
36 wholly or in part, by inmates of West Virginia correctional
37 facilities which is designed and intended to be used solely by
38 blind and persons with disabilities, including, but not limited
39 to, braille books and reading materials, may be sold or
40 distributed on the open market by the Division of Corrections
41 or other state department or agency.

42 (f) Notwithstanding the provisions of subsection (a) of
43 this section, arts and crafts produced by inmates may be sold
44 to the general public by the Division of Corrections or by
45 such other state agencies or departments as the commissioner
46 designates. The arts and crafts may be sold only on
47 consignment, so that the inmates whose arts and crafts
48 products are sold receive payment for the products.
49 Payments shall be deposited in accounts or funds and
50 managed as provided in section three-a, article one of this
51 chapter: *Provided*, That when the Division of Corrections or

52 other agency or department of state government provides
53 materials used in the production of an arts and crafts product,
54 the fair market value of such materials may be deducted from
55 the account of the individual inmate after the sale of the
56 product.

57 (g) For purposes of this section, "arts and crafts" means
58 articles produced individually by artistic or craft skill such as
59 painting, sculpture, pottery, jewelry or similar articles.

**§25-7-13. Establishment of programs authorized by the federal
Prison Industry Enhancement (PIE) Certification
Program for employment of inmates by private
persons; lease of land and improvements.**

1 (a) The Commissioner of the Division of Corrections
2 may establish programs for the employment of inmates by a
3 private person or entity for the manufacture of articles and
4 products as part of a program authorized pursuant to 18 U. S.
5 C. §1761(c), the Prison Industry Enhancement (PIE)
6 Certification Program. In establishing these programs, the
7 commissioner may enter into agreements with private
8 persons or entities to construct or lease facilities at a state
9 adult correctional facility, or at another agreed location, for
10 manufacturing and processing goods or for any other
11 business, commercial or agricultural enterprise.

12 (b) In connection with an agreement made under
13 subsection (a) of this section, the commissioner may lease
14 land and improvements on the grounds of a state correctional
15 facility for use by the private party to the agreement. Any
16 such lease shall be for a term of not more than twenty years
17 and may contain options for renewal.

**§25-7-14. Agreement between commissioner and private person
for manufacturing pursuant to Prison Industry
Enhancement (PIE) Certification Program; wages;
inmate participation on voluntary basis; and
workers' compensation.**

1 (a) The Commissioner of the Division of Corrections and
2 a private person or entity may enter into an agreement to
3 establish a program for inmates to manufacture articles and
4 products pursuant to the federal Prison Industry
5 Enhancement (PIE) Certification Program. The agreement
6 shall include the following:

7 (1) That a participating inmate be paid at a rate not less
8 than that paid for similar work in the same locality's private
9 sector, including applicable wage increases for overtime
10 work;

11 (2) That an inmate's work or participation in a PIE
12 certification program shall be only on a voluntary basis and
13 only after the inmate has been informed of the conditions of
14 participation;

15 (3) That, in the discretion of the commissioner or the
16 commissioner's designee, any inmate may be removed from
17 or refused participation in the PIE certification program;

18 (4) That the agreement will not result in the displacement
19 of civilian workers; and

20 (5) That the private person or entity shall provide for
21 workers' compensation insurance, or equivalent coverage, to
22 inmates participating in the PIE certification program.

23 (b) The provisions of this section shall not apply to
24 correctional industry service contracts under section four of
25 this article or to operations authorized in section three of this
26 article that are restricted from sale in the open market.

27 (c) A commercial or agricultural enterprise established
28 under this chapter is a private enterprise subject to federal
29 and state laws governing the operation of similar enterprises.

30 (d) The earnings of an inmate participating in a PIE
31 certification program under this article shall be deposited in
32 the Inmate Trust Account with the Division of Corrections.
33 The earnings shall be paid to the inmate after withholding of
34 state, federal and local taxes, and after other deductions
35 provided for in this chapter, including expenses for room and
36 board: *Provided*, That the commissioner shall adopt policies
37 and procedures for the additional deduction from an inmate's
38 earnings of not less than five percent nor more than twenty
39 percent, to be paid into the Crime Victims Compensation
40 Fund created by article two-a, chapter fourteen of this code.
41 Total deductions shall not exceed eighty percent of the
42 inmate's gross earnings. Earnings deposited by the
43 commissioner, with accrued interest, shall be paid to the
44 inmate no later than at the inmate's discharge or release on
45 parole.

46 (e) Spousal support or child support shall be deducted
47 from an inmate's earnings as directed by the inmate or by
48 court order. If the inmate's dependents are receiving
49 Temporary Assistance for Needy Families (TANF), the
50 disbursements shall be made to the Bureau for Child Support
51 Enforcement or any other state's public assistance agency.

**§25-7-15. Establishment of programs authorized by the federal
Prison Industry Enhancement (PIE) Certification
Program for employment of juvenile residents by
private persons; lease of land and improvements.**

1 (a) The Director of the Division of Juvenile Services may
2 establish programs for the employment of residents by a
3 private person or entity for the manufacture of articles and
4 products as part of a program authorized pursuant to 18 U. S.
5 C. §1761(c), the Prison Industry Enhancement (PIE)
6 Certification Program. In establishing these programs, the
7 director may enter into agreements with private persons or
8 entities to construct or lease facilities at a state juvenile
9 correctional facility, or at another agreed location, for

10 manufacturing and processing goods or for any other
11 business, commercial or agricultural enterprise.

12 (b) In connection with any agreement made under
13 subsection (a) of this section, the director may lease land and
14 improvements on the grounds of a juvenile correctional
15 facility for use by the private party to the agreement. Any
16 such lease shall be for a term of not more than twenty years
17 and may contain options for renewal.

**§25-7-16. Agreement between director and private person for
manufacturing pursuant to Prison Industry
Enhancement (PIE) Certification Program;
wages; resident participation on voluntary basis;
workers' compensation and unemployment
compensation.**

1 (a) The Director of the Division of Juvenile Services and
2 a private person or entity may enter into an agreement to
3 establish a program for residents to manufacture articles and
4 products pursuant to the federal Prison Industry
5 Enhancement (PIE) Certification Program. The agreement
6 shall include the following:

7 (1) That a participating resident be paid at a rate not less
8 than that paid for similar work in the same locality's private
9 sector, including applicable wage increases for overtime
10 work;

11 (2) That a resident's work or participation in a PIE
12 certification program shall be only on a voluntary basis and
13 only after the resident has been informed of the conditions of
14 participation;

15 (3) That, in the discretion of the director or the director's
16 designee, any resident may be removed from or refused
17 participation in the PIE certification program;

18 (4) That the agreement will not result in the displacement
19 of civilian workers; and

20 (5) That the private person or entity shall provide for
21 workers' compensation insurance, or equivalent coverage, to
22 residents participating in the PIE certification program.

23 (b) The provisions of this section shall not apply to
24 correctional industry service contracts provided for in section
25 four of this article or to operations authorized by section
26 three of this article that are restricted from sale in the open
27 market.

28 (c) A commercial or agricultural enterprise established
29 under this chapter is a private enterprise subject to federal
30 and state laws governing the operation of similar enterprises.

31 (d) The earnings of a resident participating in a PIE
32 certification program under this article shall be deposited in
33 the Resident Trust Account with the Division of Juvenile
34 Services. The earnings shall be paid to the resident after
35 withholding of state, federal and local taxes, and after other
36 deductions provided for in this chapter. The expenses of
37 room and board, as fixed by the director and the budget
38 agency for facilities operated by the director or, if the
39 resident is housed in a facility not operated by the director,
40 the amount paid by the Division of Juvenile Services to the
41 operator of the facility or other appropriate authority for
42 room and board, and other incidentals as established by
43 agreement between the Division of Juvenile Services and the
44 appropriate authority, shall be deducted: *Provided*, That the
45 director shall adopt policies and procedures for the additional
46 deduction from a resident's earnings of not less than five
47 percent nor more than twenty percent, to be paid into the
48 Crime Victims Compensation Fund created by article two-a,
49 chapter fourteen of this code. Total deductions shall not
50 exceed eighty percent of the resident's gross earnings.
51 Earnings deposited by the director, with accrued interest,

52 shall be paid to the resident no later than at the resident's
53 discharge or release on parole.

54 When special circumstances warrant, or for just cause,
55 the director may waive room and board charges by a facility
56 operated by the Division of Juvenile Services or, if the
57 resident is housed in a facility not operated by the Division
58 of Juvenile Services, authorize payment of room and board
59 charges from other available funds.

60 (e) Spousal support or child support shall be deducted
61 from a resident's earnings as directed by the resident or by
62 court order. If the resident's dependents are receiving
63 Temporary Assistance for Needy Families (TANF), the
64 disbursements shall be made to the Bureau for Child Support
65 Enforcement or any other state's public assistance agency.



CHAPTER 44

**(Com. Sub. for H.B. 2419 - By Delegates Perry, Boggs,
Morgan, Ellem and Webster)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §31-20-5d of the Code of West Virginia, 1931, as amended, relating to providing certain inmates a reduction in sentence for successful completion of education and rehabilitation programs.

Be it enacted by the Legislature of West Virginia:

That §31-20-5d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND
CORRECTIONAL FACILITY
AUTHORITY.**

§31-20-5d. Good time credit.

1 (a) Any person convicted of a criminal offense and
2 sentenced to confinement in a regional jail is to be granted
3 reduction of his or her sentence for good conduct in
4 accordance with this section.

5 (b) The reduction of sentence or good time is to be
6 deducted from the fixed term of determinate sentences. An
7 inmate under two or more consecutive sentences is allowed
8 good time as if the several sentences, when the maximum
9 terms thereof are added together, were all one sentence.

10 (c) Every inmate sentenced to a regional jail for a term of
11 confinement exceeding six months who, in the judgment of
12 the administrator of the regional jail facility, faithfully
13 complies with all rules of the regional jail during his or her
14 term of confinement is entitled to a deduction of five days
15 from each month of his or her sentence. No inmate may be
16 granted any good time under the provisions of this section for
17 time spent on bond or for time served on parole or in any
18 other status in which he or she is not physically incarcerated.

19 (d) Each inmate sentenced to a term of confinement in a
20 regional jail facility who participates in a general equivalency
21 diploma program is to be granted three days of good time for
22 the completion of each educational literacy level, as
23 demonstrated by achieving a passing score on standardized
24 tests required by the Department of Education, and ten days
25 of good time for completion of the requirements for a general
26 equivalency diploma or high school diploma.

27 (e) Each inmate sentenced to a term of confinement in a
28 regional jail in excess of six months shall be granted one day
29 of good time for successful completion of each of the
30 following rehabilitation programs: Domestic violence,
31 parenting, substance abuse, life skills, and anger management
32 or any special rehabilitation or educational program
33 designated by the executive director. A maximum of five
34 days good time shall be granted for successful completion of
35 five programs.

36 (f) The administrator of a regional jail facility may, with
37 the approval of the Governor, allow extra good time for
38 inmates who perform exceptional work or service.

39 (g) The Regional Jail and Correctional Facility Authority
40 shall promulgate disciplinary rules for the regional jail
41 facilities. The rules are to describe prohibited acts,
42 procedures for charging individual inmates for violations of
43 the rules and for determining the guilt or innocence of
44 inmates charged with the violations, and sanctions that may
45 be imposed for the violations. For each violation by an
46 inmate, any part or all of the good time that has been granted
47 to the inmate may be forfeited and revoked by the
48 administrator of the regional jail facility. The administrator,
49 when appropriate and with approval of the executive director
50 may restore any good time forfeited for a violation of the
51 rules promulgated or adopted pursuant to this subsection.

52 (h) Each inmate sentenced to a term of confinement in a
53 regional jail in excess of six months shall, within seventy-two
54 hours of being received into a regional jail, be given a copy
55 of the disciplinary rules, a statement setting forth the term or
56 length of his or her sentence or sentences, and the time of his
57 or her minimum discharge.

CHAPTER 45

(H.B. 2404 - By Delegates Perry, Boggs, Morgan and Ellem)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-5f, relating to inmate reimbursement to the authority for medical services provided to persons held in regional jails; providing exceptions for reimbursement for medical services; and providing authority for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §31-20-5f, to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5f. Charges assessed against inmates for services provided by the authority.

- 1 (a) The executive director is authorized to assess inmates
- 2 serving a sentence in any regional jail reasonable charges for
- 3 health care and treatment services provided to them by the
- 4 authority. The charges assessed against an inmate may be
- 5 deducted directly from the inmate's trustee account without

6 the inmate's consent. The inmate shall be notified of the
7 amount deducted and the charges to which it has been
8 applied.

9 (b) As used in this section, a "reasonable charge" may
10 not exceed the sum of \$5 for any billable service. Inmates
11 shall be notified of the fee schedule, billable services and
12 exempt services. Services initiated by the inmate shall be
13 assessed a fee, except that no charge may be assessed for:

14 (1) A specific health care service required under the law
15 of this state;

16 (2) An emergency service following a traumatic injury
17 other than a self-induced injury, or necessary to prevent death
18 or severe or permanent disability;

19 (3) Diagnosis and treatment of communicable diseases;

20 (4) Treatment of diagnosed severe mental illness;

21 (5) Treatment of specific chronic conditions identified by
22 the executive director;

23 (6) Staff-initiated care, including follow-up and referral
24 visits;

25 (7) Preventative services that the executive director
26 determines are to be provided or made available to all
27 inmates, including services related to disease prevention and
28 promotion of proper health habits; or

29 (8) Other services as may be exempted by the rule of the
30 authority.

31 No inmate may be denied any necessary billable medical
32 service because of the inability to pay the charge.

33 (c) Each inmate shall be afforded an opportunity at least
34 quarterly to review all deposits into, withdrawals from and
35 balance remaining in the inmate's trustee account during the
36 preceding three months.

37 (d) The executive director shall promulgate interpretive
38 rules implementing this section pursuant to article three,
39 chapter twenty-nine-a of this code prior to making any
40 assessment under this section. The rules may establish the
41 fee schedule and list of billable services and further define
42 services to be exempted.

CHAPTER 46

(Com. Sub. for S.B. 259 - By Senators Kessler and Chafin)

[Passed April 6, 2009; in effect from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §29-26-1 of the Code of West Virginia, 1931, as amended, relating to updating language within the West Virginia Courthouse Facilities Improvement Authority.

Be it enacted by the Legislature of West Virginia:

That §29-26-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 26. WEST VIRGINIA COURTHOUSE
FACILITIES IMPROVEMENT
AUTHORITY.**

§29-26-1. West Virginia Courthouse Facilities Improvement Authority created; membership.

1 (a) The West Virginia Courthouse Facilities
2 Improvement Authority is hereby created.

3 (b) The authority is to consist of twelve voting members,
4 including:

5 (1) The president of the West Virginia Sheriffs'
6 Association or another member of the association designated
7 to attend in lieu of the president;

8 (2) One sheriff to be appointed by the president of the
9 West Virginia Sheriffs' Association: *Provided*, That the
10 sheriff who is appointed may not be from the same
11 congressional district as the president;

12 (3) The president of the West Virginia Prosecuting
13 Attorneys' Association or another member of the association
14 designated to attend in lieu of the president;

15 (4) One prosecuting attorney to be appointed by the
16 president of the West Virginia Prosecuting Attorneys'
17 Association: *Provided*, That the prosecuting attorney who is
18 appointed may not be from the same congressional district as
19 the president;

20 (5) The president of the West Virginia' County Clerks'
21 Association or another member of the association designated
22 to attend in lieu of the president;

23 (6) The president of the West Virginia' Association of
24 Circuit Clerks or another member of the association
25 designated to attend in lieu of the president;

26 (7) One county clerk to be appointed by the president of
27 the West Virginia County Clerks' Association: *Provided*,

28 That the county clerk who is appointed may not be from the
29 same congressional district as the president;

30 (8) One circuit clerk to be appointed by the president of
31 the West Virginia Association of Circuit Clerks: *Provided*,
32 That the circuit clerk who is appointed may not be from the
33 same congressional district as the president;

34 (9) The president of the West Virginia County
35 Commissioners' Association or another member of the
36 association designated to attend in lieu of the president;

37 (10) One county commissioner to be appointed by the
38 president of the West Virginia County Commissioners'
39 Association: *Provided*, That the county commissioner who is
40 appointed may not be from the same congressional district as
41 the president;

42 (11) The president of the West Virginia Assessors'
43 Association or another member of the association designated
44 to attend in lieu of the president; and

45 (12) One assessor to be appointed by the president of the
46 West Virginia Assessors' Association: *Provided*, That the
47 assessor who is appointed may not be from the same
48 congressional district as the president.

49 (c) The authority is to consist of eight advisory members,
50 including:

51 (1) The president of the West Virginia Judicial
52 Association or another member of the association designated
53 to attend in lieu of the president;

54 (2) One circuit judge to be appointed by the West
55 Virginia Judicial Association: *Provided*, That the circuit
56 judge who is appointed may not be from the same
57 congressional district as the president;

58 (3) The president of the West Virginia Magistrates'
59 Association or another member of the association designated
60 to attend in lieu of the president;

61 (4) One magistrate to be appointed by the West Virginia
62 Magistrates' Association: *Provided*, That the magistrate who
63 is appointed may not be from the same congressional district
64 as the president;

65 (5) The president of the West Virginia Family Judicial
66 Association or another member of the association designated
67 to attend in lieu of the president;

68 (6) One family court judge to be appointed by the West
69 Virginia Family Judicial Association: *Provided*, That the
70 family court judge who is appointed may not be from the
71 same congressional district as the president;

72 (7) One member of the West Virginia Senate to be
73 appointed by the President of the Senate; and

74 (8) One member of the West Virginia House of Delegates
75 to be appointed by the Speaker of the House of Delegates.

76 (d) The advisory members of the authority are nonvoting,
77 ex officio members.

78 (e) The appointments are to be made as soon as possible
79 after the effective date of this article. The terms of
80 appointments are for four-year terms.

81 (f) The authority shall annually elect one of its members
82 as chair and shall appoint a secretary, who need not be a
83 member of the authority and who shall keep records of its
84 proceedings.

85 (g) The authority shall meet at least once every ninety
86 days to review applications requesting funding assistance and

87 otherwise to conduct its business and may meet more
88 frequently if necessary.

89 (h) Seven members of the authority constitute a quorum
90 and the affirmative vote of at least a majority of those
91 members present is necessary for any action taken by vote of
92 the authority. No vacancy in the membership of the authority
93 impairs the rights of a quorum by such vote to exercise all the
94 rights and perform all the duties of the authority.

95 (i) Members of the authority shall be reimbursed for
96 reasonable and necessary expenses actually incurred in the
97 performance of their official duties from funds appropriated
98 or otherwise made available to the authority for the purpose
99 of reimbursement upon submission of an itemized statement.



CHAPTER 47

(Com. Sub. for H.B. 2926 - By Delegate Manchin)

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §3-5-4 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-1-1b and §7-1-15, all relating to elections of county commissioners; providing legislative findings; clarifying residency requirements; and establishing a procedure for challenging a county commission candidate's qualifications for elected office.

Be it enacted by the Legislature of West Virginia:

That §3-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto two new sections, designated §7-1-1b and §7-1-15, all to read as follows:

Chapter

3. Elections.

7. County Commissions and Officers.

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-4. Nomination of candidates in primary elections.

1 (a) At each primary election, the candidate or candidates
2 of each political party for all offices to be filled at the
3 ensuing general election by the voters of the entire state, of
4 each congressional district, of each state senatorial district, of
5 each delegate district, of each judicial circuit of West
6 Virginia, of each county, and of each magisterial district in
7 the state shall be nominated by the voters of the different
8 political parties, except that no presidential elector shall be
9 nominated at a primary election.

10 (b) In primary elections a plurality of the votes cast shall
11 be sufficient for the nomination of candidates for office.
12 Where only one candidate of a political party for any office
13 in a political division, including party committeemen and
14 delegates to national conventions, is to be chosen, or where
15 a judicial circuit has two or more circuit judges and one
16 circuit judge is to be chosen for each numbered division
17 within the circuit, the candidate receiving the highest number
18 of votes therefor in the primary election shall be declared the
19 party nominee for such office. Where two or more such
20 candidates are to be chosen in the primary election, the
21 candidates constituting the proper number to be so chosen

22 who shall receive the highest number of votes cast in the
23 political division in which they are candidates shall be
24 declared the party nominees and choices for such offices,
25 except that:

26 (1) Candidates for the office of commissioner of the
27 county commission shall be nominated and elected in
28 accordance with the provisions of section ten, article nine of
29 the Constitution of the state of West Virginia and the
30 requirements of section one-b, article one, chapter seven;

31 (2) Members of county boards of education shall be
32 elected at primary elections in accordance with the provisions
33 of sections five and six of this article;

34 (3) Candidates for the House of Delegates shall be
35 nominated and elected in accordance with the residence
36 restrictions provided in section two, article two, chapter one
37 of this code; and

38 (4) In judicial circuits having numbered divisions, each
39 numbered division shall be tallied separately and the
40 candidate in each division receiving a plurality of the votes
41 cast shall be declared the party nominee for the office in that
42 numbered division.

43 (c) In case of tie votes between candidates for party
44 nominations or elections in primary elections, the choice of
45 the political party shall be determined by the executive
46 committee of the party for the political division in which
47 such persons are candidates.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-1b. Legislative findings; qualifications for county commissions.

§7-1-15. Challenge of candidate for county commission; residency.

§7-1-1b. Legislative findings; qualifications for county commissioners.

1 (a) The Legislature finds that:

2 (1) There is confusion concerning when a candidate for
3 county commission must be a resident of the magisterial
4 district he or she wants to represent;

5 (2) The supreme court has discussed the residency
6 requirement in several cases and has conflicting
7 interpretations;

8 (3) It is imperative that this issue be permanently
9 resolved at the time of filing to ensure the citizens have
10 choice on the ballot;

11 (4) It is essential the citizens know they are voting for a
12 person who is qualified to be a candidate; and

13 (5) With the expense of holding an election, tax payer
14 moneys should not be wasted of officials who could never
15 serve.

16 (b) A candidate for the office of county commissioner
17 shall be a resident from the magisterial district for which he
18 or she is seeking election:

19 (1) By the last day to file a certificate of announcement
20 pursuant to section seven, article five, chapter three of this
21 code; or

22 (2) At the time of his or her appointment by the county
23 executive committee or the chairperson of the county
24 executive committee.

§7-1-15. Challenge of candidate for county commission; residency.

1 (a) (1) Any person desiring to contest the qualifications
2 of another person whose nomination in the primary election,
3 nomination by petition, or nomination by appointment to fill
4 a vacancy on the ballot, has been certified and filed pursuant
5 to article five, chapter three of this code, as a candidate for
6 the office of county commission at a general election, shall
7 file a verified petition specifically setting forth the grounds
8 of the challenge not later than thirty days after the date of the
9 primary election.

10 (2) The court may permit a petition to be filed after the
11 thirtieth day after the primary election upon a finding that the
12 petitioner was unable to discover the grounds for challenging
13 the qualifications of the candidate prior to the thirtieth after
14 the primary election despite the exercise of reasonable
15 diligence.

16 (3) The petition shall be filed with the circuit court of
17 the county in which the candidate is seeking office.

18 (b) The circuit court shall at the earliest possible date set
19 the matter for hearing, but in no event shall the hearing be
20 held later than thirty days after the filing of the petition.

21 (c) The matter shall be tried by the circuit judge, without
22 a jury. After hearing the evidence, the circuit judge shall
23 determine whether the candidate whose qualifications have
24 been challenged is legally qualified to have his or her name
25 placed upon the ballot in question. The circuit judge shall
26 issue a written decision on each challenge by separately
27 stating findings of facts, conclusions of law within ten days
28 of the conclusion of the hearing.

29 (d) The burden of proof shall be upon the petitioner,
30 who must show by a preponderance of the evidence of the
31 record as a whole that the candidate is not qualified to be a
32 candidate for county commission.

33 (e) Within five days after judgment is rendered by the
34 circuit court, the petitioner or the candidate, or both, may file
35 an appeal in the Supreme Court upon giving a cost bond in
36 the sum of \$300. The appeal shall be immediately docketed
37 in the Supreme Court and shall be decided at the earliest
38 possible date, as a preference case over all others.

39 (f) The procedure set forth above shall be the sole and
40 only manner in which the qualifications of a candidate for
41 county commission may be challenged prior to the time of
42 his or her election. After any such person has been elected to
43 public office, the election may be challenged as otherwise
44 provided by law. After any person assumes an elective office,
45 his or her qualifications to hold that office may be contested
46 as otherwise provided by law.

CHAPTER 48

**(Com. Sub. for S.B. 440 - By Senators Kessler, Unger,
D. Facemire and Laird)**

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

AN ACT to amend and reenact §7-1-3ff of the Code of West Virginia, 1931, as amended, relating to giving county litter control officers the authority to issue citations for failure to prove proper disposal of trash and creating, contributing to or allowing an open dump.

Be it enacted by the Legislature of West Virginia:

That §7-1-3ff of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to regulate unsafe or unsanitary structures and refuse on private land; authority to establish an enforcement agency; county litter control officers; procedure for complaints; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

1 (a) Plenary power and authority are hereby conferred
2 upon every county commission to adopt ordinances
3 regulating the repair, alteration or improvement, or the
4 vacating and closing or removal or demolition, or any
5 combination thereof, of any dwellings or other buildings,
6 except for buildings utilized for farm purposes on land
7 actually being used for farming, unfit for human habitation
8 due to dilapidation, defects increasing the hazard of fire,
9 accidents or other calamities, lack of ventilation, light or
10 sanitary facilities or any other conditions prevailing in any
11 dwelling or building, whether used for human habitation or
12 not, which would cause the dwellings or other buildings to be
13 unsafe, unsanitary, dangerous or detrimental to the public
14 safety or welfare, whether the result of natural or manmade
15 force or effect.

16 (b) Plenary power and authority are hereby conferred
17 upon every county commission to adopt ordinances
18 regulating the removal and clean up of any accumulation of
19 refuse or debris, overgrown vegetation or toxic spillage or
20 toxic seepage located on private lands which is determined to

21 be unsafe, unsanitary, dangerous or detrimental to the public
22 safety or welfare, whether the result of natural or manmade
23 force or effect.

24 (c) The county commission, in formally adopting
25 ordinances, shall designate an enforcement agency which
26 shall consist of the county engineer (or other technically
27 qualified county employee or consulting engineer), county
28 health officer or his or her designee, a fire chief from a
29 county fire company, the county litter control officer, if the
30 commission chooses to hire one, and two members at large
31 selected by the county commission to serve two-year terms.
32 The county sheriff shall serve as an ex officio member of the
33 enforcement agency and the county officer charged with
34 enforcing the orders of the county commission under this
35 section.

36 (d) In addition to the powers and duties imposed by this
37 section, county litter control officers shall have authority to
38 issue citations for open dumps, as prohibited by subsection
39 (a), section ten, article fifteen, chapter twenty-two of this
40 code, unlawful disposal of litter, as prohibited by section
41 four, article fifteen-a, chapter twenty-two of this code, and
42 failure to provide proof of proper disposal of solid waste, as
43 prohibited by subsection (a), section ten, article four, chapter
44 twenty-two-c of this code, after completing a training course
45 offered by the West Virginia Department of Environmental
46 Protection. Nothing in this subsection supercedes the
47 authority or duty of the Department of Environmental
48 Protection or other law-enforcement officers to preserve law
49 and order and enforce the litter control program.

50 (e) Any ordinance adopted pursuant to the provisions of
51 this section shall provide fair and equitable rules of procedure
52 and any other standards considered necessary to guide the
53 enforcement agency, or its agents, in the investigation of
54 dwelling or building conditions, accumulation of refuse or

55 debris, overgrown vegetation or toxic spillage or toxic
56 seepage and shall provide for fair and equitable rules of
57 procedure for instituting and conducting hearings in the
58 matters before the county commission. Any entrance upon
59 premises for the purpose of making examinations shall be
60 made in a manner as to cause the least possible
61 inconvenience to the persons in possession.

62 (f)(1) Complaints authorized by this section shall be
63 brought before the county commission. Complaints shall be
64 initiated by citation issued by the county litter control officer
65 or petition of the county engineer (or other technically
66 qualified county employee or consulting engineer) on behalf
67 of and at the direction of the enforcement agency, but only
68 after that agency has investigated and determined that any
69 dwelling, building, accumulation of refuse or debris,
70 overgrown vegetation or toxic spillage or toxic seepage is
71 unsafe, unsanitary, dangerous or detrimental to the public
72 safety or welfare and should be repaired, altered, improved,
73 vacated, removed, closed, cleaned or demolished.

74 (2) The county commission shall cause the owner or
75 owners of the private land in question to be served with a
76 copy of the complaint. Service shall be accomplished in the
77 manner provided in rule four of the West Virginia Rules of
78 Civil Procedure.

79 (3) The complaint shall state the findings and
80 recommendations of the enforcement agency and that unless
81 the owner or owners of the property file with the clerk of the
82 county commission a written request for a hearing within ten
83 days of receipt of the complaint, an order will be issued by
84 the county commission implementing the recommendations
85 of the enforcement agency.

86 (4) If the owner or owners of the property file a request
87 for a hearing, the county commission shall issue an order

88 setting this matter down for hearing within twenty days.
89 Hearings shall be recorded by electronic device or by court
90 reporter. The West Virginia rules of evidence do not apply
91 to the proceedings, but each party has the right to present
92 evidence and examine and cross-examine all witnesses.

93 (5) The enforcement agency has the burden of proving its
94 allegation by a preponderance of the evidence and has the
95 duty to go forward with the evidence.

96 (6) At the conclusion of the hearing the county
97 commission shall make findings of fact, determinations and
98 conclusions of law as to whether the dwelling or building: Is
99 unfit for human habitation due to dilapidation; has defects
100 that increase the hazard of fire, accidents or other calamities,
101 lacks ventilation, light or sanitary facilities; or any other
102 conditions prevailing in the dwelling or building, whether
103 used for human habitation or not and whether the result of
104 natural or manmade force or effect, which would cause such
105 dwelling or other building to be unsafe, unsanitary,
106 dangerous or detrimental to the public safety or welfare; or
107 whether there is an accumulation of refuse or debris,
108 overgrown vegetation, toxic spillage or toxic seepage on
109 private lands which is determined to be unsafe, unsanitary,
110 dangerous or detrimental to the public safety or welfare,
111 whether the result of natural or manmade force or effect.

112 (7) The county commission has authority to order the
113 owner or owners thereof to repair, alter, improve, vacate,
114 remove, close, clean up or demolish the dwelling or building
115 in question or to remove or clean up any accumulation of
116 refuse or debris, overgrown vegetation or toxic spillage or
117 toxic seepage within a reasonable time and to impose daily
118 civil monetary penalties on the owner or owners who fail to
119 obey an order.

120 (8) Appeals from the county commission to the circuit
121 court shall be in accordance with the provisions of article
122 three, chapter fifty-eight of this code.

123 (g) Upon the failure of the owner or owners of the private
124 land to perform the ordered duties and obligations as set forth
125 in the order of the county commission, the county
126 commission may advertise for and seek contractors to make
127 the ordered repairs, alterations or improvements or the
128 ordered demolition, removal or clean up. The county
129 commission may enter into any contract with any contractor
130 to accomplish the ordered repairs, alterations or
131 improvements or the ordered demolition, removal or clean
132 up.

133 (h) A civil proceeding may be brought in circuit court by
134 the county commission against the owner or owners of the
135 private land or other responsible party that the subject matter
136 of the order of the county commission to subject the private
137 land in question: (1) To a lien for the amount of the
138 contractor's costs in making these ordered repairs, alterations
139 or improvements or ordered demolition, removal or clean up,
140 together with any daily civil monetary penalty imposed; (2)
141 to order and decree the sale of the private land in question to
142 satisfy the lien; (3) to order and decree that the contractor
143 may enter upon the private land in question at any and all
144 times necessary to make ordered repairs, alterations or
145 improvements, or ordered demolition, removal or clean up;
146 and (4) to order the payment of all costs incurred by the
147 county with respect to the property and for reasonable
148 attorney fees and court costs incurred in the prosecution of
149 the action.

150 (i) County commissions have the power and authority to
151 receive and accept grants, subsidies, donations and services
152 in kind consistent with the objectives of this section.

CHAPTER 49

(S.B. 528 - By Senators Laird, Stollings, Unger, Helmick and Green)

[Amended and again passed May 28, 2009, as a result of
the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §59-1-10 of the Code of West Virginia, 1931, as amended, relating to certain fees collected by clerks of the county commission; creating a new recording fee for the recording of certain trustee's reports of sale; providing for the distribution of certain fees paid to the clerk of the county commission; and redirecting a portion of funds currently retained by the county clerks to county general revenue.

Be it enacted by the Legislature of West Virginia:

That §59-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

***§59-1-10. Fees to be charged by clerk of county commission.**

1 For the purpose of this section, the word "page" is
2 defined as being a paper or electronic writing of not more
3 than legal size, 8 1/2" x 14".

4 The clerk of the county commission shall charge and
5 collect the following fees:

***CLERK'S NOTE:** This section was also amended by H.B. 3082 (Chapter 104), which passed prior to this act.

6 (a) When a writing is admitted to record, for receiving
7 proof of acknowledgment thereof, entering an order in
8 connection therewith, endorsing clerk's certificate of
9 recordation thereon and indexing in a proper index, where the
10 writing is a:

11 (1) Deed of conveyance (with or without a plat), trust
12 deed, fixture filing or security agreement concerning real
13 estate lease, \$15.

14 (2) Trustee's report of sale for any property for which
15 additional information and filing requirements are required
16 by section eight-a, article one, chapter thirty-eight of this
17 code, \$40, provided that \$20 of each recording fee received
18 pursuant to this subdivision shall be deposited into the
19 county's general revenue fund and \$20 of each of the
20 aforesaid recording fees shall be paid by the county clerk to
21 the State Treasurer quarterly and deposited in the Banking
22 Commissioner's fund to cover its expenses in aggregating,
23 collecting and publishing the data.

24 (3) Financing, continuation, termination or other
25 statement or writing permitted to be filed under chapter
26 forty-six of this code, \$10.

27 (4) Plat or map (with no deed of conveyance), \$10.

28 (5) Service discharge record, no charge.

29 (6) Any document or writing other than those referenced
30 in subdivisions (1), (2), (3), (4) and (5) of this subsection,
31 \$10.

32 (7) If any document or writing contains more than five
33 pages, for each additional page, \$1.

34 For any of the documents admitted to record pursuant to
35 this subsection, if the clerk of the county commission has the
36 technology available to receive these documents in electronic
37 form or other media, the clerk shall set a reasonable fee to
38 record these writings not to exceed the cost for filing paper
39 documents.

40 (8) Of the fees collected pursuant to subdivision (1),
41 subsection (a) of this section, \$10 shall be deposited in the
42 county general fund in accordance with section twenty-eight
43 of this article and \$1 shall be deposited in the county general
44 fund and dedicated to the operation of the county clerk's
45 office. Four dollars of the fees collected pursuant to
46 subdivision (1), subsection (a) of this section and \$5 of the
47 fees collected pursuant to subdivision (6), subsection (a) of
48 this section shall be paid by the county clerk into the State
49 Treasury and deposited in equal amounts for deposit into the
50 Farmland Protection Fund created in article twelve, chapter
51 eight-a of this code for the benefit of the West Virginia
52 Agricultural Land Protection Authority and into the Outdoor
53 Heritage Conservation Fund created in article two-g, chapter
54 five-b of this code: *Provided*, That the funds deposited in the
55 State Treasury pursuant to this subdivision may only be used
56 for costs, excluding personnel costs, associated with purpose
57 of land conservation, as defined in subsection (f), section
58 seven, article two-g, chapter five-b of this code.

59 (b) For administering any oath other than oaths by
60 officers and employees of the state, political subdivisions of
61 the state or a public or quasi-public entity of the state or a
62 political subdivision of the state, taken in his or her official
63 capacity, \$5.

64 (c) For issuance of marriage license and other duties
65 pertaining to the marriage license (including preparation of
66 the application, administering the oath, registering and
67 recording the license, mailing acknowledgment of minister's

68 return to one of the licensees and notification to a licensee
69 after sixty days of the nonreceipt of the minister's return),
70 \$35.

71 (1) One dollar of the marriage license fee received
72 pursuant to this subsection shall be paid by the county clerk
73 into the State Treasury as a state registration fee in the same
74 manner that license taxes are paid into the Treasury under
75 article twelve, chapter eleven of this code;

76 (2) Fifteen dollars of the marriage license fee received
77 pursuant to this subsection shall be paid by the county clerk
78 into the State Treasury for the Family Protection Shelter
79 Support Act in the same manner that license taxes are paid
80 into the Treasury under article twelve, chapter eleven of this
81 code;

82 (3) Ten dollars of the marriage license fee received
83 pursuant to this subsection shall be deposited in the
84 Courthouse Facilities Improvement Fund created by section
85 six, article twenty-six, chapter twenty-nine of this code.

86 (d) (1) For a copy of any writing or document, if it is not
87 otherwise provided for, \$1.50.

88 (2) If the copy of the writing or document contains more
89 than two pages, for each additional page, \$1.

90 (3) For annexing the seal of the commission or clerk to
91 any paper, \$1.

92 (4) For a certified copy of a birth certificate, death
93 certificate or marriage license, \$5.

94 (e) For copies of any record in electronic form or a
95 medium other than paper, a reasonable fee set by the clerk of
96 the county commission not to exceed the costs associated
97 with document search and duplication.



CHAPTER 50

(S.B. 594 - By Senators Helmick, Chafin, Fanning and Kessler)

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

AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended, relating to the transfer of moneys for the courtesy patrol program out of the Tourism Promotion Fund.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

1 There is hereby continued in the State Treasury the
2 special revenue fund known as the Tourism Promotion Fund
3 created under prior enactment of section nine, article one of
4 this chapter.

5 (a) The Legislature finds that a courtesy patrol program
6 providing assistance to motorists on the state's highways is
7 one of the most beneficial methods to introduce a tourist
8 visiting the state of the state's hospitality and good will.
9 For that reason, \$4,700,000 of the moneys deposited in the
10 fund each year shall be deposited in a special revenue
11 account in the State Treasury to be known as the Courtesy
12 Patrol Fund according to the following schedule: On July

13 31 of each year, \$850,000, and on the last day of each
14 month thereafter, \$350,000. Expenditures from the fund
15 shall be used solely to fund the courtesy patrol program
16 providing assistance to motorists on the state's highways.
17 Amounts collected in the fund which are found, from time
18 to time, to exceed funds needed for the purposes set forth
19 in this subdivision may be transferred to other accounts or
20 funds and redesignated for other purposes by appropriation
21 of the Legislature.

22 (b) If there are funds remaining after the monthly
23 distribution required in subdivision (a) of this section, a
24 minimum of five percent of the moneys deposited remaining
25 in the fund each year shall be used solely for direct
26 advertising for West Virginia travel and tourism: *Provided,*
27 That no less than twenty percent of these funds be expended,
28 with the approval of the Director of the Division of Natural
29 Resources, to effectively promote and market the state's
30 parks, state forests, state recreation areas and wildlife
31 recreational resources. Direct advertising means advertising
32 which is limited to television, radio, mailings, newspaper,
33 magazines, the internet and outdoor billboards or any
34 combination thereof.

35 (c) The balance of the moneys deposited in the fund shall
36 be used for direct advertising within the state's travel regions
37 as defined by the commission. The funds shall be made
38 available to these districts beginning July 1, 1995, according
39 to legislative rules authorized for promulgation by the
40 Tourism Commission.

41 (d) All advertising expenditures over \$25,000 from the
42 Tourism Promotion Fund require prior approval by recorded
43 vote of the commission. No member of the commission or
44 of any committee created by the commission to evaluate
45 applications for advertising or other grants may participate in
46 the discussion of, or action upon, an application for or an
47 award of any grant in which the member has a direct
48 financial interest.

CHAPTER 51

**(Com. Sub. for H.B. 2305 - By Delegates Webster,
Wells, Ferro, Miley, Frazier, Schoen, Lane,
Wooton, Hunt and Barker)**

[Passed April 7, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §51-1-11 of the Code of West Virginia, 1931, as amended, relating to the clerks office of the Supreme Court; revising appointment, bonding and compensation provisions of the clerk; and revising appointment and compensation provisions of clerks office staff.

Be it enacted by the Legislature of West Virginia:

That §51-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-11. Appointment and compensation of the Clerk and employees of the clerks' office; compensation.

1 The justices of the supreme court of appeals may appoint
2 a clerk. Notwithstanding any code provision to the contrary,
3 no bond shall be required to be posted by the clerk. The
4 justices of the supreme court of appeals may also appoint any
5 other full-time and part-time professional and clerical
6 assistants necessary to efficiently perform the functions and

7 duties of the office of the clerk. These employees shall serve
8 at the will and pleasure of the justices of the supreme court
9 of appeals. The salary of the clerk and persons employed
10 within the office of the clerk shall be established by the
11 justices of the supreme court of appeals. If any position
12 becomes vacant while the supreme court of appeals is in
13 vacation, the position may be filled by appointment, in
14 writing, issued by the justices of the supreme court of
15 appeals.

CHAPTER 52

**(S.B. 338 - By Senators Oliverio, Prezioso, Williams,
Sypolt, Edgell and Kessler)**

[Passed April 9, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended, relating to authorizing an additional circuit court judge to the seventeenth judicial circuit.

Be it enacted by the Legislature of West Virginia:

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judicial
2 circuits with the following number of judges:

3 (1) The counties of Brooke, Hancock and Ohio shall
4 constitute the first circuit and shall have four judges;

5 (2) The counties of Marshall, Tyler and Wetzel shall
6 constitute the second circuit and shall have two judges;

7 (3) The counties of Doddridge, Pleasants and Ritchie
8 shall constitute the third circuit and shall have one judge;

9 (4) The counties of Wood and Wirt shall constitute the
10 fourth circuit and shall have three judges;

11 (5) The counties of Calhoun, Jackson, Mason and Roane
12 shall constitute the fifth circuit and shall have two judges;

13 (6) The county of Cabell shall constitute the sixth circuit
14 and shall have four judges;

15 (7) The county of Logan shall constitute the seventh
16 circuit and shall have two judges;

17 (8) The county of McDowell shall constitute the eighth
18 circuit and shall have two judges;

19 (9) The county of Mercer shall constitute the ninth circuit
20 and shall have three judges;

21 (10) The county of Raleigh shall constitute the tenth
22 circuit and shall have three judges;

23 (11) The counties of Greenbrier and Pocahontas shall
24 constitute the eleventh circuit and shall have two judges;

25 (12) The county of Fayette shall constitute the twelfth
26 circuit and shall have two judges;

27 (13) The county of Kanawha shall constitute the
28 thirteenth circuit and shall have seven judges;

29 (14) The counties of Braxton, Clay, Gilmer and Webster
30 shall constitute the fourteenth circuit and shall have two
31 judges;

32 (15) The county of Harrison shall constitute the fifteenth
33 circuit and shall have three judges;

34 (16) The county of Marion shall constitute the sixteenth
35 circuit and shall have two judges;

36 (17) The county of Monongalia shall constitute the
37 seventeenth circuit and shall have two judges: *Provided*, That
38 effective July 1, 2009, said circuit court shall have three
39 judges.

40 (18) The county of Preston shall constitute the eighteenth
41 circuit and shall have one judge;

42 (19) The counties of Barbour and Taylor shall constitute
43 the nineteenth circuit and shall have one judge;

44 (20) The county of Randolph shall constitute the
45 twentieth circuit and shall have one judge;

46 (21) The counties of Grant, Mineral and Tucker shall
47 constitute the twenty-first circuit and shall have two judges;

48 (22) The counties of Hampshire, Hardy and Pendleton
49 shall constitute the twenty-second circuit and shall have two
50 judges;

51 (23) The counties of Berkeley, Jefferson and Morgan
52 shall constitute the twenty-third circuit and shall have five
53 judges;

54 (24) The county of Wayne shall constitute the
55 twenty-fourth circuit and shall have two judges;

56 (25) The counties of Lincoln and Boone shall constitute
57 the twenty-fifth circuit and shall have two judges;

58 (26) The counties of Lewis and Upshur shall constitute
59 the twenty-sixth circuit and shall have one judge;

60 (27) The county of Wyoming shall constitute the
61 twenty-seventh circuit and shall have one judge;

62 (28) The county of Nicholas shall constitute the
63 twenty-eighth circuit and shall have one judge;

64 (29) The county of Putnam shall constitute the
65 twenty-ninth circuit and shall have two judges;

66 (30) The county of Mingo shall constitute the thirtieth
67 circuit and shall have one judge; and

68 (31) The counties of Monroe and Summers shall
69 constitute the thirty-first circuit and shall have one judge.

70 (b) The Kanawha County circuit court shall be a court of
71 concurrent jurisdiction with each single judge circuit where
72 the sitting judge in the single judge circuit is unavailable by
73 reason of sickness, vacation or other reason.

74 (c) Any judge in office on the effective date of the
75 reenactment of this section shall continue as a judge of the
76 circuit as constituted under prior enactments of this section,
77 unless sooner removed or retired as provided by law, until
78 December 31, 2008.

79 (d) The term of office of all circuit court judges shall be
80 for eight years. The term of office for all circuit court judges
81 elected during the general election conducted in the year

82 2008 shall commence on January 1, 2009, and end on
83 December 31, 2016.

84 (e) For election purposes, in every judicial circuit having
85 two or more judges there shall be numbered divisions
86 corresponding to the number of circuit judges in each circuit.
87 Each judge shall be elected at large from the entire circuit.
88 In each numbered division of a judicial circuit, the candidates
89 for nomination or election shall be voted upon and the votes
90 cast for the candidates in each division shall be tallied
91 separately from the votes cast for candidates in other
92 numbered divisions within the circuit. The candidate
93 receiving the highest number of the votes cast within a
94 numbered division shall be nominated or elected, as the case
95 may be.

96 (f) Judges serving a judicial circuit comprised of four or
97 more counties with two or more judges shall not be residents
98 of the same county.

99 (g) The Supreme Court of Appeals shall, by rule,
100 establish the terms of court of circuit judges.

CHAPTER 53

**(Com. Sub. for H.B. 2737 - By Delegates Webster, Frazier,
Longstreth and Sobonya)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §62-12-5 of the Code of West Virginia, 1931, as amended, relating to authorizing the Administrative Director of the Supreme Court of Appeals to hire multi-judicial-circuit probation officers.

Be it enacted by the Legislature of West Virginia:

That §62-12-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

1 (a) Each circuit court, subject to the approval of the
2 Supreme Court of Appeals and in accordance with its rules,
3 is authorized to appoint one or more probation officers and
4 clerical assistants.

5 (b) The appointment of probation officers and clerical
6 assistants shall be in writing and entered on the order book of
7 the court by the judge making such appointment and a copy
8 of said order of appointment shall be delivered to the
9 Administrative Director of the Supreme Court of Appeals.
10 The order of appointment shall state the monthly salary, fixed
11 by the judge and approved by the Supreme Court of Appeals,
12 to be paid to the probation officer or clerical assistants so
13 appointed.

14 (c) The salary of probation officers and clerical
15 assistants shall be paid monthly or semimonthly, as the
16 Supreme Court of Appeals by rule may direct and they
17 shall be reimbursed for all reasonable and necessary
18 expenses actually incurred in the line of duty in the field.
19 The salary and expenses shall be paid by the state from the
20 judicial accounts thereof. The county commission shall
21 provide adequate office space for the probation officer and
22 his or her assistants to be approved by the appointing court.
23 The equipment and supplies as may be needed by the
24 probation officer and his or her assistants shall be provided

25 by the state and the cost thereof shall be charged against
26 the judicial accounts of the state.

27 (d) No judge may appoint any probation officer, assistant
28 probation officer or clerical assistant who is related to him or
29 her either by consanguinity or affinity.

30 (e) Subject to the approval of the Supreme Court of
31 Appeals and in accordance with its rules, a judge of a circuit
32 court whose circuit comprises more than one county may
33 appoint a probation officer and a clerical assistant in each
34 county of the circuit or may appoint the same persons to
35 serve in these respective positions in two or more counties in
36 the circuit.

37 (f) Nothing contained in this section alters, modifies,
38 affects or supersedes the appointment or tenure of any
39 probation officer, medical assistant or psychiatric assistant
40 appointed by any court under any special act of the
41 Legislature heretofore enacted, and the salary or
42 compensation of those persons shall remain as specified in
43 the most recent amendment of any special act until changed
44 by the court, with approval of the Supreme Court of Appeals,
45 by order entered of record, and any such salary or
46 compensation shall be paid out of the state treasury.

47 (g) In order to carry out the probation responsibilities set
48 forth in section twenty-six, article twelve, chapter sixty-two
49 of this code, the Administrative Director of the Supreme
50 Court of Appeals, or his or her designee, in accordance with
51 the court's procedures, is authorized to hire multi-judicial-
52 circuit probation officers, to be employed through the court's
53 Division of Probation Services.

CHAPTER 54

**(S.B. 760 - By Senators Kessler, Browning, Foster, Jenkins,
Laird, Minard, Oliverio, Palumbo, Snyder, Stollings,
Williams, Yost, Barnes, Caruth, Deem and Hall)**

[Passed April 7, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-12-28, relating to authorizing the Supreme Court of Appeals to establish up to five pretrial release programs throughout the state utilizing existing probation offices and day-report centers to reduce jail population while ensuring public safety.

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 §62-12-28, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-28. AUTHORIZING SUPREME COURT TO DEVELOP PILOT PRETRIAL RELEASE PROGRAMS.

- 1 (a) The West Virginia Supreme Court of Appeals is
- 2 hereby authorized to develop pilot pretrial release programs
- 3 in up to five circuits with the aim of reducing regional jail
- 4 populations of short-term detainees while ensuring the safety
- 5 of law-abiding citizens.

6 (b) The programs authorized by subsection (a) of this
7 section shall be available only to persons charged with
8 misdemeanors and nonviolent felonies.

9 (c) Any program developed pursuant to this section shall
10 require input from arresting officers and shall allow for
11 telephone authorization by magistrates of a charged person's
12 participation.

13 (d) In developing the pilot programs in the state for
14 examples of successful practices authorized by this section
15 the Court is requested to review any existing programs.

16 (e) The provisions of this section shall be in effect for
17 three years from the effective date of this section.

18 (f) The Supreme Court of Appeals is hereby requested to
19 provide annual reports to the President of the Senate and the
20 Speaker of the House of Delegates as to the efficacy of the
21 programs.

CHAPTER 55

**(Com. Sub. for H.B. 2566 - By Delegates Mahan,
Brown, Eldridge, Ennis, Fragale, Longstreth, Ashley,
Rowan and Schadler)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to crimes against certain protected persons; expanding applicability of increased criminal penalties for battery, malicious assault and unlawful assault against a government employee or contract worker;

expanding existing protections for health care workers to include contract workers; and changing fine structure for the penalty for battery on a government employee, contract worker, or health care worker.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and malicious assault on governmental representatives and health care providers providing services to the public; penalties.

1 (a) For purposes of this section:

2 (1) “Government representative” means any officer or
3 employee of the state or a political subdivision thereof, or a
4 person under contract with a state agency or political
5 subdivision thereof.

6 (2) “Health care worker” means any nurse, nurse
7 practitioner, physician, physician assistant or technician
8 practicing at, and all persons employed by or under contract
9 to a hospital, county or district health department, long-term
10 care facility, physician’s office, clinic or outpatient treatment
11 facility.

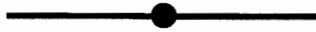
12 (b) *Malicious assault.* -- Any person who maliciously
13 shoots, stabs, cuts or wounds or by any means causes bodily
14 injury with intent to maim, disfigure, disable or kill a
15 government representative or health care worker acting in his
16 or her official capacity, and the person committing the

17 malicious assault knows or has reason to know that the
18 victim is acting in his or her official capacity is guilty of a
19 felony and, upon conviction thereof, shall be confined in a
20 state correctional facility for not less than three nor more than
21 fifteen years.

22 (c) *Unlawful assault.* -- Any person who unlawfully but
23 not maliciously shoots, stabs, cuts or wounds or by any
24 means causes a government representative or health care
25 worker acting in his or her official capacity bodily injury
26 with intent to maim, disfigure, disable or kill him or her and
27 the person committing the unlawful assault knows or has
28 reason to know that the victim is acting in his or her official
29 capacity is guilty of a felony and, upon conviction thereof,
30 shall be confined in a state correctional facility for not less
31 than two nor more than five years.

32 (d) *Battery.* -- Any person who unlawfully, knowingly
33 and intentionally makes physical contact of an insulting or
34 provoking nature with a government representative or health
35 care worker acting in his or her official capacity, or
36 unlawfully and intentionally causes physical harm to that
37 person acting in such capacity, is guilty of a misdemeanor
38 and, upon conviction thereof, shall be fined not more than
39 \$500 or confined in jail not less than one month nor more
40 than twelve months or both fined and confined. If any person
41 commits a second such offense, he or she is guilty of a felony
42 and, upon conviction thereof, shall be fined not more than
43 \$1,000 or imprisoned in a state correctional facility not less
44 than one year nor more than three years, or both fined and
45 imprisoned. Any person who commits a third violation of
46 this subsection is guilty of a felony and, upon conviction
47 thereof, shall be fined not more than \$2,000 or imprisoned in
48 a state correctional facility not less than two years nor more
49 than five years, or both fined and imprisoned.

50 (e) *Assault.* -- Any person who unlawfully attempts to
51 commit a violent injury to the person of a government
52 representative or health care worker acting in his or her
53 official capacity, or unlawfully commits an act which places
54 that person acting in his or her official capacity in reasonable
55 apprehension of immediately receiving a violent injury, is
56 guilty of a misdemeanor and, upon conviction thereof, shall
57 be confined in jail for not less than twenty-four hours nor
58 more than six months, fined not more than two hundred
59 dollars, or both fined and confined.



CHAPTER 56

**(Com. Sub. for H.B. 2788 - By Delegates Perry,
Staggers, Williams, Ennis, Talbott, Perdue, Frazier,
Fragale, Miley and Caputo)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §61-2-29 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all relating to protecting incapacitated adults; providing criminal penalties for the offenses of abuse or neglect of incapacitated adults; providing definitions; establishing and revising criminal penalties for the unlawful misappropriation or misuse of funds or assets of an incapacitated adult by a caregiver; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

That §61-2-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §61-2-29a and §61-2-29b, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.

§61-2-29a. Death of an incapacitated adult by a caregiver.

§61-2-29b. Unlawful expenditure or dissipation of funds of an incapacitated adult by a caregiver.

§61-2-29. Abuse or neglect of incapacitated adult; definitions; penalties.

1 (a) The following words, when used in this section and
2 sections twenty -nine-a and twenty-nine-b of this article, have
3 the meaning ascribed, unless the context clearly indicates
4 otherwise:

5 (1) "Abuse" means the intentional infliction of bodily
6 injury on an incapacitated adult;

7 (2) "Bodily injury" means substantial physical pain,
8 illness or any impairment of physical condition;

9 (3) "Caregiver" means any person who has assumed the
10 legal responsibility or a contractual obligation for the care of
11 an incapacitated adult, or has voluntarily assumed
12 responsibility for the care of an incapacitated adult. The term
13 includes a facility operated by any public or private agency,
14 organization or institution which provides services to, and
15 has assumed responsibility for the care of an incapacitated
16 adult.

17 (4) "Incapacitated adult" means any person eighteen years
18 of age or older who by reason of advanced age, physical,
19 mental or other infirmity is unable to carry on the daily
20 activities of life necessary to sustaining life and reasonable
21 health;

22 (5) "Neglect" means the unreasonable failure by a
23 caregiver to provide the care necessary to assure the physical
24 safety or health of an incapacitated adult; and

25 (6) "Serious bodily injury" means bodily injury which
26 creates a substantial risk of death, which causes serious or
27 prolonged disfigurement, prolonged impairment of health or
28 prolonged loss or impairment of the function of any bodily
29 organ.

30 (b) A caregiver who neglects an incapacitated adult or
31 who knowingly permits another person to neglect an
32 incapacitated adult is guilty of a misdemeanor and, upon
33 conviction thereof, shall be fined not less than \$100 nor more
34 than \$500 or confined in jail for not more than one year, or
35 both fined and confined.

36 (c) A caregiver who abuses an incapacitated adult or who
37 knowingly permits another person to abuse an incapacitated
38 adult is guilty of a misdemeanor and, upon conviction
39 thereof, shall be fined not less than \$100 nor more than \$500
40 or confined in jail for not less than ninety days nor more than
41 one year, or both fined and confined.

42 (d) A caregiver of an incapacitated adult who
43 intentionally and maliciously abuses or neglects an
44 incapacitated adult and causes the incapacitated adult bodily
45 injury is guilty of a felony and, upon conviction thereof, shall
46 be fined not less than \$100 nor more than \$1,000 and
47 imprisoned in a state correctional facility not less than two
48 years nor more than ten years.

49 (e) A caregiver of an incapacitated adult who
50 intentionally and maliciously abuses or neglects an
51 incapacitated adult and causes the incapacitated adult serious
52 bodily injury is guilty of a felony and, upon conviction
53 thereof, shall be fined not less than \$1,000 nor more than

54 \$5,000 and imprisoned in a state correctional facility not less
55 than three years nor more than fifteen years.

56 (f) Nothing in this section or in section twenty-nine-a of
57 this article shall be construed to mean an adult is abused or
58 neglected for the sole reason that his or her independent
59 decision is to rely upon treatment by spiritual means in
60 accordance with the tenets and practices of a recognized
61 church or religious denomination or organization in lieu of
62 medical treatment.

63 (g) Nothing in this section or in section twenty-nine-a of
64 this article shall be construed to mean an incapacitated adult
65 is abused or neglected if deprivation of life-sustaining
66 treatment or other act has been provided for by the West
67 Virginia Health Care Decisions Act, pursuant to article thirty,
68 chapter sixteen of this code.

§61-2-29a. Death of an incapacitated adult by a caregiver.

1 (a) A caregiver who intentionally and maliciously
2 neglects an incapacitated adult causing death is guilty of a
3 felony and, upon conviction thereof, shall be fined not more
4 than \$5000 and be imprisoned in a state correctional facility
5 for a definite term of not less than five nor more than fifteen
6 years.

7 (b) A caregiver of an incapacitated adult who causes the
8 death of an incapacitated adult by knowingly allowing any
9 other person to intentionally or maliciously neglect the
10 incapacitated adult is guilty of a felony and, upon conviction
11 thereof, shall be fined not more than \$5000 and be
12 imprisoned in a state correctional facility for a definite term
13 of not less than five nor more than fifteen years.

14 (c) A caregiver of an incapacitated adult who
15 intentionally and maliciously abuses an incapacitated adult

16 which causes the death of the incapacitated adult is guilty of
17 a felony and, upon conviction thereof, shall be imprisoned in
18 a state correctional facility for a definite term of not less than
19 five nor more than forty years.

20 (d) A caregiver of an incapacitated adult who causes the
21 death of an incapacitated adult by knowingly allowing any
22 other person to intentionally and maliciously abuse an
23 incapacitated adult is guilty of a felony and, upon conviction
24 thereof, shall be imprisoned in a state correctional facility for
25 a definite term of not less than five nor more than forty years.

26 (f) The provisions of this section do not apply to any
27 caregiver or health care provider who, without malice, fails
28 or refuses, or allows another person to, without malice, fail
29 or refuse, to supply an incapacitated adult with necessary
30 medical care when the medical care conflicts with the tenets
31 and practices of a recognized religious denomination or order
32 of which the incapacitated adult is an adherent member.

**§61-2-29b. Unlawful expenditure or dissipation of funds of an
incapacitated adult by a caregiver.**

1 (a) A caregiver of an incapacitated adult who
2 intentionally misappropriates or misuses the funds or assets
3 of an incapacitated adult in the amount of less than \$1,000 in
4 value for the caregiver's personal use, advantage or wrongful
5 profit or to the advantage or wrongful profit of another, is
6 guilty of a misdemeanor and, upon conviction thereof, shall
7 be fined not more than \$1,000 or confined in jail no more
8 than one year, or both fined and confined.

9 (b) A caregiver of an incapacitated adult who
10 intentionally misappropriates or misuses the funds or assets
11 of an incapacitated adult in the amount of \$1,000 or more in
12 value for the caregiver's personal use, advantage or wrongful
13 profit or to the advantage or wrongful profit of another, is

14 guilty of a felony and, upon conviction thereof, shall be fined
15 not more than \$5,000 and imprisoned in a state correctional
16 facility not less than one nor more than ten years.

17 (c) A caregiver of an incapacitated adult, who by means
18 of intentional intimidation, infliction of bodily injury or
19 threats of the infliction of bodily injury to an incapacitated
20 adult, willfully misappropriates or misuses for the caregiver's
21 personal use, advantage or wrongful profit or to the
22 advantage or wrongful profit of another is guilty of a felony
23 and, upon conviction thereof, shall be fined not more than
24 \$5000 and imprisoned in a state correctional facility not less
25 than three nor more than fifteen years.

CHAPTER 57

**(S.B. 761 - By Senators Jenkins, Browning, Chafin, Foster,
Kessler, Laird, Minard, Oliverio, Palumbo, Snyder, Stollings,
Williams, Yost, Barnes, Caruth, Deem and Hall)**

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

AN ACT to amend and reenact §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, relating to crimes committed on or against commercial, railroad or public utility property; extending criminal penalties for prohibited entry upon commercial property enclosed by a fence or similar physical barrier or upon certain structures used for utility transmission or distribution; clarifying the offense of breaking and entering or entering without breaking onto public utility

property that is enclosed or fenced, with the intent to commit a felony or larceny; establishing the felony offense of knowingly and willfully damaging and destroying utility or railroad property, resulting in the creation of a substantial risk of serious bodily injury to another; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-12 and §61-3-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

§61-3-29. Damage or destruction of railroad or public utility company property, or real or personal property used for producing, generating, transmitting, distributing, treating or collecting electricity, natural gas, coal, water, wastewater, stormwater, telecommunications or cable service; penalties; restitution.

§61-3-12. Entry of building other than dwelling; entry of railroad, traction or motorcar, steamboat or other vessel; penalties; counts in indictment.

1 If any person shall, at any time, break and enter, or shall
2 enter without breaking, any office, shop, underground coal
3 mine, storehouse, warehouse, banking house or any house or
4 building, other than a dwelling house or outhouse adjoining
5 thereto or occupied therewith, any railroad or traction car,
6 propelled by steam, electricity or otherwise, any steamboat or
7 other boat or vessel, or any commercial, industrial or public
8 utility property enclosed by a fence, wall or other structure
9 erected with the intent of the property owner of protecting or
10 securing the area within and its contents from unauthorized
11 persons, within the jurisdiction of any county in this state,
12 with intent to commit a felony or any larceny, he or she shall
13 be deemed guilty of a felony and, upon conviction, shall be

14 confined in a state correctional facility not less than one nor
15 more than ten years. And if any person shall, at any time,
16 break and enter, or shall enter without breaking, any
17 automobile, motorcar or bus, with like intent, within the
18 jurisdiction of any county in this state, he or she shall be
19 guilty of a misdemeanor and, upon conviction, shall be
20 confined in jail not less than two nor more than twelve
21 months and be fined not exceeding \$100.

22 An indictment for burglary may contain one or more
23 counts for breaking and entering, or for entering without
24 breaking, the house or building mentioned in the count for
25 burglary under the provisions of this section and section
26 eleven of this article.

**§61-3-29. Damage or destruction of railroad or public utility
company property, or real or personal property
used for producing, generating, transmitting,
distributing, treating or collecting electricity,
natural gas, coal, water, wastewater, stormwater,
telecommunications or cable service; penalties;
restitution.**

1 (a) Any person who knowingly and willfully damages or
2 destroys any real or personal property owned by a railroad
3 company, or public utility company, or any real or personal
4 property used for producing, generating, transmitting,
5 distributing, treating or collecting electricity, natural gas,
6 coal, water, wastewater, stormwater, telecommunications or
7 cable service, is guilty of a misdemeanor and, upon
8 conviction thereof, shall be fined not more than \$2,000, or
9 confined in jail not more than one year, or both fined and
10 confined.

11 (b) Any person who knowingly and willfully: (1)
12 Damages or destroys any real or personal property owned by

13 a railroad company, or public utility company, or any real or
14 personal property used for producing, generating,
15 transmitting, distributing, treating or collecting electricity,
16 natural gas, coal, water, wastewater, stormwater,
17 telecommunications or cable service; and (2) creates a
18 substantial risk of serious bodily injury to another or results
19 in the interruption of service to the public is guilty of a felony
20 and, upon conviction thereof, shall be fined not more than
21 \$5,000, or confined in a state correctional facility not less
22 than one nor more than three years, or both fined and
23 imprisoned.

24 (c) Any person who knowingly and willfully: (1)
25 Damages or destroys any real or personal property owned by
26 a railroad company, or public utility company, or any real or
27 personal property used for producing, generating,
28 transmitting, distributing, treating or collecting electricity,
29 natural gas, coal, water, wastewater, stormwater,
30 telecommunications or cable service; and (2) causes serious
31 bodily injury to another is guilty of a felony and, upon
32 conviction thereof, shall be fined not less than \$5,000 nor
33 more than \$50,000, or confined in a state correctional facility
34 not less than one nor more than five years, or both fined and
35 imprisoned.

36 (d) Nothing in this section may be construed to limit or
37 restrict the ability of an entity referred to in subsection (a),
38 (b) or (c) of this section or a property owner or other person
39 who has been damaged or injured as a result of a violation of
40 this section from seeking recovery for damages arising from
41 violation of this section.

CHAPTER 58

(H.B. 2536 - By Delegates Craig and Boggs)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §61-3-28 of the Code of West Virginia, 1931, as amended, relating to offenses against railroad property, generally; adding language that includes railcars and locomotives in the category of railroad property that is illegal to interfere with, tamper with or obstruct, or to threaten to interfere with, to tamper with or obstruct; and establishing a minimum fine for violations.

Be it enacted by the Legislature of West Virginia:

That §61-3-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-28. Offenses against railroad property and persons on railroad property; definitions.

- 1 (a) As used in this section:
- 2 (1) “Bodily injury” means substantial physical pain,
3 illness or any impairment of physical injury.
- 4 (2) “Railroad” means any form of nonhighway ground
5 transportation that runs on rails or electromagnetic
6 guideways, including:

7 (i) Commuter or other short-haul railroad passenger
8 service in a metropolitan or suburban area; and

9 (ii) High-speed ground transportation systems that
10 connect metropolitan areas but does not include rapid transit
11 operations in an urban area that are not connected to the
12 general railroad system of transportation;

13 (3) "Railroad carrier" means a person providing railroad
14 transportation; railroad carrier including a right-of-way,
15 track, bridge, yard, shop, station, tunnel, viaduct, trestle,
16 depot, warehouse, terminal, railroad signal system, train
17 control system, centralized dispatching system, or any other
18 structure, appurtenance, or equipment owned, leased, or used
19 in the operation of any railroad carrier including a train,
20 locomotive, engine, railroad car, work equipment, rolling
21 stock, or safety device. "Railroad property" does not include
22 administrative buildings, administrative offices, or
23 administrative office equipment;

24 (4) "Right-of-way" means the track or roadbed owned,
25 leased, or operated by a railroad carrier which is located on
26 either side of its tracks and which is readily recognizable to
27 a reasonable person as being railroad property or is
28 reasonably identified as such by fencing or appropriate signs;

29 (5) "Yard" means a system of parallel tracks, crossovers,
30 and switches where railroad cars are switched and made up
31 into trains, and where railroad cars, locomotives and other
32 rolling stock are kept when not in use or when awaiting
33 repairs.

34 (b) Whoever willfully damages or attempts to damage
35 railroad property or willfully endangers or attempts to
36 endanger the safety of another, by:

37 (1) Taking, removing, altering, or otherwise vandalizing
38 a railroad sign, placard or marker;

39 (2) Throwing or dropping an object capable of causing
40 significant damage to railroad property at or on a locomotive,
41 railroad car or train;

42 (3) Shooting a firearm or other dangerous weapon at a
43 locomotive, railroad car or train;

44 (4) Removing appurtenances from, damaging, or
45 otherwise impairing the operation of any railroad signal
46 system, including a train control system, centralized
47 dispatching system, or highway-railroad grade crossing
48 warning signal, on a railroad owned, leased, or operated by
49 any railroad carrier, and without consent of the railroad
50 carrier involved;

51 (5) Interfering or tampering with, or obstructing in any
52 way, or threatening to interfere with, tamper with or obstruct
53 in any way any railcar or locomotive, switch, frog, rail,
54 roadbed, sleeper, viaduct, bridge, trestle, culvert,
55 embankment, structure, or appliance pertaining to or
56 connected with any railroad carrier without consent of the
57 railroad carrier involved; or

58 (6) Taking, stealing, removing, changing, adding to,
59 altering, or in any manner interfering with any part of the
60 operating mechanism of any locomotive, engine, tender,
61 coach, car, caboose, or motor car used or capable of being
62 used by any railroad carrier in this state without consent of
63 the railroad carrier is guilty of a felony.

64 If railroad property damage does not exceed \$1,000 and
65 no bodily injury occurs to another as a result of any of the
66 aforesaid acts, upon conviction thereof, the person shall be
67 fined not less than \$500 nor more than \$5,000, confined in a
68 regional jail for not more than one year, or both. If bodily
69 injury occurs to another not acting with or in connection with
70 the perpetrator as a result of any of the aforesaid acts or if

71 railroad property damage exceeds \$1,000, upon conviction
72 thereof, the person shall be fined not less \$1,000 nor more
73 than \$10,000, committed to the custody of the Commission
74 of Corrections for not less than one nor more than ten years,
75 or both.

76 (d) The provisions of this section do not apply to any
77 person employed by a railroad who is performing the duties
78 assigned by the railroad or who is otherwise performing
79 within the scope of his or her employment.



CHAPTER 59

(Com. Sub. for H.B. 2958 - By Delegate Hamilton)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §61-3B-3 of the Code of West Virginia, 1931, as amended, relating to increasing the fines for a trespassing conviction pursuant to certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §61-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. TRESPASS.

§61-3B-3. Trespass on property other than structure or conveyance.

1 (a) It is an unlawful trespass for any person to knowingly,
2 and without being authorized, licensed or invited, to enter or
3 remain on any property, other than a structure or conveyance,
4 as to which notice against entering or remaining is either
5 given by actual communication to such person or by posting,
6 fencing or cultivation.

7 (b) First offense conviction. -- Upon a first trespassing
8 conviction pursuant to subsection (a):

9 The person is guilty of a misdemeanor and shall be fined
10 not less than \$100 nor more than \$500.

11 (c) Second offense conviction. -- Upon a second
12 trespassing conviction pursuant to subsection (a):

13 The person is guilty of a misdemeanor and shall be fined
14 not less than \$500 nor more than \$1,000.

15 (d) Third offense conviction. -- Upon a third and
16 subsequent trespassing conviction pursuant to subsection (a):

17 The person is guilty of a misdemeanor and shall be fined
18 not less than \$1,000 nor more than \$1,500.

19 (e) If the offender defies an order to leave, personally
20 communicated to him by the owner, tenant or agent of such
21 owner or tenant, or if the offender opens any door, fence or
22 gate, and thereby exposes animals, crops or other property to
23 waste, destruction or freedom, or causes any damage to
24 property by such trespassing on property other than a
25 structure or conveyance, he shall be guilty of a misdemeanor
26 and, upon conviction thereof, shall be fined not less than
27 \$100 nor more than \$500 or imprisoned in the county jail for
28 a period not to exceed six months, or both such fine and
29 imprisonment.

30 (c) If the offender is armed with a firearm or other
31 dangerous weapon with the unlawful and felonious intent to
32 do bodily injury to a human being during his commission of
33 the offense of trespass on property other than a structure or
34 conveyance, such offender shall, notwithstanding section
35 one, article seven, chapter sixty-one of this code, be guilty of
36 a misdemeanor and, upon conviction thereof, shall be
37 confined in the county jail for a term not to exceed six
38 months, or fined not more than \$100, or both such fine and
39 imprisonment.

40 (d) Notwithstanding and in addition to any other penalties
41 provided by law, any person who performs or causes damage
42 to property in the course of a willful trespass shall be liable
43 to the property owner in the amount of twice the amount of
44 such damage. However, this article shall not apply in a labor
45 dispute.

CHAPTER 60

(S.B. 521 - By Senators Laird, Foster and Green)

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 13, 2009.]

AN ACT to amend and reenact §61-5-8 of the Code of West Virginia, 1931, as amended, relating to adding telecommunications devices to items which cannot be brought into a jail or correctional facility.

Be it enacted by the Legislature of West Virginia:

That §61-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.**

1 (a) Where any adult or juvenile is lawfully detained in
2 custody or confinement in any jail, state correctional facility,
3 juvenile facility or juvenile detention center, if any other
4 person delivers anything into the place of custody or
5 confinement of the adult or juvenile with the intent to aid or
6 facilitate the adult's or juvenile's escape or attempted escape
7 therefrom, or if the other person forcibly rescues or attempts
8 to rescue an adult or a juvenile therefrom, the other person is
9 guilty of a felony and, upon conviction thereof, shall be
10 confined in a state correctional facility not less than one nor
11 more than ten years.

12 (b) Where any adult or juvenile is lawfully detained in
13 custody or confinement in any jail, a state correctional
14 facility or a juvenile facility or juvenile detention center, if
15 any other person delivers any money or other thing of value,
16 any written or printed matter, any article of merchandise,
17 food or clothing, any medicine, utensil or instrument of any
18 kind to the adult or juvenile without the express authority and
19 permission of the supervising officer and with knowledge
20 that the adult or juvenile is lawfully detained, the other
21 person is guilty of a misdemeanor and, upon conviction
22 thereof, shall be fined not less than \$50 nor more than \$500
23 and confined in jail not less than three nor more than twelve
24 months: *Provided*, That the provisions of this section do not
25 prohibit an attorney or his or her employees from supplying
26 any written or printed material to an adult or juvenile which
27 pertains to that attorney's representation of the adult or
28 juvenile.

29 (c)(1) If any person transports any alcoholic liquor,
30 nonintoxicating beer, poison, implement of escape,

31 dangerous material, weapon, or any controlled substance as
32 defined by chapter sixty-a of this code onto the grounds of
33 any jail, state correctional facility, juvenile facility or juvenile
34 detention center within this state and is unauthorized by law
35 to do so, or is unauthorized by the persons supervising the
36 facility, the person is guilty of a felony and, upon conviction
37 thereof, shall be fined not less than \$1,000 nor more than
38 \$5,000 or confined in a state correctional facility not less than
39 two years nor more than ten years, or both, or, in the
40 discretion of the court, be confined in jail not more than one
41 year and fined not more than \$500.

42 (2) If any person willfully and knowingly transports or
43 causes to be transported any telecommunications device into
44 or upon any portion of any jail, state correctional facility,
45 juvenile facility or juvenile detention center within this state
46 that is not generally open and accessible to members of the
47 public without prior approval from the warden/administrator
48 or designee and such person is unauthorized by law to do so,
49 or is unauthorized by the persons supervising the facility, the
50 person is guilty of a misdemeanor and, upon conviction
51 thereof, shall be fined not less than \$100 nor more than \$500
52 or confined in jail not more than one year or both fined and
53 confined.

54 (d) If any person delivers any alcoholic liquor,
55 nonintoxicating beer, poison, implement of escape,
56 dangerous material, weapon or any controlled substance as
57 defined by chapter sixty-a of this code to an adult or juvenile
58 in custody or confinement in any jail, state correctional
59 facility, juvenile facility or juvenile detention center within
60 this state and is unauthorized by law to do so, or is
61 unauthorized by the persons supervising the facility, the
62 person is guilty of a felony and, upon conviction thereof,
63 shall be fined not less than \$1,000 nor more than \$5,000 or
64 confined in a state correctional facility not less than one year
65 nor more than five years, or both.

66 (e) Whoever purchases, accepts as a gift or secures by
67 barter, trade or in any other manner any article or articles
68 manufactured at or belonging to any jail, state correctional
69 facility, juvenile facility or juvenile detention center from any
70 adult or juvenile detained therein is guilty of a misdemeanor
71 and, upon conviction thereof, shall be fined not less than \$50
72 nor more than \$500 and confined in jail not less than three
73 nor more than twelve months: *Provided*, That the provisions
74 of this subsection do not apply to articles specially
75 manufactured in any facility under the authorization of the
76 persons supervising the facility and which are offered for sale
77 within or outside of the facility.

78 (f) Whoever persuades, induces or entices or attempts to
79 persuade, induce or entice any person who is in custody or
80 confined in any jail, state correctional facility, juvenile
81 facility or juvenile detention center to escape therefrom or to
82 engage or aid in any insubordination to the persons
83 supervising the facility is guilty of a misdemeanor and, upon
84 conviction thereof, shall be fined not less than \$50 nor more
85 than \$500 and confined in jail not less than three nor more
86 than twelve months.

87 (g) (1) An inmate of a jail, state correctional facility,
88 juvenile facility or juvenile detention center having in his or
89 her possession any poison, implement of escape, dangerous
90 material, weapon, telecommunications device or any
91 controlled substance as defined by chapter sixty-a of this
92 code is guilty of a felony and, upon conviction thereof, shall
93 be fined not less than \$1,000 nor more than \$5,000 or
94 confined in a state correctional facility not less than one year
95 nor more than five years, or both, or, in the discretion of the
96 court, be confined in jail not more than one year and fined
97 not more than \$500.

98 (2) An inmate of a jail, state correctional facility, juvenile
99 facility or juvenile detention center having in his or her

100 possession any alcoholic liquor, nonintoxicating beer, money
101 or other thing of value, any written or printed matter, any
102 article of merchandise, food or clothing, any medicine,
103 utensil or instrument of any kind without the express
104 authority and permission of the supervising officer is guilty
105 of a misdemeanor and, upon conviction thereof, shall be
106 fined not less than \$50 nor more than \$500 and confined in
107 jail not more than twelve months.

108 (h) As used in this section:

109 (1) "Dangerous material" means any incendiary material
110 or device, highly flammable or caustic liquid, explosive,
111 bullet or other material readily capable of causing death or
112 serious bodily injury.

113 (2) "Delivers" means to transfer an item to an adult or
114 juvenile who is detained in custody or confinement in any
115 jail, correctional facility, juvenile facility or juvenile
116 detention center or a building appurtenant to those places.
117 The term includes bringing the item into a jail, correctional
118 facility, juvenile facility or juvenile detention center or a
119 building appurtenant to those places. The term includes
120 putting an item in a place where it may be obtained by an
121 inmate.

122 (3) "Inmate" means an adult or juvenile who is detained
123 in custody or confinement in any jail, correctional facility,
124 juvenile facility or juvenile detention center, regardless of
125 whether the individual is temporarily absent due to medical
126 treatment, transportation, court appearance or other reason
127 for a temporary absence.

128 (4) "Implement of escape" means a tool, implement,
129 device, equipment or other item which an inmate is not
130 authorized to possess capable of facilitating, aiding or
131 concealing an escape or attempted escape by an inmate.

132 (5) "Telecommunication device" means any type of
133 instrument, device, machine or equipment which is capable
134 of transmitting telephonic, electronic, digital, cellular or radio
135 communications or any part of an instrument, device,
136 machine or equipment which is capable of facilitating the
137 transmission of telephonic, electronic, digital, cellular or
138 radio communications regardless of whether the part itself is
139 able to transmit. The term includes, but is not limited to,
140 cellular phones, digital phones and modem equipment
141 devices.

142 (6) "Weapon" means an implement readily capable of
143 lethal use and includes any firearm, knife, dagger, razor,
144 other cutting or stabbing implement or club. The term
145 includes any item which has been modified or adapted so that
146 it can be used as a firearm, knife, dagger, razor, other cutting
147 or stabbing implement or club. For purposes of this
148 definition, the term "firearm" includes an unloaded firearm
149 or the unassembled components of a firearm.



CHAPTER 61

**(Com. Sub. for H.B. 2701 - By Delegates Shaver,
Argento and Perry)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §61-5-12b, relating
to escape by any person from the custody of the Commissioner

of Juvenile Services; establishing criminal penalties; providing venue for the proceedings; and allowing for the transfer of jurisdiction back to the original committing court 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 §61-5-12b, to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

1 (a) Any person who escapes from the custody of the
2 director of Division of Juvenile Services, regardless of where
3 he or she is confined or detained, shall be guilty of a
4 misdemeanor, and upon conviction, shall be confined in jail,
5 or in the case of a person under the age of eighteen, in a
6 juvenile facility, for not more than one year.

7 (b) Venue for the prosecution of a violation of this
8 section shall be in the county in which the escape occurs:
9 *Provided*, That if the person is under the age of eighteen,
10 upon agreement of all parties, the prosecution of the escape
11 may be transferred to the circuit court from which the
12 juvenile was originally committed.

CHAPTER 62

**(Com. Sub. for S.B. 612 - By Senators Prezioso,
Unger and Deem)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §61-5-29 of the Code of West Virginia, 1931, as amended, relating generally to criminal enforcement for willful failure to pay child support.

Be it enacted by the Legislature of West Virginia:

That §61-5-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to pay support to a minor; penalties.

1 (1) A person who: (a) Repeatedly and willfully fails to
2 pay his or her court-ordered support which he or she can
3 reasonably provide and which he or she knows he or she has
4 a duty to provide to a minor; and (b) is subject to court order
5 to pay any amount for the support of a minor child and is
6 delinquent in meeting the full obligation established by the
7 order and has been delinquent for a period of at least six
8 months' duration is guilty of a misdemeanor and, upon
9 conviction thereof, shall be fined not less than \$100 nor more
10 than \$1,000, or confined in jail for not more than one year, or
11 both fined and confined.

12 (2) A person who repeatedly and willfully fails to pay his
13 or her court-ordered support which he or she can reasonably
14 provide and which he or she knows he or she has a duty to
15 provide to a minor by virtue of a court or administrative order
16 and the failure results in twelve months without payment of
17 support that remains unpaid is guilty of a felony and, upon
18 conviction thereof, shall be fined not less than \$100 nor more
19 than \$1,000, or imprisoned for not less than one year nor
20 more than three years, or both fined and imprisoned.

CHAPTER 63

**(H.B. 2952 - By Delegates Webster, Barker, Brown, Ferro,
Hunt, Longstreth, Miley, Perry, Shook, Stagers and Ellem)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §61-6-24 of the Code of West Virginia, 1931, as amended, relating to clarifying that a terroristic threat is a felony regardless of intent to actually commit the threatened act.

Be it enacted by the Legislature of West Virginia:

That §61-6-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-24. Threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; penalties.

1 (a) As used in this section:

2 (1) “Economic harm” means all direct, incidental and
3 consequential pecuniary harm suffered by a victim as a
4 result of criminal conduct. Economic harm includes, but
5 is not limited to, the following:

6 (A) All wages, salaries or other compensation lost as
7 a result of the criminal conduct;

8 (B) The cost of all wages, salaries or other
9 compensation paid to employees for time those employees
10 are prevented from working as a result of the criminal
11 conduct;

12 (C) The cost of all wages, salaries or other
13 compensation paid to employees for time those employees
14 spent in reacting to the results of the criminal conduct; or

15 (D) The overhead costs incurred for the time that a
16 business is shut down as a result of the criminal conduct.

17 (2) “Hoax substance or device” means any substance
18 or device that is shaped, sized, colored, marked, imprinted,
19 numbered, labeled, packaged, distributed, priced or
20 delivered so as to cause a reasonable person to believe that
21 the substance or device is of a nature which is capable of
22 causing serious bodily injury or damage to property or the
23 environment.

24 (3) “Terrorist act” means an act that is:

25 (A) Likely to result in serious bodily injury or damage
26 to property or the environment; and

27 (B) Intended to:

- 28 (i) Intimidate or coerce the civilian population;
- 29 (ii) Influence the policy of a branch or level of
30 government by intimidation or coercion;
- 31 (iii) Affect the conduct of a branch or level of
32 government by intimidation or coercion; or
- 33 (iv) Retaliate against a branch or level of government
34 for a policy or conduct of the government.
- 35 (b) Any person who knowingly and willfully threatens
36 to commit a terrorist act, with or without the intent to
37 commit the act, is guilty of a felony and, upon conviction
38 thereof, shall be fined not less than \$5,000 nor more than
39 \$25,000 or confined in a state correctional facility for not
40 less than one year nor more than three years, or both.
- 41 (c) Any person who knowingly and willfully conveys
42 false information knowing the information to be false
43 concerning an attempt or alleged attempt being made or to
44 be made of a terrorist act is guilty of a felony and, upon
45 conviction thereof, shall be fined not less than \$5,000 nor
46 more than \$25,000 or confined in a state correctional
47 facility for not less than one year nor more than three
48 years, or both.
- 49 (d) Any person who uses a hoax substance or device
50 with the specific intent to commit a terrorist act is guilty of
51 a felony and, upon conviction thereof, shall be fined not
52 less than \$10,000 nor more than \$50,000 or confined in a
53 state correctional facility for not less than one year nor
54 more than five years, or both.
- 55 (e) The court shall order any person convicted of an
56 offense under this section to pay the victim restitution in

57 an amount not to exceed the total amount of any economic
58 harm suffered.

59 (f) The court shall order any person convicted of an
60 offense under this section to reimburse the state or any
61 subdivision of the state for any expenses incurred by the
62 state or the subdivision incident to its response to a
63 violation of this section.

64 (g) The conviction of any person under the provisions
65 of this section does not preclude or otherwise limit any
66 civil proceedings arising from the same act.

CHAPTER 64

**(Com. Sub. for H.B. 3314 - By Delegates Varner,
Perdue, Miley, Hunt, White, Beach, Campbell,
Hamilton, Hall, Shaver and Ellem)**

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

AN ACT to amend and reenact §61-7-4 and §61-7-6a of the Code of West Virginia, 1931, as amended, all relating to concealed handgun licensing generally; clarifying scope of license; clarifying that the investigation necessary for licensure shall include a nationwide criminal background check; requiring reissue application to be ruled on within forty-five days; eliminating social security number from issued license; related to the honoring of concealed handgun licenses issued by another state; eliminating requirement that a person holding a concealed handgun license from a reciprocating state be a resident of that state and requiring that a potential reciprocating

state's licensure standards be similar to or greater than those of this state.

Be it enacted by the Legislature of West Virginia:

That §61-7-4 and §61-7-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

§61-7-6a. Reciprocity; out-of-state concealed handgun permits.

§61-7-4. License to carry deadly weapons; how obtained.

1 (a) Except as provided in subsection (h) of this section,
2 any person desiring to obtain a state license to carry a
3 concealed deadly weapon shall apply to the sheriff of his or
4 her county for the license, and shall pay to the sheriff, at the
5 time of application, a fee of \$75, of which \$15 of that amount
6 shall be deposited in the Courthouse Facilities Improvement
7 Fund created by section six, article twenty-six, chapter
8 twenty-nine of this code. Concealed weapons permits may
9 only be issued for pistols or revolvers. Each applicant shall
10 file with the sheriff, a complete application, as prepared by
11 the Superintendent of the West Virginia State Police, in
12 writing, duly verified, which sets forth only the following
13 licensing requirements:

14 (1) The applicant's full name, date of birth, social security
15 number and a description of the applicant's physical features;

16 (2) That, on the date the application is made, the
17 applicant is a bona fide resident of this state and of the
18 county in which the application is made and has a valid
19 driver's license or other state-issued photo identification
20 showing the residence;

21 (3) That the applicant is twenty-one years of age or older:
22 *Provided*, That any individual who is less than twenty-one
23 years of age and possesses a properly issued concealed
24 weapons license as of the effective date of this article shall be
25 licensed to maintain his or her concealed weapons license
26 notwithstanding the provisions of this section requiring new
27 applicants to be at least twenty-one years of age: *Provided*,
28 *however*, That upon a showing of any applicant who is
29 eighteen years of age or older that he or she is required to
30 carry a concealed weapon as a condition for employment,
31 and presents satisfactory proof to the sheriff thereof, then he
32 or she shall be issued a license upon meeting all other
33 conditions of this section. Upon discontinuance of
34 employment that requires the concealed weapons license, if
35 the individual issued the license is not yet twenty-one years
36 of age, then the individual issued the license is no longer
37 eligible and must return his or her license to the issuing
38 sheriff;

39 (4) That the applicant is not addicted to alcohol, a
40 controlled substance or a drug and is not an unlawful user
41 thereof;

42 (5) That the applicant has not been convicted of a felony
43 or of an act of violence involving the misuse of a deadly
44 weapon;

45 (6) That the applicant has not been convicted of a
46 misdemeanor offense of assault or battery either under the
47 provisions of section twenty-eight, article two of this chapter
48 or the provisions of subsection (b) or (c), section nine, article
49 two of this chapter in which the victim was a current or
50 former spouse, current or former sexual or intimate partner,
51 person with whom the defendant has a child in common,
52 person with whom the defendant cohabits or has cohabited,
53 a parent or guardian, the defendant's child or ward or a
54 member of the defendant's household at the time of the

55 offense; or a misdemeanor offense with similar essential
56 elements in a jurisdiction other than this state;

57 (7) That the applicant is not under indictment for a felony
58 offense or is not currently serving a sentence of confinement,
59 parole, probation or other court-ordered supervision imposed
60 by a court of any jurisdiction or is the subject of an
61 emergency or temporary domestic violence protective order
62 or is the subject of a final domestic violence protective order
63 entered by a court of any jurisdiction;

64 (8) That the applicant is physically and mentally
65 competent to carry the weapon;

66 (9) That the applicant has not been adjudicated to be
67 mentally incompetent;

68 (10) That the applicant has qualified under the minimum
69 requirements set forth in subsection (d) of this section for
70 handling and firing the weapon: *Provided*, That this
71 requirement shall be waived in the case of a renewal
72 applicant who has previously qualified;

73 (11) That the applicant authorizes the sheriff of the
74 county, or his or her designee, to conduct an investigation
75 relative to the information contained in the application.

76 (b) The sheriff shall conduct an investigation including
77 a nationwide criminal background check, in order to verify
78 that the information required in subdivisions (1), (2), (3), (5),
79 (6), (8) and (9), subsection (a) of this section is true and
80 correct.

81 (c) Sixty dollars of the application fee and any fees for
82 replacement of lost or stolen licenses received by the sheriff
83 shall be deposited by the sheriff into a concealed weapons
84 license administration fund. The fund shall be administered

85 by the sheriff and shall take the form of an interest bearing
86 account with any interest earned to be compounded to the
87 fund. Any funds deposited in this concealed weapon license
88 administration fund are to be expended by the sheriff to pay
89 for the costs associated with issuing concealed weapons
90 licenses. Any surplus in the fund on hand at the end of each
91 fiscal year may be expended for other law-enforcement
92 purposes or operating needs of the sheriff's office, as the
93 sheriff may consider appropriate.

94 (d) All persons applying for a license must complete a
95 training course in handling and firing a handgun. The
96 successful completion of any of the following courses fulfills
97 this training requirement:

98 (1) Any official National Rifle Association handgun
99 safety or training course;

100 (2) Any handgun safety or training course or class
101 available to the general public offered by an official
102 law-enforcement organization, community college, junior
103 college, college or private or public institution or
104 organization or handgun training school utilizing instructors
105 duly certified by the institution;

106 (3) Any handgun training or safety course or class
107 conducted by a handgun instructor certified as such by the
108 state or by the National Rifle Association;

109 (4) Any handgun training or safety course or class
110 conducted by any branch of the United States Military,
111 Reserve or National Guard.

112 A photocopy of a certificate of completion of any of the
113 courses or classes or an affidavit from the instructor, school,
114 club, organization or group that conducted or taught said
115 course or class attesting to the successful completion of the

116 course or class by the applicant or a copy of any document
117 which shows successful completion of the course or class
118 shall constitute evidence of qualification under this section.

119 (e) All concealed weapons license applications must be
120 notarized by a notary public duly licensed under article four,
121 chapter twenty-nine of this code. Falsification of any portion
122 of the application constitutes false swearing and is punishable
123 under the provisions of section two, article five, chapter
124 sixty-one of this code.

125 (f) If the information in the application is found to be true
126 and correct, the sheriff shall issue a license. The sheriff shall
127 issue, reissue or deny the license within forty-five days after
128 the application is filed if all required background checks
129 authorized by this section are completed.

130 (g) Before any approved license shall be issued or
131 become effective, the applicant shall pay to the sheriff a fee
132 in the amount of \$15 which the sheriff shall forward to the
133 Superintendent of the West Virginia State Police within thirty
134 days of receipt. The license shall be valid for five years
135 throughout the state, unless sooner revoked.

136 (h) All persons holding a current and valid concealed
137 weapons license as of December 16, 1995, shall continue to
138 hold a valid concealed weapons license until his or her
139 license expires or is revoked as provided in this article:
140 *Provided*, That all reapplication fees shall be waived for
141 applications received by January 1, 1997, for any person
142 holding a current and valid concealed weapons license as of
143 December 16, 1995, which contains use restrictions placed
144 upon the license as a condition of issuance by the issuing
145 circuit court. Any licenses reissued pursuant to this
146 subsection will be issued for the time period of the original
147 license.

148 (i) Each license shall contain the full name and address
149 of the licensee and a space upon which the signature of the
150 licensee shall be signed with pen and ink. The issuing sheriff
151 shall sign and attach his or her seal to all license cards. The
152 sheriff shall provide to each new licensee a duplicate license
153 card, in size similar to other state identification cards and
154 licenses, suitable for carrying in a wallet, and the license card
155 is considered a license for the purposes of this section.

156 (j) The Superintendent of the West Virginia State Police
157 shall prepare uniform applications for licenses and license
158 cards showing that the license has been granted and shall do
159 any other act required to be done to protect the state and see
160 to the enforcement of this section.

161 (k) If an application is denied, the specific reasons for the
162 denial shall be stated by the sheriff denying the application.
163 Any person denied a license may file, in the circuit court of
164 the county in which the application was made, a petition
165 seeking review of the denial. The petition shall be filed
166 within thirty days of the denial. The court shall then
167 determine whether the applicant is entitled to the issuance of
168 a license under the criteria set forth in this section. The
169 applicant may be represented by counsel, but in no case may
170 the court be required to appoint counsel for an applicant. The
171 final order of the court shall include the court's findings of
172 fact and conclusions of law. If the final order upholds the
173 denial, the applicant may file an appeal in accordance with
174 the Rules of Appellate Procedure of the Supreme Court of
175 Appeals.

176 (l) If a license is lost or destroyed, the person to whom
177 the license was issued may obtain a duplicate or substitute
178 license for a fee of \$5 by filing a notarized statement with the
179 sheriff indicating that the license has been lost or destroyed.

180 (m) The sheriff shall, immediately after the license is
181 granted as aforesaid, furnish the Superintendent of the West

182 Virginia State Police a certified copy of the approved
183 application. The sheriff shall furnish to the Superintendent
184 of the West Virginia State Police at any time so requested a
185 certified list of all licenses issued in the county. The
186 Superintendent of the West Virginia State Police shall
187 maintain a registry of all persons who have been issued
188 concealed weapons licenses.

189 (n) All licensees must carry with them a state-issued
190 photo identification card with the concealed weapons license
191 whenever the licensee is carrying a concealed weapon. Any
192 licensee who fails to have in his or her possession a
193 state-issued photo identification card and a current concealed
194 weapons license while carrying a concealed weapon is guilty
195 of a misdemeanor and, upon conviction thereof, shall be
196 fined not less than \$50 or more than \$200 for each offense.

197 (o) The sheriff shall deny any application or revoke any
198 existing license upon determination that any of the licensing
199 application requirements established in this section have been
200 violated by the licensee.

201 (p) A person who is engaged in the receipt, review or in
202 the issuance or revocation of a concealed weapon license
203 does not incur any civil liability as the result of the lawful
204 performance of his or her duties under this article.

205 (q) Notwithstanding the provisions of subsection (a) of
206 this section, with respect to application by a former
207 law-enforcement officer honorably retired from agencies
208 governed by article fourteen, chapter seven of this code;
209 article fourteen, chapter eight of this code; article two,
210 chapter fifteen of this code; and article seven, chapter twenty
211 of this code, an honorably retired officer is exempt from
212 payment of fees and costs as otherwise required by this
213 section, and the application of the honorably retired officer
214 shall be granted without proof or inquiry by the sheriff as to

215 those requirements set forth in subdivision (9), subsection (a)
216 of this section, if the officer meets the remainder of the
217 requirements of this section and has the approval of the
218 appropriate chief law-enforcement officer.

219 (r) Except as restricted or prohibited by the provisions of
220 this article or as otherwise prohibited by law, the issuance of
221 a concealed weapon permit issued in accordance with the
222 provisions of this section authorizes the holder of the permit
223 to carry a concealed pistol or revolver on the lands or waters
224 of this state.

§61-7-6a. Reciprocity; out-of-state concealed handgun permits.

1 (a) A holder of a valid out-of-state permit or license to
2 carry a concealed handgun, as issued by another state with
3 which the State of West Virginia has executed a reciprocity
4 agreement, shall be recognized as valid in this state, if the
5 following conditions are met:

6 (1) The permit or license holder is 21 years or older;

7 (2) The permit or license is in his or her immediate
8 possession;

9 (3) The permit or license holder is not a resident of the
10 State of West Virginia; and,

11 (4) The State of West Virginia has executed a valid and
12 effective reciprocity agreement with the issuing state
13 pertaining to the carrying and verification of concealed
14 handgun licenses and permits issued in the respective states.

15 (b) A holder of a valid permit or license from another
16 state who is authorized to carry a concealed handgun in this
17 state pursuant to provisions of this section is subject to the
18 same laws and restrictions with respect to carrying a

19 concealed handgun as a resident of West Virginia who is so
20 permitted, and must carry the concealed handgun in
21 compliance with the laws of this state.

22 (c) A license or permit from another state is not valid in
23 this state if the holder is or becomes prohibited by law from
24 possessing a firearm.

25 (d) The West Virginia Attorney General shall seek to
26 enter into and may execute reciprocity agreements on behalf
27 of the State of West Virginia with states which meet the
28 following standards and requirements:

29 (1) The standards applied by the other state before
30 issuing a concealed handgun license or permit must be
31 similar to or greater than the standards imposed by this
32 article;

33 (2) This state's law-enforcement officers have continuous
34 access to data bases on the criminal information network,
35 twenty-four hours per day, seven days per week, to verify the
36 continued validity of any license or permit to carry a
37 concealed handgun that has been granted by the issuing state;

38 (3) The other state agrees to grant the right to carry a
39 concealed handgun to residents of West Virginia who have
40 valid concealed handgun permits issued pursuant to this
41 article in their possession while carrying concealed weapons
42 in that state; and

43 (4) The states agree to apprise one another of changes in
44 permitting standards and requirements, to provide for a
45 prompt reexamination of whether any adopted change in
46 licensing or permitting standards negates the states' ability to
47 continue with the reciprocity agreement.

48 (e) The West Virginia State Police shall maintain a
49 registry of states with which the State of West Virginia has
50 entered into reciprocity agreements on the criminal

51 information network and make the registry available to
52 law-enforcement officers for investigative purposes.

53 (f) Every twelve months after the effective date of this
54 section, the West Virginia Attorney General shall make
55 written inquiry of the concealed handgun permitting
56 authorities in each other state as to: (i) Whether a West
57 Virginia resident may carry a concealed handgun in their
58 state based upon having a valid West Virginia concealed
59 handgun permit; and (ii) whether a West Virginia resident
60 may carry a concealed handgun in that state based upon
61 having a valid West Virginia concealed handgun permit,
62 pursuant to the laws of that state or by the execution of a
63 valid reciprocity agreement between the states.

64 (g) The West Virginia State Police shall make available
65 to the public a list of states which have entered into
66 reciprocity agreements with the State of West Virginia.

CHAPTER 65

(Com. Sub. for S.B. 339 - By Senator Foster)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 13, 2009.]

AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to exemptions for certain spousal relationships from county hiring and employment prohibition under limited circumstances; creating an exemption for certain spouses who were employed by the county prior to their engagement or marriage to a county official to county hiring prohibition; creating an exemption for certain licensed professional medical personnel to county hiring prohibition; limitations; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §61-10-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

1 (a) It is unlawful for any member of a county
2 commission, district school officer, secretary of a board of
3 education, supervisor or superintendent, principal or teacher
4 of public schools or any member of any other county or
5 district board or any county or district officer to be or become
6 pecuniarily interested, directly or indirectly, in the proceeds
7 of any contract or service or in the furnishing of any supplies
8 in the contract for or the awarding or letting of a contract if,
9 as a member, officer, secretary, supervisor, superintendent,
10 principal or teacher, he or she may have any voice, influence
11 or control: *Provided*, That nothing in this section prevents or
12 makes unlawful the employment of the spouse of a member,
13 officer, secretary, supervisor, superintendent, principal or
14 teacher as a principal or teacher or auxiliary or service
15 employee in the public schools of any county or prevents or
16 makes unlawful the employment by any joint county and
17 circuit clerk of his or her spouse.

18 (b) Any person who violates the provisions of subsection
19 (a) of this section is guilty of a misdemeanor and, upon
20 conviction thereof, shall be fined not less than \$50 nor more
21 than \$500 or confined in jail not more than one year, or both
22 fined and confined.

23 (c) Any person convicted of violating the provisions of
24 subsection (a) of this section shall also be removed from his

25 or her office and the certificate or certificates of any teacher,
26 principal, supervisor or superintendent so convicted shall,
27 upon conviction thereof, be immediately revoked: *Provided*,
28 That no person may be removed from office and no
29 certificate may be revoked for a violation of the provisions of
30 this section unless the person has first been convicted of the
31 violation.

32 (d) Any person, firm or corporation that offers or gives
33 any compensation or thing of value or who forebears to
34 perform an act to any of the persons named in subsection (a)
35 of this section or to or for any other person with the intent to
36 secure the influence, support or vote of the person for any
37 contract, service, award or other matter as to which any
38 county or school district becomes or may become the
39 paymaster is guilty of a misdemeanor and, upon conviction
40 thereof, shall be fined not less than \$500 nor more than
41 \$2,500 and, in the court's discretion, the person or any
42 member of the firm or, if it is a corporation, any agent or
43 officer of the corporation offering or giving any
44 compensation or other thing of value may, in addition to a
45 fine, be confined in jail for a period not to exceed one year.

46 (e) The provisions of subsection (a) of this section do not
47 apply to any person who is a salaried employee of a vendor
48 or supplier under a contract subject to the provisions of said
49 subsection if the employee, his or her spouse or child:

50 (1) Is not a party to the contract;

51 (2) Is not an owner, a shareholder, a director or an officer
52 of a private entity under the contract;

53 (3) Receives no commission, bonus or other direct
54 remuneration or thing of value by virtue of the contract;

55 (4) Does not participate in the deliberations or awarding
56 of the contract; and

57 (5) Does not approve or otherwise authorize the payment
58 for any services performed or supplies furnished under the
59 contract.

60 (f) The provisions of subsection (a) of this section do not
61 apply to any person who has a pecuniary interest in a bank
62 within the county serving or under consideration to serve as
63 a depository of funds for the county or board of education, as
64 the case may be, if the person does not participate in the
65 deliberations or any ultimate determination of the depository
66 of the funds.

67 (g) The provisions of subsection (a) of this section do not
68 apply to any person who has a pecuniary interest in a public
69 utility which is subject to regulation by the Public Service
70 Commission of this state.

71 (h) Where the provisions of subsection (a) of this section
72 would result in the loss of a quorum in a public body or
73 agency, in excessive cost, undue hardship or other substantial
74 interference with the operation of a governmental body or
75 agency, the affected governmental body or agency may make
76 written application to the West Virginia Ethics Commission
77 pursuant to subsection (d), section five, article two, chapter
78 six-b of this code for an exemption from subsection (a) of
79 this section.

80 (i) The provisions of this section do not apply to
81 publications in newspapers required by law to be made.

82 (j) No school employee or school official subject to the
83 provisions of subsection (a) of this section has an interest in
84 the sale, proceeds or profits in any book or other thing used
85 or to be used in the free school system of this state, as
86 proscribed in section nine, article XII of the Constitution of
87 West Virginia, if they qualify for the exceptions set forth in
88 subsection (e), (f),(g) or (h) of this section.

89 (k) The provisions of subsection (a) of this section do not
90 prevent or make unlawful the employment of the spouse of
91 any member of a county commission as a licensed health care
92 provider at government-owned hospitals or other government
93 agencies who provide health care services: *Provided*, That
94 the member of a county commission whose spouse is
95 employed or to be employed may not:

96 (1) Serve on the board for the government-owned
97 hospital or other government agency who provides health
98 care services where his or her spouse is employed or to be
99 employed;

100 (2) Vote on the appointment of members to the board for
101 the government-owned hospital or other government agency
102 who provides health care services where his or her spouse is
103 employed or to be employed; or

104 (3) Seek to influence the hiring or promotion of his or her
105 spouse by the government-owned hospital or other
106 government agency who provides health care services.

107 (l) The provisions of subsection (a) of this section do not
108 make unlawful the employment of a spouse of any elected
109 county official by that county official: *Provided*, That the
110 elected county official may not:

111 (1) Directly supervise the spouse employee; or

112 (2) Set the salary of the spouse employee: *Provided*, That
113 the provisions of this subsection shall only apply to spouse
114 employees who were neither married to nor engaged to the
115 elected county official at the time of their initial hiring.

CHAPTER 66

(H.B. 2920 - By Delegate Ellem)

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on June 5, 2009.]

AN ACT to repeal §61-11-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-11-6 of said code, all relating to crimes and their punishment; eliminating the felony offense of second or subsequent petit larceny; providing elements of and increasing the penalty for accessory after the fact for certain crimes against the person; and excluding certain persons from being considered an accessory after the fact.

Be it enacted by the Legislature of West Virginia:

That §61-11-20 of the Code of West Virginia, 1931, as amended, be repealed; and that §61-11-6 of said code be amended and reenacted to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-6. Punishment of principals in the second degree and accessories before and after the fact.

- 1 (a) In the case of every felony, every principal in the
- 2 second degree and every accessory before the fact shall be

3 punishable as if he or she were the principal in the first
4 degree; and every accessory after the fact shall be confined
5 in jail not more than one year and fined not exceeding \$500.
6 But no person in the relation of husband and wife, parent or
7 grandparent, child or grandchild, brother or sister, by
8 consanguinity or affinity, or servant to the offender, who,
9 after the commission of a felony, shall aid or assist a
10 principal felon, or accessory before the fact, to avoid or
11 escape from prosecution or punishment shall be deemed an
12 accessory after the fact.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, any person who knowingly harbors, conceals,
15 maintains or assists the principal felon after the commission
16 of the underlying offense violating the felony provisions of
17 sections one, four, or nine of article two of this chapter, or
18 gives such offender aid knowing that he or she has
19 committed such felony, with the intent that the offender
20 avoid or escape detention, arrest, trial or punishment, shall be
21 considered an accessory after the fact and, upon conviction,
22 be guilty of a felony and confined in a state correctional
23 facility for a period not to exceed five years, or a period of
24 not more than one half of the maximum penalty for the
25 underlying felony offense, whichever is the lesser maximum
26 term of confinement. But no person who is a person in the
27 relation of husband and wife, parent, grandparent, child,
28 grandchild, brother or sister, whether by consanguinity or
29 affinity, or servant to the offender shall be considered an
30 accessory after the fact.

CHAPTER 67

(Com. Sub. for H.B. 3036 - By Delegate Schoen)

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §61-11-26 of the Code of West Virginia, 1931, as amended, relating to removing the notice and publication requirements for expungement petitions.

Be it enacted by the Legislature of West Virginia:

That §61-11-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

1 (a) Any person convicted of a misdemeanor offense or
2 offenses arising from the same transaction committed while
3 he or she was between the ages of eighteen and twenty-six
4 may, pursuant to the provisions of this section, petition the
5 circuit court in which the conviction or convictions occurred
6 for expungement of the conviction or convictions and the
7 records associated therewith. The clerk of the circuit court
8 shall charge and collect in advance the same fee as is charged
9 for instituting a civil action pursuant to subdivision (1),

10 subsection (a), section eleven, article one, chapter fifty-nine
11 of this code for a petition for expungement.

12 (b) Expungement shall not be available for any conviction
13 of an offense listed in subsection (j) of this section. The relief
14 afforded by this subsection is only available to persons having
15 no other prior or subsequent convictions other than minor
16 traffic violations at the time the petition is filed: *Provided,*
17 That at the time the petition is filed and during the time the
18 petition is pending, petitioner may not be the subject of an
19 arrest or any other pending criminal proceeding. No person
20 shall be eligible for expungement pursuant to the provisions of
21 subsection (a) of this section until one year after the
22 conviction, completion of any sentence of incarceration or
23 probation, whichever is later in time.

24 (c) Each petition to expunge a conviction or convictions
25 pursuant to this section shall be verified under oath and
26 include the following information:

27 (1) Petitioner's current name and all other legal names or
28 aliases by which petitioner has been known at any time;

29 (2) All of petitioner's addresses from the date of the
30 offense or alleged offense in connection with which an
31 expungement order is sought to date of the petition;

32 (3) Petitioner's date of birth and social security number;

33 (4) Petitioner's date of arrest, the court of jurisdiction and
34 criminal complaint, indictment, summons or case number;

35 (5) The statute or statutes and offense or offenses for
36 which petitioner was charged and of which petitioner was
37 convicted;

38 (6) The names of any victim or victims, or that there were
39 no identifiable victims;

40 (7) Whether there is any current order for restitution,
41 protection, restraining order or other no contact order
42 prohibiting the petitioner from contacting the victims or
43 whether there has ever been a prior order for restitution,
44 protection or restraining order prohibiting the petitioner from
45 contacting the victim. If there is such a current order,
46 petitioner shall attach a copy of that order to his or her
47 petition;

48 (8) The court's disposition of the matter and punishment
49 imposed, if any;

50 (9) Why expungement is sought, such as, but not limited
51 to, employment or licensure purposes, and why it should be
52 granted;

53 (10) The steps the petitioner has taken since the time of
54 the offenses toward personal rehabilitation, including
55 treatment, work or other personal history that demonstrates
56 rehabilitation;

57 (11) Whether petitioner has ever been granted
58 expungement or similar relief regarding a criminal conviction
59 by any court in this state, any other state or by any federal
60 court; and

61 (12) Any supporting documents, sworn statements,
62 affidavits or other information supporting the petition to
63 expunge.

64 (d) A copy of the petition, with any supporting
65 documentation, shall be served by petitioner pursuant to the
66 rules of the trial court upon the Superintendent of the State
67 Police; the prosecuting attorney of the county of conviction;
68 the chief of police or other executive head of the municipal
69 police department wherein the offense was committed; the
70 chief law-enforcement officer of any other law-enforcement
71 agency which participated in the arrest of the petitioner; the

72 superintendent or warden of any institution in which the
73 petitioner was confined; the magistrate court or municipal
74 court which disposed of the petitioner's criminal charge; and
75 all other state and local government agencies whose records
76 would be affected by the proposed expungement. The
77 prosecutorial office that had jurisdiction over the offense or
78 offenses for which expungement is sought shall serve by first
79 class mail the petition for expungement, accompanying
80 documentation and any proposed expungement order to any
81 identified victims.

82 (e) Upon receipt of a petition for expungement, the
83 Superintendent of the State Police; the prosecuting attorney
84 of the county of conviction; the chief of police or other
85 executive head of the municipal police department wherein
86 the offense was committed; the chief law-enforcement officer
87 of any other law-enforcement agency which participated in
88 the arrest of the petitioner; the superintendent or warden of
89 any institution in which the petitioner was confined; the
90 magistrate court or municipal court which disposed of the
91 petitioner's criminal charge; all other state and local
92 government agencies whose records would be affected by the
93 proposed expungement and any other interested individual or
94 agency that desires to oppose the expungement shall, within
95 thirty days of receipt of the petition, file a notice of
96 opposition with the court with supporting documentation and
97 sworn statements setting forth the reasons for resisting the
98 petition for expungement. A copy of any notice of
99 opposition with supporting documentation and sworn
100 statements shall be served upon the petitioner in accordance
101 with trial court rules. The petitioner may file a reply no later
102 than ten days after service of any notice of opposition to the
103 petition for expungement.

104 (f) The burden of proof shall be on the petitioner to prove
105 by clear and convincing evidence that: (1) The conviction or
106 convictions for which expungement is sought are the only
107 convictions against petitioner and that the conviction or

108 convictions are not excluded from expungement by
109 subsection (j) of this section; (2) that the requisite time period
110 has passed since the conviction or convictions or end of the
111 completion of any sentence of incarceration or probation; (3)
112 petitioner has no criminal charges pending against him or
113 her; (4) the expungement is consistent with the public
114 welfare; (5) petitioner has, by his or her behavior since the
115 conviction or convictions, evidenced that he or she has been
116 rehabilitated and is law-abiding; and (6) any other matter
117 deemed appropriate or necessary by the court to make a
118 determination regarding the petition for expungement.

119 (g) Within sixty days of the filing of a petition for
120 expungement the circuit court shall:

121 (1) Summarily grant the petition;

122 (2) Set the matter for hearing; or

123 (3) Summarily deny the petition if the court determines
124 that the petition is insufficient or, based upon supporting
125 documentation and sworn statements filed in opposition to
126 the petition, the court determines that the petitioner, as a
127 matter of law, is not entitled to expungement.

128 (h) If the court sets the matter for hearing, all interested
129 parties who have filed a notice of opposition shall be notified.
130 At the hearing, the court may inquire into the background of
131 the petitioner and shall have access to any reports or records
132 relating to the petitioner that are on file with any
133 law-enforcement authority, the institution of confinement, if
134 any, and parole authority or other agency which was in any
135 way involved with the petitioner's arrest, conviction,
136 sentence and post-conviction supervision, including any
137 record of arrest or conviction in any other state or federal
138 court. The court may hear testimony of witnesses and any
139 other matter the court deems proper and relevant to its
140 determination regarding the petition. The court shall enter an

141 order reflecting its ruling on the petition for expungement
142 with appropriate findings of fact and conclusions of law.

143 (i) No person shall be eligible for expungement of a
144 conviction and the records associated therewith pursuant to
145 the provisions of subsection (a) of this section for any
146 violation involving the infliction of serious physical injury;
147 involving the provisions of article eight-b of this chapter
148 where the petitioner was eighteen years old, or older, at the
149 time the violation occurred and the victim was twelve years
150 of age, or younger, at the time the violation occurred;
151 involving the use or exhibition of a deadly weapon or
152 dangerous instrument; of the provisions of subsection (b) or
153 (c), section nine, article two of this chapter where the victim
154 was a spouse, a person with whom the person seeking
155 expungement had a child in common or with whom the
156 person seeking expungement ever cohabitated prior to the
157 offense; any violation of the provisions of section
158 twenty-eight of said article; a conviction for driving under the
159 influence of alcohol, controlled substances or a conviction for
160 a violation of section three, article four, chapter seventeen-b
161 of this code or section nineteen, article eight of this chapter.

162 (j) If the court grants the petition for expungement, it
163 shall order the sealing of all records in the custody of the
164 court and expungement of any records in the custody of any
165 other agency or official, including law-enforcement records.
166 Every agency with records relating to the arrest, charge or
167 other matters arising out of the arrest or conviction that is
168 ordered to expunge records shall certify to the court within
169 sixty days of the entry of the expungement order that the
170 required expungement has been completed. All orders
171 enforcing the expungement procedure shall also be sealed.

172 (k) Upon expungement, the proceedings in the matter
173 shall be deemed never to have occurred. The court and other
174 agencies shall reply to any inquiry that no record exists on
175 the matter. The person whose record is expunged shall not

176 have to disclose the fact of the record or any matter relating
177 thereto on an application for employment, credit or other type
178 of application.

179 (l) Inspection of the sealed records in the court's
180 possession may thereafter be permitted by the court only
181 upon a motion by the person who is the subject of the records
182 or upon a petition filed by a prosecuting attorney that
183 inspection and possible use of the records in question are
184 necessary to the investigation or prosecution of a crime in
185 this state or another jurisdiction. If the court finds that the
186 interests of justice will be served by granting a petition to
187 inspect the sealed record, it may be granted.

CHAPTER 68

**(Com. Sub. for S.B. 451 - By Senators Kessler, Snyder,
D. Facemire and White)**

[Passed April 11, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating generally to compensation awards to victims of crimes; expanding the definition of "criminally injurious conduct"; increasing allowable victim relocation costs; allowing payment for reasonable travel expenses for the transportation of a victim to or from a medical facility; increasing the amount that may be paid to a victim and to all other claimants sustaining economic loss because of injury to that victim; and removing the provision that prohibits the voluntary intoxication of a victim from being a defense against the estate of a deceased victim.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim, except the term "victim" does not include
6 a nonresident of this state where the criminally injurious act
7 did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor, the
10 parents, legal guardians and siblings of the victim;

11 (3) A third person, other than a collateral source, who
12 legally assumes or voluntarily pays the obligations of a
13 victim, or of a dependent of a victim, which obligations are
14 incurred as a result of the criminally injurious conduct that is
15 the subject of the claim;

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source, including, but not limited to, assignees, persons
19 holding power of attorney or other persons who hold
20 authority to make or submit claims in place of or on behalf of
21 a victim, a dependent or third person who is not a collateral
22 source; and, in the event that the victim, dependent or third

23 person who is not a collateral source is a minor or other
24 legally incompetent person, the duly qualified fiduciary of
25 the minor;

26 (5) A person who is a secondary victim in need of mental
27 health counseling due to the person's exposure to the crime
28 committed. An award to a secondary victim may not exceed
29 \$1,000; and

30 (6) A person who owns real property damaged by the
31 operation of a methamphetamine laboratory without the
32 knowledge or consent of the owner of the real property.

33 (b) "Collateral source" means a source of benefits or
34 advantages for economic loss otherwise compensable that the
35 victim or claimant has received, or that is readily available to
36 him or her, from any of the following sources:

37 (1) The offender, including any restitution received from
38 the offender pursuant to an order by a court of law sentencing
39 the offender or placing him or her on probation following a
40 conviction in a criminal case arising from the criminally
41 injurious act for which a claim for compensation is made;

42 (2) The government of the United States or any of its
43 agencies, a state or any of its political subdivisions or an
44 instrumentality of two or more states;

45 (3) Social Security, Medicare and Medicaid;

46 (4) State-required, temporary, nonoccupational disability
47 insurance; other disability insurance;

48 (5) Workers' compensation;

49 (6) Wage continuation programs of any employer;

50 (7) Proceeds of a contract of insurance payable to the
51 victim or claimant for loss that was sustained because of the
52 criminally injurious conduct;

53 (8) A contract providing prepaid hospital and other health
54 care services or benefits for disability; and

55 (9) That portion of the proceeds of all contracts of
56 insurance payable to the claimant on account of the death of
57 the victim which exceeds \$25,000.

58 (c) “Criminally injurious conduct” means conduct that
59 occurs or is attempted in this state or in any state not having
60 a victim compensation program which by its nature poses a
61 substantial threat of personal injury or death and is
62 punishable by fine or imprisonment or death or would be so
63 punishable but for the fact that the person engaging in the
64 conduct lacked capacity to commit the crime under the laws
65 of this state. Criminally injurious conduct also includes
66 criminally injurious conduct committed outside of the United
67 States against a resident of this state. Criminally injurious
68 conduct does not include conduct arising out of the
69 ownership, maintenance or use of a motor vehicle, except
70 when the person engaging in the conduct intended to cause
71 personal injury or death, or when the person engaging in the
72 conduct committed negligent homicide, driving under the
73 influence of alcohol, controlled substances or drugs, reckless
74 driving or when the person leaves the scene of the accident.

75 (d) “Dependent” means an individual who received over
76 half of his or her support from the victim. For the purpose of
77 determining whether an individual received over half of his
78 or her support from the victim, there shall be taken into
79 account the amount of support received from the victim as
80 compared to the entire amount of support which the
81 individual received from all sources, including support which
82 the individual himself or herself supplied. The term
83 “support” includes, but is not limited to, food, shelter,

84 clothing, medical and dental care and education. The term
85 “dependent” includes a child of the victim born after his or
86 her death.

87 (e) “Economic loss” means economic detriment
88 consisting only of allowable expense, work loss and
89 replacement services loss. If criminally injurious conduct
90 causes death, economic loss includes a dependent's economic
91 loss and a dependent's replacement services loss.
92 Noneconomic detriment is not economic loss; however,
93 economic loss may be caused by pain and suffering or
94 physical impairment. For purposes of this article, the term
95 “economic loss” includes a lost scholarship as defined in this
96 section.

97 (f) (1) “Allowable expense” means reasonable charges
98 incurred or to be incurred for reasonably needed products,
99 services and accommodations, including those for medical
100 care, mental health counseling, prosthetic devices, eye
101 glasses, dentures, rehabilitation and other remedial treatment
102 and care.

103 (2) Allowable expense includes a total charge not in
104 excess of \$7,000 for expenses in any way related to funerals,
105 cremations and burials. It does not include that portion of a
106 charge for a room in a hospital, clinic, convalescent home,
107 nursing home or any other institution engaged in providing
108 nursing care and related services in excess of a reasonable
109 and customary charge for semiprivate accommodations,
110 unless accommodations other than semiprivate
111 accommodations are medically required.

112 (3) Allowable expense also includes:

113 (A) A charge, not to exceed \$5,000, for cleanup of real
114 property damaged by a methamphetamine laboratory or a
115 charge, not to exceed \$1,000, for any other crime scene
116 cleanup;

117 (B) Victim relocation costs, not to exceed \$2,000;

118 (C) Reasonable travel expenses, not to exceed \$1,000, for
119 a claimant to attend court proceedings that are conducted for
120 the prosecution of the offender;

121 (D) Reasonable travel expenses for a claimant to return
122 a person who is a minor or incapacitated adult who has been
123 unlawfully removed from this state to another state or
124 country, if the removal constitutes a crime under the laws of
125 this state. Reasonable travel expenses to another state for
126 that purpose may not exceed \$2,000 and reasonable travel
127 expenses for that purpose to another county may not exceed
128 \$3,000; and

129 (E) Reasonable travel expenses for the transportation of
130 a victim to and from a medical facility.

131 (g) "Work loss" means loss of income from work that the
132 injured person would have performed if he or she had not
133 been injured and expenses reasonably incurred or to be
134 incurred by him or her to obtain services in lieu of those he
135 or she would have performed for income, reduced by any
136 income from substitute work actually performed or to be
137 performed by him or her or by income he or she would have
138 earned in available appropriate substitute work that he or she
139 was capable of performing but unreasonably failed to
140 undertake. "Work loss" also includes loss of income from
141 work by the parent or legal guardian of a minor victim who
142 must miss work to take care of the minor victim.

143 (h) "Replacement services loss" means expenses
144 reasonably incurred or to be incurred in obtaining ordinary
145 and necessary services in lieu of those the injured person
146 would have performed, not for income but for the benefit of
147 himself or herself or his or her family, if he or she had not
148 been injured.

149 (I) "Dependent's economic loss" means loss after a
150 victim's death of contributions or things of economic value to
151 his or her dependents, not including services they would have
152 received from the victim if he or she had not suffered the
153 fatal injury, less expenses of the dependents avoided by
154 reason of the victim's death.

155 (j) "Dependent's replacement service loss" means loss
156 reasonably incurred or to be incurred by dependents after a
157 victim's death in obtaining ordinary and necessary services in
158 lieu of those the victim would have performed for their
159 benefit if he or she had not suffered the fatal injury, less
160 expenses of the dependents avoided by reason of the victim's
161 death and not subtracted in calculating dependent's economic
162 loss.

163 (k) "Victim" means a person who suffers personal injury
164 or death as a result of any one of the following: (1)
165 Criminally injurious conduct; (2) the good faith effort of the
166 person to prevent criminally injurious conduct; or (3) the
167 good faith effort of the person to apprehend a person that the
168 injured person has observed engaging in criminally injurious
169 conduct or who the injured person has reasonable cause to
170 believe has engaged in criminally injurious conduct
171 immediately prior to the attempted apprehension. "Victim"
172 includes the owner of real property damaged by the operation
173 of a methamphetamine laboratory.

174 (l) "Contributory misconduct" means any conduct of the
175 claimant, or of the victim through whom the claimant claims
176 an award, that is unlawful or intentionally tortious and that,
177 without regard to the conduct's proximity in time or space to
178 the criminally injurious conduct, has causal relationship to
179 the criminally injurious conduct that is the basis of the claim
180 and shall also include the voluntary intoxication of the
181 claimant, either by the consumption of alcohol or the use of
182 any controlled substance when the intoxication has a causal
183 connection or relationship to the injury sustained.

184 (m) "Lost scholarship" means a scholarship, academic
185 award, stipend or other monetary scholastic assistance which
186 had been awarded or conferred upon a victim in conjunction
187 with a post-secondary school educational program and which
188 the victim is unable to receive or use, in whole or in part, due
189 to injuries received from criminally injurious conduct.

**§14-2A-14. Grounds for denial of claim or reduction of awards;
maximum awards.**

1 (a) Except as provided in subsection (b), section ten of
2 this article, the judge or commissioner may not approve an
3 award of compensation to a claimant who did not file his or
4 her application for an award of compensation within two
5 years after the date of the occurrence of the criminally
6 injurious conduct that caused the injury or death for which he
7 or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an
9 award of compensation if the criminally injurious conduct
10 upon which the claim is based was not reported to a
11 law-enforcement officer or agency within seventy-two hours
12 after the occurrence of the conduct, unless it is determined
13 that good cause existed for the failure to report the conduct
14 within the 72-hour period.

15 (c) The judge or commissioner may not approve an
16 award of compensation to a claimant who is the offender or
17 an accomplice of the offender who committed the criminally
18 injurious conduct, nor to any claimant if the award would
19 unjustly benefit the offender or his or her accomplice.

20 (d) A judge or commissioner, upon a finding that the
21 claimant or victim has not fully cooperated with appropriate
22 law-enforcement agencies or the claim investigator, may
23 deny a claim, reduce an award of compensation or reconsider
24 a claim already approved.

25 (e) A judge or commissioner may not approve an award
26 of compensation if the injury occurred while the victim was
27 confined in any state, county or regional jail, prison, private
28 prison or correctional facility.

29 (f) After reaching a decision to approve an award of
30 compensation, but prior to announcing the approval, the
31 judge or commissioner shall require the claimant to submit
32 current information as to collateral sources on forms
33 prescribed by the Clerk of the Court of Claims. The judge or
34 commissioner shall reduce an award of compensation or deny
35 a claim for an award of compensation that is otherwise
36 payable to a claimant to the extent that the economic loss
37 upon which the claim is based is or will be recouped from
38 other persons, including collateral sources, or if the reduction
39 or denial is determined to be reasonable because of the
40 contributory misconduct of the claimant or of a victim
41 through whom he or she claims. If an award is reduced or a
42 claim is denied because of the expected recoupment of all or
43 part of the economic loss of the claimant from a collateral
44 source, the amount of the award or the denial of the claim
45 shall be conditioned upon the claimant's economic loss being
46 recouped by the collateral source: *Provided*, That if it is
47 thereafter determined that the claimant will not receive all or
48 part of the expected recoupment, the claim shall be reopened
49 and an award shall be approved in an amount equal to the
50 amount of expected recoupment that it is determined the
51 claimant will not receive from the collateral source, subject
52 to the limitation set forth in subsection (g) of this section.

53 (g) (1) Except in the case of death, or as provided in
54 subdivision (2) of this subsection, compensation payable to
55 a victim and to all other claimants sustaining economic loss
56 because of injury to that victim may not exceed \$35,000 in
57 the aggregate. Compensation payable to all claimants
58 because of the death of the victim may not exceed \$50,000 in
59 the aggregate.

60 (2) In the event the victim's personal injuries are so
61 severe as to leave the victim with a disability, as defined in
62 Section 223 of the Social Security Act, as amended, as
63 codified in 42 U. S. C. §423, the court may award an
64 additional amount, not to exceed \$100,000, for special needs
65 attributable to the injury.

66 (h) If an award of compensation of \$5,000 or more is
67 made to a minor, a guardian shall be appointed pursuant to
68 the provisions of article ten, chapter forty-four of this code to
69 manage the minor's estate.

CHAPTER 69

(Com. Sub. for S.B. 370 - By Senator Kessler)

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §62-11C-4 and §62-11C-7 of the Code of West Virginia, 1931, as amended, all relating to community corrections fees generally; clarifying that circuit clerks, magistrate clerks, municipal court clerks or his or her designee are all authorized to collect certain fees imposed pursuant to this article; and permitting only a community criminal justice board to have the authority to collect supervision or participation fees ordered by circuit courts, magistrate courts, municipal courts or the community criminal justice board.

Be it enacted by the Legislature of West Virginia:

That §62-11C-4 and §62-11C-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.

§62-11C-4. Special revenue account.

§62-11C-7. Supervision or participation fee.

§62-11C-4. Special revenue account.

1 (a) There is hereby created in the State Treasury a special
2 revenue account to be known as the West Virginia
3 Community Corrections Fund. Expenditures from the fund
4 are for the purposes set forth in subsection (e) of this section
5 and are not authorized from collections but are to be made
6 only in accordance with appropriation by the Legislature and
7 in accordance with the provisions of article three, chapter
8 twelve of this code and upon the fulfillment of the provisions
9 set forth in article two, chapter five-a of this code. The West
10 Virginia Community Corrections Fund may receive any gifts,
11 grants, contributions or other money from any source which
12 is specifically designated for deposit in the fund.

13 (b) In addition to the fee required in section nine, article
14 twelve of this chapter, a fee not to exceed \$35 per month,
15 unless modified by legislative rule as provided in section
16 three of this article, is also to be collected from those persons
17 on probation. This fee is to be based upon the person's
18 ability to pay. The magistrate or circuit judge shall conduct
19 a hearing prior to imposition of probation and make a
20 determination on the record that the offender is able to pay
21 the fee without undue hardship. The magistrate clerk, deputy
22 magistrate clerk, magistrate assistant, circuit clerk or deputy
23 circuit clerk shall collect all fees imposed pursuant to this
24 subsection and deposit them in a separate account. Within
25 ten calendar days following the beginning of the calendar
26 month, the magistrate clerk or circuit clerk shall forward the

27 amount deposited to the State Treasurer to be credited to the
28 West Virginia Community Corrections Fund.

29 (c) In addition to the fee required in section five, article
30 eleven-b of this chapter, a fee of \$2.50 per day is to be
31 collected from those persons on home incarceration. The
32 circuit judge, magistrate or municipal court judge shall
33 consider the person's ability to pay in determining the
34 imposition of the fee. The circuit clerk, magistrate clerk,
35 municipal court clerk or his or her designee shall collect all
36 fees imposed pursuant to this subsection and deposit them in
37 a separate account. Within ten calendar days following the
38 beginning of the calendar month, the circuit clerk, magistrate
39 clerk or municipal court clerk shall forward the amount
40 deposited to the State Treasurer to be credited to the West
41 Virginia Community Corrections Fund.

42 (d) In addition to the usual court costs in any criminal
43 case taxed against any defendant convicted in a municipal,
44 magistrate or circuit court, excluding municipal parking
45 ordinances, a \$10 fee shall be added. The circuit clerk,
46 magistrate clerk, municipal court clerk or his or her designee
47 shall collect all fees imposed pursuant to this subsection and
48 deposit them in a separate account. Within ten calendar days
49 following the beginning of the calendar month, the circuit
50 clerk, magistrate court clerk and the municipal court clerk
51 shall forward the amount deposited to the State Treasurer to
52 be credited to the West Virginia Community Corrections
53 Fund.

54 (e) The moneys of the West Virginia Community
55 Corrections Fund are to be disbursed by the Governor's
56 Committee on Crime, Delinquency and Correction, upon
57 recommendation by the community corrections
58 subcommittee, for the funding of community corrections
59 programs and to pay expenses of the Governor's committee

60 in administering the provisions of this article, which expenses
61 may not in any fiscal year exceed ten percent of the funds
62 deposited to the special revenue account during that fiscal
63 year.

64 (f) Any disbursements from the West Virginia
65 Community Corrections Fund allocated for community
66 corrections programs by the Governor's committee may be
67 made contingent upon local appropriations or gifts in money
68 or in kind for the support of the programs. Any county
69 commission of any county or the governing body of a
70 municipality may appropriate and expend money for
71 establishing and maintaining community corrections
72 programs.

§62-11C-7. Supervision or participation fee.

1 (a) A circuit judge, magistrate, municipal court judge or
2 community criminal justice board may require the payment
3 of a supervision or participation fee from any person required
4 to be supervised by or participate in a community corrections
5 program. The circuit judge, magistrate, municipal court
6 judge or community criminal justice board shall consider the
7 person's ability to pay in determining the imposition and
8 amount of the fee.

9 (b) All fees ordered by the circuit court, magistrate court,
10 municipal court or community criminal justice board
11 pursuant to this section are to be paid to the community
12 criminal justice board, who shall remit the fees monthly to
13 the treasurer of the county designated as the fiscal agent for
14 the board pursuant to section six of this article.

CHAPTER 70

**(S.B. 347 - By Senators Kessler, Browning, Foster, Jenkins,
Laird, Minard, Oliverio, Palumbo, Snyder, Stollings,
Williams, Yost, Barnes, Caruth, Deem and Hall)**

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

AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to making corrections to internal code references and other terminology related to extended supervision for certain sex offenders.

Be it enacted by the Legislature of West Virginia:

That §62-12-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

**§62-12-26. Extended supervision for certain sex offenders;
sentencing; conditions; supervision provisions;
supervision fee.**

1 (a) Notwithstanding any other provision of this code to
2 the contrary, any defendant convicted after the effective date
3 of this section of a violation of section twelve, article eight,
4 chapter sixty-one of this code or a felony violation of the
5 provisions of article eight-b, eight-c or eight-d of said chapter
6 shall, as part of the sentence imposed at final disposition, be
7 required to serve, in addition to any other penalty or
8 condition imposed by the court, a period of supervised

9 release of up to fifty years: *Provided*, That the period of
10 supervised release imposed by the court pursuant to this
11 section for a defendant convicted after the effective date of
12 this section as amended and reenacted during the first
13 extraordinary session of the Legislature, 2006, of a violation
14 of section three or seven, article eight-b, chapter sixty-one of
15 this code and sentenced pursuant to section nine-a of said
16 article, shall be no less than ten years: *Provided, however*,
17 That a defendant designated after the effective date of this
18 section as amended and reenacted during the first
19 extraordinary session of the Legislature, 2006, as a sexually
20 violent predator pursuant to the provisions of section two-a,
21 article twelve, chapter fifteen of this code shall be subject, in
22 addition to any other penalty or condition imposed by the
23 court, to supervised release for life: *Provided further*, That,
24 pursuant to the provisions of subsection (g) of this section, a
25 court may modify, terminate or revoke any term of
26 supervised release imposed pursuant to subsection (a) of this
27 section.

28 (b) Any person required to be on supervised release for
29 a minimum term of ten years or for life pursuant to the
30 provisos of subsection (a) of this section also shall be further
31 prohibited from:

32 (1) Establishing a residence or accepting employment
33 within one thousand feet of a school or child care facility or
34 within one thousand feet of the residence of a victim or
35 victims of any sexually violent offenses for which the person
36 was convicted;

37 (2) Establishing a residence or any other living
38 accommodation in a household in which a child under sixteen
39 resides if the person has been convicted of a sexually violent
40 offense against a child, unless the person is one of the
41 following:

42 (i) The child's parent;

43 (ii) The child's grandparent; or

44 (iii) The child's stepparent and the person was the
45 stepparent of the child prior to being convicted of a sexually
46 violent offense, the person's parental rights to any children
47 in the home have not been terminated, the child is not a
48 victim of a sexually violent offense perpetrated by the
49 person, and the court determines that the person is not likely
50 to cause harm to the child or children with whom such person
51 will reside: *Provided*, That nothing in this subsection shall
52 preclude a court from imposing residency or employment
53 restrictions as a condition of supervised release on defendants
54 other than those subject to the provision of this subsection.

55 (c) The period of supervised release imposed by the
56 provisions of this section shall begin upon the expiration of
57 any period of probation, the expiration of any sentence of
58 incarceration or the expiration of any period of parole
59 supervision imposed or required of the person so convicted,
60 whichever expires later.

61 (d) Any person sentenced to a period of supervised
62 release pursuant to the provisions of this section shall be
63 supervised by the probation office of the sentencing court or
64 by the community corrections program established in said
65 circuit unless jurisdiction is transferred elsewhere by order of
66 the sentencing court.

67 (e) A defendant sentenced to a period of supervised
68 release shall be subject to any or all of the conditions
69 applicable to a person placed upon probation pursuant to the
70 provisions of section nine of this article: *Provided*, That any
71 defendant sentenced to a period of supervised release
72 pursuant to this section shall be required to participate in
73 appropriate offender treatment programs or counseling
74 during the period of supervised release unless the court
75 deems the offender treatment programs or counseling to no
76 longer be appropriate or necessary and makes express
77 findings in support thereof.

78 Within ninety days of the effective date of this section as
79 amended and reenacted during the first extraordinary session
80 of the Legislature, 2006, the Secretary of the Department of
81 Health and Human Resources shall propose rules and
82 emergency rules for legislative approval in accordance with
83 the provisions of article three, chapter twenty-nine-a of this
84 code establishing qualifications for sex offender treatment
85 programs and counselors based on accepted treatment
86 protocols among licensed mental health professionals.

87 (f) The sentencing court may, based upon defendant's
88 ability to pay, impose a supervision fee to offset the cost of
89 supervision. Said fee shall not exceed \$50 per month. Said
90 fee may be modified periodically based upon the defendant's
91 ability to pay.

92 (g) *Modification of conditions or revocation.* -- The
93 court may:

94 (1) Terminate a term of supervised release and discharge
95 the defendant released at any time after the expiration of two
96 years of supervised release, pursuant to the provisions of the
97 West Virginia Rules of Criminal Procedure relating to the
98 modification of probation, if it is satisfied that such action is
99 warranted by the conduct of the defendant released and the
100 interests of justice;

101 (2) Extend a period of supervised release if less than the
102 maximum authorized period was previously imposed or
103 modify, reduce or enlarge the conditions of supervised
104 release, at any time prior to the expiration or termination of
105 the term of supervised release, consistent with the provisions
106 of the West Virginia Rules of Criminal Procedure relating to
107 the modification of probation and the provisions applicable
108 to the initial setting of the terms and conditions of post-
109 release supervision;

110 (3) Revoke a term of supervised release and require the
111 defendant to serve in prison all or part of the term of
112 supervised release without credit for time previously served
113 on supervised release if the court, pursuant to the West
114 Virginia Rules of Criminal Procedure applicable to
115 revocation of probation, finds by clear and convincing
116 evidence that the defendant violated a condition of
117 supervised release, except that a defendant whose term is
118 revoked under this subdivision may not be required to serve
119 more than the period of supervised release;

120 (4) Order the defendant to remain at his or her place of
121 residence during nonworking hours and, if the court so
122 directs, to have compliance monitored by telephone or
123 electronic signaling devices, except that an order under this
124 paragraph may be imposed only as an alternative to
125 incarceration.

126 (h) *Written statement of conditions.* -- The court shall
127 direct that the probation officer provide the defendant with a
128 written statement at the defendant's sentencing hearing that
129 sets forth all the conditions to which the term of supervised
130 release is subject and that it is sufficiently clear and specific
131 to serve as a guide for the defendant's conduct and for such
132 supervision as is required.

133 (i) *Supervised release following revocation.* -- When a
134 term of supervised release is revoked and the defendant is
135 required to serve a term of imprisonment that is less than the
136 maximum term of supervised release authorized under
137 subsection (a) of this section, the court may include a
138 requirement that the defendant be placed on a term of
139 supervised release after imprisonment. The length of such
140 term of supervised release shall not exceed the term of
141 supervised release authorized by this section less any term of
142 imprisonment that was imposed upon revocation of
143 supervised release.

144 (j) *Delayed revocation.* -- The power of the court to
145 revoke a term of supervised release for violation of a
146 condition of supervised release and to order the defendant to
147 serve a term of imprisonment and, subject to the limitations
148 in subsection (i) of this section, a further term of supervised
149 release extends beyond the expiration of the term of
150 supervised release for any period necessary for the
151 adjudication of matters arising before its expiration if, before
152 its expiration, a warrant or summons has been issued on the
153 basis of an allegation of such a violation.



CHAPTER 71

**(Com. Sub. for H.B. 2753 - By Delegates Stephens,
Klempa, D. Poling, Swartzmiller and Perry)**

[Passed April 9, 2009; in effect from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §17-2D-2, §17-2D-3 and §17-2D-5
of the Code of West Virginia, 1931, as amended, all relating to
the continuation of the Design-Build Program.

Be it enacted by the Legislature of West Virginia:

That §17-2D-2, §17-2D-3 and §17-2D-5 of the Code of West
Virginia, 1931, as amended, be amended and reenacted, all to read
as follows:

**ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT
PROGRAM.**

§17-2D-2. Highway Design-Build Pilot Program.

§17-2D-3. Invitation for bids.

§17-2D-5. Report to the Legislature.

§17-2D-2. Highway Design-Build Pilot Program.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the Commissioner of the West Virginia Division of
3 Highways may continue with the pilot program to expedite
4 the construction of no more than ten special projects, in
5 addition to the three projects authorized by prior enactment
6 of this section, by combining the design and construction
7 elements of a highway or bridge project into a single
8 contract.

9 (b) A design-build project may not be let to contract after
10 June 30, 2011. The Division of Highways may expend no
11 more than \$50 million in each of the three years remaining in
12 the pilot program, for an aggregate total of \$150 million.

13 (c) A design-build project may be let to contract only in
14 accordance with the Commissioner's established policies and
15 procedures concerning design-build projects.

16 (d) After June 30, 2011, no projects may be let under the
17 provisions of this article unless the West Virginia Legislature
18 either approves additional projects or makes the program
19 permanent.

20 (e) Projects receiving special funding above the regular
21 federal core funding, including any Competitive Surface
22 Transportation Grants received as a result of the American
23 Recovery and Reinvestment Act of 2009, may utilize the
24 pilot program, but shall not be included in the total number
25 of projects or expenditure limits provided by subsections (a)
26 and (b) of this section.

§17-2D-3. Invitation for bids.

1 (a) The division shall prepare an invitation for bids for
2 prequalified design-builders, which must provide at a
3 minimum:

4 (1) The procedures to be followed for submitting bids
5 and the procedures for making awards;

6 (2) The proposed general terms and conditions for the
7 design-build contract;

8 (3) The description of the drawings, specifications or
9 other information to be submitted with the bid, with guidance
10 as to the form and level of completeness of the drawings,
11 specifications or submittals that will be acceptable;

12 (4) A proposed time schedule commencement and
13 completion of the design-build contract;

14 (5) Budget limits for the design-build contract, if any;

15 (6) Requirements or restrictions for the subletting of
16 specific portions of the design-build contract, if any; and

17 (7) Requirements for performance bonds, payment bonds,
18 insurance, professional liability insurance and workers'
19 compensation coverage.

20 (b) The division shall make available to the qualified
21 design-builders, a list of prequalified consultants, approved
22 subcontractors, suppliers and sureties, as applicable,
23 additional information including, but not limited to, surveys,
24 soils reports, drawings or information regarding existing
25 structures, environmental studies, photographs or references
26 to public records, or other pertinent information.

27 (c) The division shall set forth its needs with sufficient
28 clarity to assure that there is a comprehensive understanding
29 of the project's scope and requirement.

§17-2D-5. Report to the Legislature.

1 On or before December 1, 2011, the commissioner shall
2 prepare and submit to the Joint Standing Committee on
3 Government Organization a report evaluating the experience
4 of the Division of Highways with each project, including
5 whether the division realized any cost or time savings, the
6 number and cost of change orders, the quality of work
7 performed, the number of bids received and other issues the
8 commissioner considers appropriate.

CHAPTER 72

**(Com. Sub. for H.B. 2694 - By Delegates Boggs, Webster,
Iaquinta, Ferro, Wooton, Schoen, Tabb, Fleischauer,
Schadler, Hamilton and Hutchins)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §48-1-233.3 and §48-1-233.4; to amend said code by adding thereto a new section, designated §48-9-404; to amend and reenact §48-11-106 of said code; and to amend said code by adding thereto a new section, designated §48-11-108, all relating to modifying custodial rights and child support for a parent who has been deployed for military service; providing definitions; modifying the terms of a parenting plan; requiring that any order is only a temporary order; providing for temporary modification of child support during the military service; requiring an expedited process for modification of a child

support order; reinstating the child support obligation in place prior to the parent's military service upon release from service; and requiring that a further modification of child support be based solely on the income and earning capacity the parent has after the military service.

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 §48-1-233.3 and §48-1-233.4; that said code be amended by adding thereto a new section, designated §48-9-404; that §48-11-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §48-11-108, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

Article

- 1. General Provisions; Definitions.**
- 9. Allocation of Custodial Responsibility and Decision-making Responsibility of Children.**
- 11. Support of Children.**

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 2--DEFINITIONS.

§48-1-233.3 Military parent defined.

§48-1-233.4. Military service or service defined.

§48-1-233.3. Military parent defined.

- 1 "Military parent" means a natural parent or adoptive
- 2 parent of a child under the age of eighteen whose parental
- 3 rights have not been terminated by a court of competent
- 4 jurisdiction.

§48-1-233.4. Military service or service defined.

- 1 (a) In the case of a parent who is a member of the Army,
- 2 Navy, Air Force, Marine Corps, Coast Guard, or a Reserve

3 component of these services, “military service or service”
4 means a deployment for combat operations, a contingency
5 operation, or a natural disaster based on orders that do not
6 permit a family member to accompany the member on the
7 deployment.

8 (b) In the case of a parent who is a member of the
9 National Guard, “military service or service” means
10 service under a call to active service authorized by the
11 President of the United States or the Secretary of Defense
12 for a period of more than thirty consecutive days pursuant
13 to 32 U.S.C. 502(f) for purposes of responding to a
14 national emergency declared by the President and
15 supported by federal funds.

16 (c) “Military service or service” includes a period during
17 which a military parent remains subject to deployment orders
18 and remains deployed on account of sickness, wounds, leave
19 or other lawful cause.

**ARTICLE 9. ALLOCATION OF CUSTODIAL
RESPONSIBILITY AND
DECISION - MAKING
RESPONSIBILITY OF CHILDREN.**

PART 4. MODIFICATION OF PARENTING PLAN.

**§48-9-404. Modification of a parenting plan due to military
service.**

1 (a) If a military parent is required to be separated from a
2 child due to military service, a court shall not enter a final
3 order modifying the terms of an existing parenting plan until
4 ninety days after the military parent is released from military
5 service. A military parent's absence or relocation because of
6 military service must not be the sole factor supporting a
7 change in circumstance or grounds sufficient to support a
8 permanent modification of an existing parenting plan.

9 (b) A parenting plan establishing the terms of custody or
10 visitation in place at the time a military parent is called to
11 military service may be temporarily modified to make
12 reasonable accommodation for the parties because of the
13 military parent's service.

14 (c) A temporary parenting plan pursuant to this section
15 shall provide that the military parent has at least substantial
16 custodial responsibility of the child during a period of leave
17 granted to the military parent during their military service,
18 unless the court determines that it is not in the best interest of
19 the child. If a temporary parenting plan is not issued pursuant
20 to this section, the nonmilitary custodial parent shall make the
21 child or children reasonably available to the military parent
22 when the military parent has leave to ensure that the military
23 parent has reasonable custodial responsibility and is able to
24 exercise custodial responsibility of the child or children.

25 (d) If there is no existing parenting plan or order
26 establishing the terms of custody or visitation and it appears
27 that military service is imminent, upon motion by either
28 parent, the court shall expedite a temporary hearing to
29 establish a temporary parenting plan to ensure the military
30 parent has access to the child, to establish support, and
31 provide other appropriate relief.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-106. Expedited process for modification.

§48-11-108. Modification of support based on military service.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child
2 support order may be utilized if:

3 (1) Either parent experiences a substantial change of
4 circumstances resulting in a decrease in income due to loss
5 of employment or other involuntary cause;

6 (2) An increase in income due to promotion, change in
7 employment or reemployment;

8 (3) Other such change in employment status; or

9 (4) If a military parent is called to military service.

10 (b) The party seeking the recalculation of support and
11 modification of the support order shall file a description of
12 the decrease or increase in income and an explanation of the
13 cause of the decrease or increase on a standardized form to be
14 provided by the secretary-clerk or other employee of the
15 family court. The standardized form shall be verified by the
16 filing party. Any available documentary evidence shall be
17 filed with the standardized form. Based upon the filing and
18 information available in the case record, the amount of
19 support shall be tentatively recalculated.

20 (c) The secretary-clerk shall serve a notice of the filing,
21 a copy of the standardized form and the support calculations
22 upon the other party by certified mail, return receipt
23 requested, with delivery restricted to the addressee, in
24 accordance with rule 4(d)(1)(D) of the West Virginia rules of
25 civil procedure. The secretary-clerk shall also mail a copy,
26 by first-class mail, to the local office of the bureau for child
27 support enforcement for the county in which the family court
28 is located in the same manner as original process under rule
29 4(d) of the rules of civil procedure.

30 (d) The notice shall fix a date fourteen days from the date
31 of mailing and inform the party that unless the recalculation
32 is contested and a hearing request is made on or before the
33 date fixed, the proposed modification will be made effective.
34 If the filing is contested, the proposed modification shall be
35 set for hearing; otherwise, the court shall enter an order for
36 a judgment by default. Either party may move to set aside a
37 judgment by default, pursuant to the provisions of rule 55 or
38 rule 60(b) of the rules of civil procedure.

39 (e) If an obligor uses the provisions of this section to
40 expeditiously reduce his or her child support obligation, the
41 order that effected the reduction shall also require the
42 obligor to notify the obligee of reemployment, new
43 employment or other such change in employment status
44 that results in an increase in income. If an obligee uses the
45 provisions of this section to expeditiously increase his or
46 her child support obligation, the order that effected the
47 increase shall also require the obligee to notify the obligor
48 of reemployment, new employment or other such change in
49 employment status that results in an increase in income of
50 the obligee.

51 (f) The Supreme Court of Appeals shall develop the
52 standardized form required by this section.

§48-11-108. Modification of support based on military service.

1 (a) If a military parent is called to military service, either
2 parent may file a notice of activation of military service and
3 a request for an expedited modification of a support order
4 pursuant to section one hundred six of this article. In the
5 petition, the parent must cite the basis for modifying the
6 support order and the military parent's change in financial
7 circumstances supporting the petition.

8 (b) The court shall temporarily modify the amount of
9 child support for the duration of the military parent's military
10 service pursuant to the provisions of section fifteen of this
11 article if there is a substantial change in circumstances based
12 upon changes in income and earning capacity of the military
13 parent during military service. An increase or decrease in
14 income or earning capacity of a military parent due to
15 military service may only be used to calculate support during
16 the period of military service and must not be considered a
17 permanent increase or decrease in income or earning
18 capacity. The effective date for a temporary modification
19 must be the date the military parent begins military service.

20 (c) Upon return from military service, the military
21 parent's child support obligation prior to a temporary
22 modification is automatically reinstated, effective on the date
23 the military parent is released from service. Within ninety
24 days of the military parent's release from service, either
25 parent may make a request for a modification of child
26 support to correspond to a change in the military parent's
27 nonservice related income or earning capacity. A
28 modification of child support must be based solely upon the
29 income or earning capacity the military parent has following
30 his or her period of military service.



CHAPTER 73

**(Com. Sub. for S.B. 405 - By Senators Kessler, Unger,
Minard and White)**

[Passed April 8, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §48-10-401 and §48-10-402 of the Code of West Virginia, 1931, as amended, all relating to circuit and family court jurisdiction over petitions for grandparent visitation; and establishing exclusive family court jurisdiction over such petitions or motions except when the child or children with whom visitation is sought are the subject or subjects of a pending abuse or neglect petition in the circuit court.

Be it enacted by the Legislature of West Virginia:

That §48-10-401 and §48-10-402 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

1 (a) The provisions of this section apply to any pending
2 actions for divorce, custody, legal separation, annulment or
3 establishment of paternity.

4 (b) After the commencement of the action, a grandparent
5 seeking visitation with his or her grandchild may, by motion,
6 apply to the family court for an order granting visitation. A
7 grandparent moving for an order of visitation will not be
8 afforded party status, but may be called as a witness by the
9 court, and will be subject to cross-examination by the parties.

10 (c) Motions or petitions for grandparent visitation shall
11 be filed and heard in the family court except when an abuse
12 or neglect proceeding involving the child or children is
13 pending before the circuit court, in which case the motion or
14 petition shall be filed and heard in the circuit court.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

1 (a) The provisions of this section apply when no
2 proceeding for divorce, custody, legal separation, annulment
3 or establishment of paternity is pending.

4 (b) A grandparent may petition the family court for an
5 order granting visitation with his or her grandchild,
6 regardless of whether the parents of the child are married. If
7 the grandparent filed a motion for visitation in a previous
8 proceeding for divorce, custody, legal separation, annulment
9 or establishment of paternity, and a decree or final order has
10 issued in that earlier action, the grandparent may petition for
11 visitation if the circumstances have materially changed since
12 the entry of the earlier order or decree.

13 (c) When a petition under this section is filed, the matter
14 shall be styled “In re grandparent visitation of [petitioner's(s')
15 name(s)]”.

16 (d) Motions or petitions for grandparent visitation shall
17 be filed and heard in the family court except when an abuse
18 or neglect proceeding involving the child or children is
19 pending before the circuit court, in which case the motion or
20 petition shall be filed and heard in the circuit court.

CHAPTER 74

**(Com. Sub. for H.B. 2739 - By Delegates Webster, Frazier,
Fleischauer, Miley and Longstreth)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §48-27-505, §48-27-701,
§48-27-902, §48-27-903 and §48-27-1002 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
two new sections, designated §48-27-1003 and §48-27-1004,

all relating to revising and expanding the procedures and methods for service, enforcement, and registration of domestic violence protective orders; requiring circuit court clerks to forward copies of protective orders to magistrates or magistrate court clerks; requiring magistrates or magistrate court clerks to forward copies of protective orders to state and federal agencies; requiring law enforcement to attempt service of protective orders within seventy-two hours of receipt of order; authorizing certain persons to file a criminal complaint for violation of a protective order; providing a criminal penalty for violation of a protective order; authorizing the seizure of weapons possessed in violation of a protective order; authorizing nonjudicial enforcement and service of state protective orders; and providing civil and criminal immunity to government officials for acts or omissions arising out of enforcement of a protective order, or the detention or arrest of an alleged violator of a protective order, if the official acted in a good faith effort to comply with the statutes related to the prevention and treatment of domestic violence.

Be it enacted by the Legislature of West Virginia:

That §48-27-505, §48-27-701, §48-27-902, §48-27-903 and §48-27-1002 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §48-27-1003 and §48-27-1004, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

- §48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
- §48-27-701. Service of pleadings and orders by law-enforcement officers.
- §48-27-902. Violation of protective orders; criminal complaints.
- §48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.
- §48-27-1002. Arrest in domestic violence matters; conditions.
- §48-27-1003. Nonjudicial enforcement of order.
- §48-27-1004. Immunity.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided in subsection (d),
2 section four hundred one of this article, a protective order,
3 entered by the family court pursuant to this article, is
4 effective for either ninety days or one hundred eighty days,
5 in the discretion of the court. If the court enters an order for
6 a period of ninety days, upon receipt of a written request
7 from the petitioner prior to the expiration of the ninety-day
8 period, the family court shall extend its order for an
9 additional ninety-day period.

10 (b) To be effective, a written request to extend an order
11 from ninety days to one hundred eighty days must be
12 submitted to the court prior to the expiration of the original
13 ninety-day period. A notice of the extension shall be sent by
14 the clerk of the court to the respondent by first-class mail,
15 addressed to the last known address of the respondent as
16 indicated by the court file. The extension of time is effective
17 upon mailing of the notice.

18 (c) Certified copies of any order entered or extension
19 notice made under the provisions of this section shall be
20 served upon the respondent by first class mail, addressed to
21 the last known address of the respondent as indicated by the
22 court file, and delivered to the petitioner and any
23 law-enforcement agency having jurisdiction to enforce the
24 order, including the city police, the county sheriff's office or
25 local office of the West Virginia State Police within
26 twenty-four hours of the entry of the order. The protective
27 order shall be in full force and effect in every county of this
28 state.

29 (d) The family court may modify the terms of a
30 protective order upon motion of either party.

31 (e) The clerk of the circuit court shall cause a copy of any
32 protective order entered by the family court pursuant to the
33 provisions of this article or pursuant to the provisions of
34 chapter forty-eight of this code to be forwarded to the
35 magistrate or magistrate court clerk and the magistrate or
36 magistrate court clerk shall forward a copy of the protective
37 order to the appropriate state and federal agencies for
38 registration of domestic violence offenders as required by
39 state and federal law.

§48-27-701. Service of pleadings and orders by law-enforcement officers.

1 Notwithstanding any other provision of this code to the
2 contrary, all law-enforcement officers are hereby authorized
3 to serve all pleadings and orders filed or entered pursuant to
4 this article on Sundays and legal holidays. No
5 law-enforcement officer shall refuse to serve any pleadings
6 or orders entered pursuant to this article. Law enforcement
7 shall attempt to serve all protective orders without delay:
8 *Provided*, That service of process shall be attempted within
9 seventy-two hours of law enforcement's receipt of the order.
10 If service is not made, law enforcement shall continue to
11 attempt service on the respondent until proper service is
12 made.

§48-27-902. Violations of protective orders; criminal complaints.

1 (a) Any person authorized to file a petition pursuant to
2 section three hundred five of this article, and any person
3 authorized to file a petition for civil contempt pursuant to
4 section nine hundred one of this article may file a criminal
5 complaint:

6 (1) Against a respondent who knowingly and willfully
7 violates a provision of an emergency or final protective order
8 entered pursuant to:

9 (A) Subsection (a) or (b) of section five hundred two of
10 this article;

11 (B) If the court has ordered such relief; subsection (2),
12 (7) or (9) of section five hundred three of this article;

13 (C) Subsection (b) or (c) of section five hundred nine,
14 article five of this chapter; or

15 (D) Subsection (b) or (c) of section six hundred eight,
16 article five of this chapter.

17 (2) Against a person who violates a condition of bail,
18 probation or parole which has the express intent or effect of
19 protecting the personal safety of a particular person or
20 persons;

21 (3) Against a respondent who knowingly and willfully
22 violates the terms of a protection order from another
23 jurisdiction that is required to be enforced pursuant to section
24 three, article twenty-eight of this chapter; or

25 (4) Against a person who, in violation of subdivision (3),
26 subsection (a), section seven, article twenty-eight of this
27 chapter, knowingly and willfully violates the terms of a
28 condition of bail, probation or parole imposed in another
29 state which has the express intent or effect of protecting the
30 personal safety of a particular person or persons.

31 (b) If the court finds probable cause upon the complaint,
32 the court shall issue a warrant for the arrest of the person
33 charged.

**§48-27-903. Misdemeanor offenses for violation of protective
order, repeat offenses, penalties.**

1 (a) Any person who knowingly and willfully violates:

2 (1) A provision of an emergency or final protective order
3 entered pursuant to: (A) subsection (a) or (b) of section five
4 hundred two of this article; (B) if the court has ordered such
5 relief; subsection (2), (7) or (9) of section five hundred three
6 of this article; (C) subsection (b) or (c) of section five
7 hundred nine, article five of this chapter; or (D) subsection
8 (b) or (c) of section six hundred eight, article five of this
9 chapter; or

10 (2) A condition of bail, probation or parole which has the
11 express intent or effect of protecting the personal safety of a
12 particular person or persons; is guilty of a misdemeanor and,
13 upon conviction thereof, shall be confined in jail for a period
14 of not less than one day nor more than one year, which jail
15 term shall include actual confinement of not less than
16 twenty-four hours, and shall be fined not less than \$250 nor
17 more than \$2,000.

18 (b) Any person who is convicted of a second or
19 subsequent offense under subsection (a) of this section is
20 guilty of a misdemeanor and, upon conviction thereof, shall
21 be confined in jail for not less than three months nor more
22 than one year, which jail term shall include actual
23 confinement of not less than twenty-four hours, and fined not
24 less than \$500 nor more than \$3,000, or both.

§48-27-1002. Arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, if a person is alleged to have committed a violation
3 of the provisions of subsection (a) or (b), section
4 twenty-eight, article two, chapter sixty-one of this code
5 against a family or household member, in addition to any
6 other authority to arrest granted by this code, a
7 law-enforcement officer has authority to arrest that person
8 without first obtaining a warrant if:

9 (1) The law-enforcement officer has observed credible
10 corroborative evidence that an offense has occurred; and
11 either:

12 (2) The law-enforcement officer has received, from the
13 victim or a witness, an oral or written allegation of facts
14 constituting a violation of section twenty-eight, article two,
15 chapter sixty-one of this code; or

16 (3) The law-enforcement officer has observed credible
17 evidence that the accused committed the offense.

18 (b) For purposes of this section, credible corroborative
19 evidence means evidence that is worthy of belief and
20 corresponds to the allegations of one or more elements of the
21 offense and may include, but is not limited to, the following:

22 (1) *Condition of the alleged victim.* -- One or more
23 contusions, scratches, cuts, abrasions, or swellings; missing
24 hair; torn clothing or clothing in disarray consistent with a
25 struggle; observable difficulty in breathing or breathlessness
26 consistent with the effects of choking or a body blow;
27 observable difficulty in movement consistent with the effects
28 of a body blow or other unlawful physical contact.

29 (2) *Condition of the accused.* -- Physical injury or other
30 conditions similar to those set out for the condition of the
31 victim which are consistent with the alleged offense or
32 alleged acts of self-defense by the victim.

33 (3) *Condition of the scene.* -- Damaged premises or
34 furnishings; disarray or misplaced objects consistent with the
35 effects of a struggle.

36 (4) *Other conditions.* -- Statements by the accused
37 admitting one or more elements of the offense; threats made
38 by the accused in the presence of an officer; audible evidence
39 of a disturbance heard by the dispatcher or other agent

40 receiving the request for police assistance; written statements
41 by witnesses.

42 (c) Whenever any person is arrested pursuant to
43 subsection (a) of this section, the arrested person shall be
44 taken before a magistrate within the county in which the
45 offense charged is alleged to have been committed in a
46 manner consistent with the provisions of Rule 1 of the
47 Administrative Rules for the Magistrate Courts of West
48 Virginia.

49 (d) If an arrest for a violation of subsection (c), section
50 twenty-eight, article two, chapter sixty-one of this code is
51 authorized pursuant to this section, that fact constitutes prima
52 facie evidence that the accused constitutes a threat or danger
53 to the victim or other family or household members for the
54 purpose of setting conditions of bail pursuant to section
55 seventeen-c, article one-c, chapter sixty-two of this code.

56 (e) Whenever any person is arrested pursuant to the
57 provisions of this article or for a violation of an order issued
58 pursuant article five, section five hundred nine, the arresting
59 officer, subject to the requirements of the Constitutions of
60 this State and of the United States:

61 (1) Shall seize all weapons that are alleged to have been
62 involved or threatened to be used in the commission of
63 domestic violence;

64 (2) May seize a weapon that is in plain view of the officer
65 or was discovered pursuant to a consensual search, as
66 necessary for the protection of the officer or other persons;
67 and

68 (3) May seize all weapons that are possessed in violation
69 of a valid protective order.

§48-27-1003. Nonjudicial enforcement of order.

1 (a) A law-enforcement officer of this state, upon
2 determining that there is probable cause to believe that a
3 valid protective order exists and that the order has been
4 violated, shall enforce the order pursuant to any authority to
5 arrest under the code. Presentation of a protective order that
6 identifies both the protected individual and the respondent
7 and that appears, on its face, to be authentic and currently in
8 effect constitutes probable cause to believe that a valid
9 protective order exists. For the purposes of this section, the
10 protective order may be inscribed on a tangible medium or
11 may have been stored in an electronic or other medium if it
12 is retrievable in perceivable form. Presentation of a certified
13 copy of a protective order is not required for enforcement.

14 (b) If a protective order is not presented, a
15 law-enforcement officer of this state may consider other
16 credible information in determining whether there is probable
17 cause to believe that a valid protective order exists.

18 (c) If a law-enforcement officer of this state determines
19 that an otherwise valid protective order cannot be enforced
20 because the respondent has not been notified of or served
21 with the order, the officer shall inform the respondent of the
22 order, make a reasonable effort to serve the order upon the
23 respondent and allow the respondent a reasonable
24 opportunity to comply with the order before enforcing the
25 order.

§48-27-1004. Immunity.

1 This state or a local governmental agency, or a
2 law-enforcement officer, prosecuting attorney, clerk of court
3 or any state or local governmental official acting in an
4 official capacity, is immune from civil and criminal liability
5 for an act or omission arising out of the enforcement of a
6 protective order or the detention or arrest of an alleged
7 violator of a protective order if the act or omission was done
8 in good faith in an effort to comply with this article.



CHAPTER 75

**(Com. Sub. for H.B. 2738 - By Delegates Webster,
Miley, Fleischauer and Longstreth)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend and reenact §48-27-802 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-28-5 of said code; and to amend and reenact §51-1-21 of said code, all relating generally to registering domestic violence protective orders with the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

That §48-27-802 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-28-5 of said code be amended and reenacted; and that §51-1-21 of said code be amended and reenacted, all to read as follows:

Chapter

- 48. Domestic Relations.
- 51. Courts and Their Officers.

CHAPTER 48. DOMESTIC RELATIONS.

Article

- 27. Prevention and Treatment of Domestic Violence.
- 28. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-802. Maintenance of registry by State Police.

1 (a) The West Virginia State Police shall maintain a
2 registry in which it shall enter certified copies of protective
3 orders entered by courts from every county in this state
4 pursuant to the provisions of this article and of protection
5 orders issued by a jurisdiction outside of this state pursuant
6 to its law: *Provided*, That the provisions of this subsection
7 are not effective until a central automated state law-
8 enforcement information system is developed.

9 (b) Effective January 2, 2010, a court which enters a
10 protective order pursuant to this article shall immediately
11 register such order in the domestic violence database
12 established pursuant to the provisions of section twenty-one,
13 article one, chapter fifty-one of this code. A protected
14 individual who obtains a protection order from a jurisdiction
15 outside of this State pursuant to its law or his or her
16 representative as provided in section five, article twenty-eight
17 of this chapter may register that order with the West Virginia
18 Supreme Court of Appeals for entry in the domestic violence
19 database established pursuant to the provisions of section
20 twenty-one, article one, chapter fifty-one of this code.

21 (c) Failure to register an order as provided in this section
22 shall not affect its enforceability in any county or
23 jurisdiction.

**ARTICLE 28. UNIFORM INTERSTATE ENFORCEMENT
OF DOMESTIC VIOLENCE PROTECTION
ORDERS ACT.****§48-28-5. Registration of order.**

1 (a) Any individual may register a foreign protection order
2 in this state by:

3 Presenting a certified copy of the order to the West
4 Virginia Supreme Court of Appeals for registration in
5 accordance with the provisions of section eight hundred two,
6 article twenty-seven of this chapter.

7 (b) An individual registering a foreign protection order
8 shall file an affidavit by the protected individual stating that,
9 to the best of the protected individual's knowledge, the order
10 is currently in effect.

11 (c) Upon receipt of a foreign protection order for
12 registration, the West Virginia Supreme Court of Appeals
13 shall:

14 (1) Register the order in accordance with the provisions
15 of this section and of section eight hundred two, article
16 twenty-seven of this chapter;

17 (2) Furnish to the individual registering the order a copy
18 of the proof of registration of the order.

19 (d) A registered foreign protection order that is shown to
20 be inaccurate or not currently in effect must be corrected or
21 removed from the registry.

22 (e) A foreign protection order registered under this article
23 may be entered in any existing state or federal registry of
24 protection orders in accordance with applicable law.

25 (f) A fee may not be charged for the registration of a
26 foreign protection order.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-21. Authority to maintain domestic violence database.

1 (a) The West Virginia Supreme Court of Appeals is
2 hereby authorized to maintain a domestic violence database
3 containing copies of protective orders entered by the courts
4 of this state and granted pursuant to the provisions of article
5 twenty-seven, chapter forty-eight of this code. Further, the
6 domestic violence database shall also include, upon request,
7 protection orders issued by a jurisdiction outside of this state
8 pursuant to its law.

9 (b) Only a protected individual who obtains a protection
10 order from a jurisdiction other than this state pursuant to its
11 law or his or her representative as provided in section five,
12 article twenty-eight of this chapter may register that order
13 with the West Virginia Supreme Court of Appeals.

14 (c) Failure to register an order as provided in this section
15 shall not affect its enforceability in any county or
16 jurisdiction.

CHAPTER 76

**(Com. Sub. for S.B. 244 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to public employees' reemployment after retirement; and providing for restrictions for holders of elected public office.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES
RETIREMENT ACT.**

**§5-10-48. Reemployment after retirement; options for holder
of elected public office.**

1 (a) The Legislature finds that a compelling state interest
2 exists in maintaining an actuarially sound retirement system
3 and that this interest necessitates that certain limitations be
4 placed upon an individual's ability to retire from the system
5 and to then later return to state employment as an employee
6 with a participating public employer while
7 contemporaneously drawing an annuity from the system.
8 The Legislature hereby further finds and declares that the
9 interests of the public are served when persons having retired
10 from public employment are permitted, within certain
11 limitations, to render post-retirement employment in
12 positions of public service, either in elected or appointed
13 capacities. The Legislature further finds and declares that it
14 has the need for qualified employees and that in many cases
15 an employee of the Legislature will retire and be available to
16 return to work for the Legislature as a per diem employee.
17 The Legislature further finds and declares that in many
18 instances these employees have particularly valuable
19 expertise which the Legislature cannot find elsewhere. The
20 Legislature further finds and declares that reemploying these
21 persons on a limited per diem basis after they have retired is
22 not only in the best interests of this state, but has no adverse
23 effect whatsoever upon the actuarial soundness of this
24 particular retirement system.

25 (b) For the purposes of this section: (1) “Regularly
26 employed on a full-time basis” means employment of an
27 individual by a participating public employer, in a position
28 other than as an elected or appointed public official, which
29 normally requires twelve months per year service and/or
30 requires at least one thousand forty hours of service per year
31 in that position; (2) “temporary full-time employment or
32 temporary part-time employment” means employment of an
33 individual on a temporary or provisional basis by a
34 participating public employer, other than as an elected or
35 appointed public official, in a position which does not
36 otherwise render the individual as regularly employed; (3)
37 “former employee of the Legislature” means any person who
38 has retired from employment with the Legislature and who
39 has at least ten years' contributing service with the
40 Legislature; and (4) “reemployed by the Legislature” means
41 a former employee of the Legislature who has been
42 reemployed on a per diem basis not to exceed one hundred
43 seventy-five days per calendar year.

44 (c) In the event a retirant becomes regularly employed on
45 a full-time basis by a participating public employer, payment
46 of his or her annuity shall be suspended during the period of
47 his or her reemployment and he or she shall become a
48 contributing member to the retirement system. If his or her
49 reemployment is for a period of one year or longer, his or her
50 annuity shall be recalculated and he or she shall be granted an
51 increased annuity due to such additional employment, said
52 annuity to be computed according to section twenty-two of
53 this article. A retirant may accept temporary full-time or
54 temporary part-time employment from a participating
55 employer without suspending his or her retirement annuity so
56 long as he or she does not receive annual compensation in
57 excess of \$15,000: *Provided*, That a retirant may be
58 employed by the Legislature on a per diem basis without
59 suspension of the retirement annuity if the retirant's annual
60 compensation from the Legislature does not exceed \$20,000.

61 (d) In the event a member retires and is then subsequently
62 elected to a public office or is subsequently appointed to hold
63 an elected public office, or is a former employee of the
64 Legislature who has been reemployed by the Legislature, he
65 or she has the option, notwithstanding subsection (c) of this
66 section, to either:

67 (1) Continue to receive payment of his or her annuity
68 while holding such public office or during any reemployment
69 of a former employee of the Legislature on a per diem basis,
70 in addition to the salary he or she may be entitled to as such
71 office holder or as a per diem reemployed former employee
72 of the Legislature; or

73 (2) Suspend the payment of his or her annuity and
74 become a contributing member of the retirement system as
75 provided in subsection (c) of this section. Notwithstanding
76 the provisions of this subsection, a member who is
77 participating in the system as an elected public official may
78 not retire from his or her elected position and commence to
79 receive an annuity from the system and then be elected or
80 reappointed to the same position unless and until a
81 continuous twelve-month period has passed since his or her
82 retirement from the position: *Provided*, That a former
83 employee of the Legislature may not be reemployed by the
84 Legislature on a per diem basis until at least sixty days after
85 the employee has retired: *Provided, however*, That the
86 limitation on compensation provided by subsection (c) of this
87 section does not apply to the reemployed former employee:
88 *Provided further*, That in no event may reemployment by the
89 Legislature of a per diem employee exceed one hundred
90 seventy-five days per calendar year.

91 (e) A member who is participating in the system
92 simultaneously as both a regular, full-time employee of a
93 participating public employer and as an elected or appointed

94 member of the legislative body of the state or any political
95 subdivision may, upon meeting the age and service
96 requirements of this article, elect to retire from his or her
97 regular full-time state employment and may commence to
98 receive an annuity from the system without terminating his
99 or her position as a member of the legislative body of the
100 state or political subdivision: *Provided*, That the retired
101 member shall not, during the term of his or her retirement
102 and continued service as a member of the legislative body of
103 a political subdivision, be eligible to continue his or her
104 participation as a contributing member of the system and
105 shall not continue to accrue any additional service credit or
106 benefits in the system related to the continued service.

107 (f) Notwithstanding the provisions of section twenty-
108 seven-b of this article, any publicly elected member of the
109 legislative body of any political subdivision or of the State
110 Legislature, the Clerk of the House of Delegates and the
111 Clerk of the Senate may elect to commence receiving in-
112 service retirement distributions from this system upon
113 attaining the age of seventy and one-half years: *Provided*,
114 That the member is eligible to retire under the provisions of
115 section twenty or twenty-one of this article: *Provided*,
116 *however*, That the member elects to stop actively contributing
117 to the system while receiving such in-service distributions.

118 (g) The provisions of section twenty-two-h of this article
119 are not applicable to the amendments made to this section
120 during the 2006 regular session.



CHAPTER 77

(S.B. 556 - By Senators White and Stollings)

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

AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-6 of said code, all relating to driver education courses; allowing proof of a completed defensive driving course to rescind pending license suspension; and expanding the time which judgment can be withheld by a municipal judge while a licensee completes a driver education course.

Be it enacted by the Legislature of West Virginia:

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-6 of said code be amended and reenacted, all to read as follows:

Chapter

- 8. Municipal Corporations.**
- 17B. Motor Vehicle Driver's Licenses.**

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

1 (a) Municipal courts are hereby authorized to establish a
2 prejudgment alternative disposition procedure for traffic
3 offenses over which the court has jurisdiction.

4 (b) Under a prejudgment disposition procedure
5 authorized by subsection (a) of this section, if a person is
6 found guilty of a traffic offense, the municipal court may,
7 with the person's consent, withhold for a reasonable time not
8 to exceed one hundred eighty days the entry of a judgment of
9 conviction so that the person may attend a driver safety
10 education course designated by the municipal court. If the
11 person attends said course, the municipal court, if satisfied
12 with the person's participation in the course, shall, without
13 entering a judgment of conviction, dismiss the proceeding
14 against the person.

15 (c) It shall be a condition of any prejudgment alternative
16 disposition authorized by the provisions of this section that
17 the person pay any fine assessed by the court and pay all fees
18 and costs required to be paid by any provision of this code
19 where a person is convicted of a criminal traffic offense. No
20 municipal court shall utilize any prejudgment alternative
21 disposition procedure unless it collects such fees and costs as
22 are required by any provision of this code and transmits the
23 moneys collected as required by law. No municipal court
24 shall utilize any prejudgment alternative disposition
25 procedure unless it conforms with the requirements of this
26 section.

27 (d) The procedure authorized by the provisions of this
28 section shall not be available to any person who:

29 (1) Holds a commercial driver's license issued by this
30 state in accordance with chapter seventeen-e of this code, or
31 who holds a commercial driver's license issued by any other
32 state or jurisdiction;

33 (2) Is arrested while operating a commercial motor
34 vehicle as defined in chapter seventeen-e of this code; or

35 (3) Is arrested for driving under the influence of alcohol
36 or drugs or any other offense for which a mandatory period
37 of confinement in jail is required.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

1 (a) The division is hereby authorized to suspend the
2 driver's license of any person without preliminary hearing
3 upon a showing by its records or other sufficient evidence
4 that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of a driver's license is required upon conviction;

7 (2) Has by reckless or unlawful operation of a motor
8 vehicle, caused or contributed to an accident resulting in the
9 death or personal injury of another or property damage;

10 (3) Has been convicted with such frequency of serious
11 offenses against traffic regulations governing the movement
12 of vehicles as to indicate a disrespect for traffic laws and a
13 disregard for the safety of other persons on the highways;

14 (4) Is an habitually reckless or negligent driver of a motor
15 vehicle;

16 (5) Is incompetent to drive a motor vehicle;

17 (6) Has committed an offense in another state which if
18 committed in this state would be a ground for suspension or
19 revocation;

20 (7) Has failed to pay or has defaulted on a plan for the
21 payment of all costs, fines, forfeitures or penalties imposed
22 by a magistrate court or municipal court within ninety days,
23 as required by section two-a, article three, chapter fifty of this
24 code or section two-a, article ten, chapter eight of this code;

25 (8) Has failed to appear or otherwise respond before a
26 magistrate court or municipal court when charged with a
27 motor vehicle violation as defined in section three-a of this
28 article;

29 (9) Is under the age of eighteen and has withdrawn either
30 voluntarily or involuntarily due to misconduct from a
31 secondary school or has failed to maintain satisfactory
32 academic progress, as provided in section eleven, article
33 eight, chapter eighteen of this code; or

34 (10) Has failed to pay overdue child support or comply
35 with subpoenas or warrants relating to paternity or child
36 support proceedings, if a circuit court has ordered the
37 suspension of the license as provided in article five-a, chapter
38 forty-eight-a of this code and the Child Support Enforcement
39 Division has forwarded to the division a copy of the court
40 order suspending the license, or has forwarded its
41 certification that the licensee has failed to comply with a new
42 or modified order that stayed the suspension and provided for
43 the payment of current support and any arrearage due.

44 (b) The driver's license of any person having his or her
45 license suspended shall be reinstated if:

46 (1) The license was suspended under the provisions of
47 subdivision (7), subsection (a) of this section and the
48 payment of costs, fines, forfeitures or penalties imposed by
49 the applicable court has been made;

50 (2) The license was suspended under the provisions of
51 subdivision (8), subsection (a) of this section and the person
52 having his or her license suspended has appeared in court and
53 has prevailed against the motor vehicle violations charged; or

54 (3) The license was suspended under the provisions of
55 subdivision (10), subsection (a) of this section and the
56 division has received a court order restoring the license or a
57 certification by the Child Support Enforcement Division that
58 the licensee is complying with the original support order or
59 a new or modified order that provides for the payment of
60 current support and any arrearage due.

61 (c) Any reinstatement of a license under subdivision (1),
62 (2) or (3), subsection (b) of this section shall be subject to a
63 reinstatement fee designated in section nine of this article.

64 (d) Upon suspending the driver's license of any person as
65 hereinbefore in this section authorized, the division shall
66 immediately notify the licensee in writing, sent by certified
67 mail, return receipt requested, to the address given by the
68 licensee in applying for license, and upon his or her request
69 shall afford him or her an opportunity for a hearing as early
70 as practical within not to exceed twenty days after receipt of
71 such request in the county wherein the licensee resides unless
72 the division and the licensee agree that such hearing may be
73 held in some other county. Upon such hearing the
74 commissioner or his or her duly authorized agent may
75 administer oaths and may issue subpoenas for the attendance
76 of witnesses and the production of relevant books and papers
77 and may require a reexamination of the licensee. Upon such
78 hearing the division shall either rescind its order of
79 suspension or, good cause appearing therefor, may extend the
80 suspension of such license or revoke such license. The
81 provisions of this subsection providing for notice and hearing
82 are not applicable to a suspension under subdivision (10),
83 subsection (a) of this section.

84 (e) Notwithstanding the provisions of legislative rule 91
85 CSR 5, the division may, upon completion of an approved
86 defensive driving course, deduct three points from a
87 licensee's point accumulation provided the licensee has not
88 reached fourteen points. If a licensee has been notified of a
89 pending thirty-day driver's license suspension based on the
90 accumulation of twelve or thirteen points, the licensee may
91 submit proof of completion of an approved defensive driving
92 course to deduct three points and rescind the pending license
93 suspension: *Provided*, That the licensee submits proof of
94 prior completion of the course and payment of the
95 reinstatement fee in accordance with section nine, article
96 three of this chapter to the division prior to the effective date
97 of the suspension.



CHAPTER 78

(Com. Sub. for S.B. 398 - By Senator Foster)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to imposing certain restrictions on a graduated driver's license to increase public safety; and imposing criminal penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60A-4-406 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**§17B-2-3a. Graduated driver's license.**

1 (a) Any person under the age of eighteen may not operate
2 a motor vehicle unless he or she has obtained a graduated
3 driver's license in accordance with the three-level graduated
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless
6 of class or level of licensure, who operates a motor vehicle
7 with any measurable alcohol in his or her system is subject to
8 the provisions of section two, article five, chapter seventeen-c
9 of this code and section two, article five-a of said chapter.
10 Any person under the age of eighteen, regardless of class or
11 licensure level, is subject to the mandatory school attendance
12 and satisfactory academic progress provisions of section
13 eleven, article eight, chapter eighteen of this code.

14 (c) *Level one instruction permit.* — An applicant who is
15 fifteen years or older meeting all other requirements
16 prescribed in this code may be issued a level one instruction
17 permit.

18 (1) *Eligibility.* — The division shall not issue a level one
19 instruction permit unless the applicant:

20 (A) Presents a completed application, as prescribed by
21 the provisions of section six of this article, and which is
22 accompanied by a writing, duly acknowledged, consenting to
23 the issuance of the graduated driver's license and executed by
24 a parent or guardian entitled to custody of the applicant;

25 (B) Presents a certified copy of a birth certificate issued
26 by a state or other governmental entity responsible for vital
27 records unexpired, or a valid passport issued by the United

28 States government evidencing that the applicant meets the
29 minimum age requirement and is of verifiable identity;

30 (C) Passes the vision and written knowledge examination
31 and completes the driving under the influence awareness
32 program, as prescribed in section seven of this article;

33 (D) Presents a driver's eligibility certificate or otherwise
34 shows compliance with the provisions of section eleven,
35 article eight, chapter eighteen of this code; and

36 (E) Pays a fee of \$5, which shall permit the applicant two
37 attempts at the written knowledge test.

38 (2) *Terms and conditions of instruction permit.* — A level
39 one instruction permit issued under the provisions of this
40 section is valid until thirty days after the date the applicant
41 attains the age of eighteen and is not renewable. However,
42 any permit holder who allows his or her permit to expire
43 prior to successfully passing the road skills portion of the
44 driver examination, and who has not committed any offense
45 which requires the suspension, revocation or cancellation of
46 the instruction permit, may reapply for a new instruction
47 permit under the provisions of section six of this article. The
48 division shall immediately revoke the permit upon receipt of
49 a second conviction for a moving violation of traffic
50 regulations and laws of the road or violation of the terms and
51 conditions of a level one instruction permit, which
52 convictions have become final unless a greater penalty is
53 required by this section or any other provision of this code.
54 Any person whose instruction permit has been revoked is
55 disqualified from retesting for a period of ninety days.
56 However, after the expiration of ninety days, the person may
57 retest if otherwise eligible. In addition to all other provisions
58 of this code for which a driver's license may be restricted,
59 suspended, revoked or canceled, the holder of a level one

60 instruction permit may only operate a motor vehicle under
61 the following conditions:

62 (A) Under the direct supervision of a licensed driver,
63 twenty-one years of age or older, or a driver's education or
64 driving school instructor who is acting in an official capacity
65 as an instructor, who is fully alert and unimpaired, and the
66 only other occupant of the front seat. The vehicle may be
67 operated with no more than two additional passengers, unless
68 the passengers are family members;

69 (B) Between the hours of five a. m. and ten p. m.;

70 (C) All occupants must use safety belts in accordance
71 with the provisions of section forty-nine, article fifteen,
72 chapter seventeen-c of this code;

73 (D) Without any measurable blood alcohol content, in
74 accordance with the provisions of subsection (h), section two,
75 article five, chapter seventeen-c of this code; and

76 (E) Maintains current school enrollment and is making
77 satisfactory academic progress or otherwise shows
78 compliance with the provisions of section eleven, article
79 eight, chapter eighteen of this code.

80 (F) A holder of a level one instruction permit who is
81 under the age of eighteen years shall be prohibited from using
82 a wireless communication device while operating a motor
83 vehicle, unless the use of the wireless communication device
84 is for contacting a 9-1-1 system. A person violating the
85 provisions of this paragraph is guilty of a misdemeanor and,
86 upon conviction thereof, shall for the first offense be fined
87 \$25; for a second offense be fined \$50; and for a third or
88 subsequent offense be fined \$75.

89 (d) *Level two intermediate driver's license.* — An
90 applicant sixteen years of age or older, meeting all other
91 requirements of the code, may be issued a level two
92 intermediate driver's license.

93 (1) *Eligibility.* -- The division shall not issue a level two
94 intermediate driver's license unless the applicant:

95 (A) Presents a completed application as prescribed in
96 section six of this article;

97 (B) Has held the level one instruction permit
98 conviction-free for the one hundred eighty days immediately
99 preceding the date of application for a level two intermediate
100 license;

101 (C) Has completed either a driver's education course
102 approved by the State Department of Education or fifty hours
103 of behind-the-wheel driving experience, including a
104 minimum of ten hours of nighttime driving, certified by a
105 parent or legal guardian or other responsible adult over the
106 age of twenty-one as indicated on the form prescribed by the
107 division: *Provided*, That nothing in this paragraph shall be
108 construed to require any school or any county board of
109 education to provide any particular number of driver's
110 education courses or to provide driver's education training to
111 any student;

112 (D) Presents a driver's eligibility certificate or otherwise
113 shows compliance with the provisions of section eleven,
114 article eight, chapter eighteen of this code;

115 (E) Passes the road skills examination as prescribed by
116 section seven of this article; and

117 (F) Pays a fee of \$5.

118 (2) *Terms and conditions of a level two intermediate*
119 *driver's license.* -- A level two intermediate driver's license
120 issued under the provisions of this section shall expire thirty
121 days after the applicant attains the age of eighteen, or until
122 the licensee qualifies for a level three full Class E license,
123 whichever comes first. In addition to all other provisions of
124 this code for which a driver's license may be restricted,
125 suspended, revoked or canceled, the holder of a level two
126 intermediate driver's license may only operate a motor
127 vehicle under the following conditions:

128 (A) Unsupervised between the hours of five a. m. and ten
129 p. m.;

130 (B) Only under the direct supervision of a licensed driver,
131 age twenty-one years or older, between the hours of ten p. m.
132 and five a. m. except when the licensee is going to or
133 returning from:

134 (i) Lawful employment;

135 (ii) A school-sanctioned activity;

136 (iii) A religious event; or

137 (iv) An emergency situation that requires the licensee to
138 operate a motor vehicle to prevent bodily injury or death of
139 another;

140 (C) All occupants shall use safety belts in accordance
141 with the provisions of section forty-nine, article fifteen,
142 chapter seventeen-c of this code;

143 (D) For the first six months after issuance of a level two
144 intermediate driver's license, the licensee may not operate a
145 motor vehicle carrying any passengers less than twenty years
146 old, unless these passengers are family members of the

147 licensee; for the second six months after issuance of a level
148 two intermediate driver's license, the licensee may not
149 operate a motor vehicle carrying more than one passenger
150 less than twenty years old, unless these passengers are family
151 members of the licensee;

152 (E) Without any measurable blood alcohol content in
153 accordance with the provisions of subsection (h), section two,
154 article five, chapter seventeen-c of this code;

155 (F) Maintains current school enrollment and is making
156 satisfactory academic progress or otherwise shows
157 compliance with the provisions of section eleven, article
158 eight, chapter eighteen of this code;

159 (G) A holder of a level two intermediate driver's license
160 who is under the age of eighteen years shall be prohibited
161 from using a wireless communication device while operating
162 a motor vehicle, unless the use of the wireless
163 communication device is for contacting a 9-1-1 system. A
164 person violating the provisions of this paragraph is guilty of
165 a misdemeanor and, upon conviction thereof, shall for the
166 first offense be fined \$25; for a second offense be fined \$50;
167 and for a third or subsequent offense be fined \$75.

168 (H) Upon the first conviction for a moving traffic
169 violation or a violation of paragraph (A), (B), (C), (D) or (G),
170 subdivision (1), subsection (d) of this section of the terms and
171 conditions of a level two intermediate driver's license, the
172 licensee shall enroll in an approved driver improvement
173 program unless a greater penalty is required by this section or
174 by any other provision of this code; and

175 At the discretion of the commissioner, completion of an
176 approved driver improvement program may be used to negate
177 the effect of a minor traffic violation as defined by the
178 commissioner against the one year conviction-free driving

179 criteria for early eligibility for a level three driver's license
180 and may also negate the effect of one minor traffic violation
181 for purposes of avoiding a second conviction under
182 paragraph (I) of this subdivision; and

183 (I) Upon the second conviction for a moving traffic
184 violation or a violation of the terms and conditions of the
185 level two intermediate driver's license, the licensee's
186 privilege to operate a motor vehicle shall be revoked or
187 suspended for the applicable statutory period or until the
188 licensee's eighteenth birthday, whichever is longer unless a
189 greater penalty is required by this section or any other
190 provision of this code. Any person whose driver's license
191 has been revoked as a level two intermediate driver, upon
192 reaching the age of eighteen years and if otherwise eligible
193 may reapply for an instruction permit, then a driver's license
194 in accordance with the provisions of sections five, six and
195 seven of this article.

196 (e) *Level three, full Class E license.* -- The level three
197 license is valid until thirty days after the date the licensee
198 attains his or her twenty-first birthday. Unless otherwise
199 provided in this section or any other section of this code, the
200 holder of a level three full Class E license is subject to the
201 same terms and conditions as the holder of a regular Class E
202 driver's license.

203 A level two intermediate licensee whose privilege to
204 operate a motor vehicle has not been suspended, revoked or
205 otherwise canceled and who meets all other requirements of
206 the code may be issued a level three full Class E license
207 without further examination or road skills testing if the
208 licensee:

209 (1) Has reached the age of seventeen years; and

210 (A) Presents a completed application as prescribed by the
211 provisions of section six of this article;

212 (B) Has held the level two intermediate license
213 conviction free for the twelve-month period immediately
214 preceding the date of the application;

215 (C) Has completed any driver improvement program
216 required under paragraph (G), subdivision (2), subsection (d)
217 of this section; and

218 (D) Pays a fee of \$2.50 for each year the license is valid.
219 An additional fee of \$.50 shall be collected to be deposited in
220 the Combined Voter Registration and Driver's Licensing
221 Fund established in section twelve, article two, chapter three
222 of this code;

223 (E) Presents a driver's eligibility certificate or otherwise
224 shows compliance with the provisions of section eleven,
225 article eight, chapter eighteen of this code; or

226 (2) Reaches the age of eighteen years; and

227 (A) Presents a completed application as prescribed by the
228 provisions of section six of this article; and

229 (B) Pays a fee of \$2.50 for each year the license is valid.
230 An additional fee of \$.50 shall be collected to be deposited in
231 the Combined Voter Registration and Driver's Licensing
232 Fund established in section twelve, article two, chapter three
233 of this code.

234 (f) A person violating the provisions of the terms and
235 conditions of a level one or level two intermediate driver's
236 license is guilty of a misdemeanor and, upon conviction
237 thereof, shall for the first offense be fined \$25; for a second
238 offense be fined \$50; and for a third or subsequent offense be
239 fined \$75.



CHAPTER 79

**(Com. Sub. for H.B. 2684 - By Delegates Moore, Webster,
Brown, Overington and Schadler)**

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §61-11-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §62-15-1, §62-15-2, §62-15-3, §62-15-4, §62-15-5, §62-15-6, §62-15-7, §62-15-8, §62-15-9, §62-15-10, §62-15-11, §62-15-12, and §62-15-13, all relating to the enactment of the “West Virginia Drug Offender Accountability and Treatment Act”; removing conflicting provisions related to drug court from the code; explaining the policy and goals of the Act; authorizing drug courts; providing for the structure of drug courts; authorizing drug court teams; establishing eligibility requirements for drug courts; providing treatment and services to participants; establishing drug testing procedures; providing for oversight and rule-making authority of the supreme court of appeals; collecting and maintaining information on drug court candidates and participants; funding; providing for immunity from liability; and establishing the manner in which the Act is to be construed.

Be it enacted by the Legislature of West Virginia:

That §61-11-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §62-15-1, §62-15-2, §62-15-3, §62-15-4, §62-15-5, §62-15-6, §62-15-7, §62-15-8, §62-15-9,

§62-15-10, §62-15-11, §62-15-12, and §62-15-13, all to read as follows:

Chapter

61. Crimes and Their Punishment.

62. Criminal Procedure.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

1 (a) A prosecuting attorney of any county of this state or
2 a person acting as a special prosecutor may enter into a
3 pretrial diversion agreement with a person under
4 investigation or charged with an offense against the state of
5 West Virginia, when he or she considers it to be in the
6 interests of justice. The agreement is to be in writing and is
7 to be executed in the presence of the person's attorney, unless
8 the person has executed a waiver of counsel.

9 (b) Any agreement entered into pursuant to the provisions
10 of subsection (a) of this section may not exceed twenty-four
11 months in duration. The duration of the agreement must be
12 specified in the agreement. The terms of any agreement
13 entered into pursuant to the provisions of this section may
14 include conditions similar to those set forth in section nine,
15 article twelve, chapter sixty-two of this code relating to
16 conditions of probation. The agreement may require
17 supervision by a probation officer of the circuit court, with
18 the consent of the court. An agreement entered into pursuant
19 to this section must include a provision that the applicable
20 statute of limitations be tolled for the period of the
21 agreement.

22 (c) A person who has entered into an agreement for
23 pretrial diversion with a prosecuting attorney and who has
24 successfully complied with the terms of the agreement is not
25 subject to prosecution for the offense or offenses described
26 in the agreement or for the underlying conduct or transaction
27 constituting the offense or offenses described in the
28 agreement, unless the agreement includes a provision that
29 upon compliance the person agrees to plead guilty or nolo
30 contendere to a specific related offense, with or without a
31 specific sentencing recommendation by the prosecuting
32 attorney.

33 (d) No person charged with a violation of the provisions
34 of section two, article five, chapter seventeen-c of this code
35 may participate in a pretrial diversion program. No person
36 charged with a violation of the provisions of section
37 twenty-eight, article two of this chapter may participate in a
38 pretrial diversion program unless the program is part of a
39 community corrections program approved pursuant to the
40 provisions of article eleven-c, chapter sixty-two of this code.
41 No person indicted for a felony crime of violence against the
42 person where the alleged victim is a family or household
43 member as defined in section two hundred three, article
44 twenty-seven, chapter forty-eight of this code or indicted for
45 a violation of the provisions of sections three, four or seven,
46 article eight-b of this chapter is eligible to participate in a
47 pretrial diversion program. No defendant charged with a
48 violation of the provisions of section twenty-eight, article two
49 of this chapter or subsections (b) or (c), section nine, article
50 two of this chapter where the alleged victim is a family or
51 household member is eligible for pretrial diversion programs
52 if he or she has a prior conviction for the offense charged or
53 if he or she has previously been granted a period of pretrial
54 diversion pursuant to this section for the offense charged.
55 Notwithstanding any provision of this code to the contrary,
56 defendants charged with violations of the provisions of
57 section twenty-eight, article two, chapter sixty-one of this

58 code or the provisions of subsection (b) or (c), section nine,
59 article two of said chapter where the alleged victim is a
60 family or household member as defined by the provisions of
61 section two hundred three, article twenty-seven, chapter
62 forty-eight of this code are ineligible for participation in a
63 pretrial diversion program before the July 1, 2002, and before
64 the community corrections subcommittee of the Governor's
65 Committee on Crime, Delinquency and Correction
66 established pursuant to the provisions of section two, article
67 eleven-c, chapter sixty-two of this code, in consultation with
68 the working group of the subcommittee, has approved
69 guidelines for a safe and effective program for diverting
70 defendants charged with domestic violence.

71 (e) The provisions of section twenty-five of this article
72 are inapplicable to defendants participating in pretrial
73 diversion programs who are charged with a violation of the
74 provisions of section twenty-eight, article two, chapter
75 sixty-one of this code. The community corrections
76 subcommittee of the Governor's Committee on Crime,
77 Delinquency and Correction established pursuant to the
78 provisions of section two, article eleven-c, chapter sixty-two
79 of this code shall, upon approving any program of pretrial
80 diversion for persons charged with violations of the
81 provisions of section twenty-eight, article two, chapter
82 sixty-one of this code, establish and maintain a central
83 registry of the participants in the programs which may be
84 accessed by judicial officers and court personnel.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

- §62-15-1. Short title.
- §62-15-2. Definitions.
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- §62-15-13. Statutory construction.

§62-15-1. Short title.

- 1 This article shall be known and may be cited as the "West
- 2 Virginia Drug Offender Accountability and Treatment Act".

§62-15-2. Definitions.

- 1 For the purposes of this article:
- 2 (1) "Assessment" means a diagnostic evaluation to
- 3 determine whether and to what extent a person is a drug
- 4 offender under this article and would benefit from its
- 5 provisions. The assessment shall be conducted in accordance
- 6 with the standards, procedures, and diagnostic criteria
- 7 designed to provide effective and cost-beneficial use of
- 8 available resources.
- 9 (2) "Continuum of care" means a seamless and
- 10 coordinated course of substance abuse education and
- 11 treatment designed to meet the needs of drug offenders as
- 12 they move through the criminal justice system and beyond,
- 13 maximizing self-sufficiency.
- 14 (3) "Controlled substance" means a drug or other
- 15 substance for which a medical prescription or other legal
- 16 authorization is required for purchase or possession.
- 17 (4) "Drug" means a controlled substance, an illegal drug,
- 18 or other harmful substance.

19 (5) "Drug court" means a judicial intervention process
20 that incorporates the Ten Key Components and may include
21 pre-adjudication or post-adjudication participation.

22 (6) "Drug court team" may consist of the following
23 members who are assigned to the drug court:

24 (A) The drug court judge, which may include a
25 magistrate, mental hygiene commissioner, or other hearing
26 officer;

27 (B) The prosecutor;

28 (C) The public defender or member of the criminal
29 defense bar;

30 (D) A representative from the day report center or
31 community corrections program, if operating in the
32 jurisdiction;

33 (E) A law-enforcement officer;

34 (F) The drug court coordinator;

35 (G) A representative from a circuit court probation office
36 or the division of parole supervision or both;

37 (H) One or more substance abuse treatment providers;
38 and

39 (I) Any other persons selected by the drug court team.

40 (7) "Drug offender" means an adult person charged with
41 a drug-related offense or an offense in which substance abuse
42 is determined from the evidence to have been a factor in the
43 commission of the offense.

44 (8) "Dual Diagnosis" means a substance abuse and co-
45 occurring mental health disorder.

46 (9) "Local advisory committee" may consist of the
47 following members or their designees:

48 (A) Drug court circuit judge, who shall serve as chair;

49 (B) Drug court magistrate(s);

50 (C) Prosecutor;

51 (D) Public defender;

52 (E) Drug court coordinator;

53 (F) Criminal defense bar;

54 (G) Circuit clerk;

55 (H) Day report center director;

56 (I) Circuit court probation officer, parole officer or both;

57 (J) Law enforcement;

58 (K) One or more substance abuse treatment providers;

59 (L) Corrections representative; and

60 (M) Such other person or persons the chair deems
61 appropriate.

62 (10) "Illegal drug" means a drug whose manufacture,
63 sale, use or possession is forbidden by law.

64 (11) "Memorandum of Understanding" means a written
65 document setting forth an agreed upon procedure.

66 (12) "Offender" means an adult charged with a criminal
67 offense punishable by incarceration.

68 (13) "Other harmful substance" means a misused
69 substance otherwise legal to possess, including alcohol.

70 (14) "Pre-adjudication" means a court order requiring a
71 drug offender to participate in drug court before charges are
72 filed or before conviction.

73 (15) "Post-adjudication" means a court order requiring a
74 drug offender to participate in drug court after having entered
75 a plea of guilty or *nolo contendere* or having been found
76 guilty.

77 (16) "Recidivism" means any subsequent arrest for a
78 serious offense (carrying a sentence of at least one year)
79 resulting in the filing of a charge.

80 (17) "Relapse" means a return to substance use after a
81 period of abstinence.

82 (18) "Split sentencing" means a sentence which includes
83 a period of incarceration followed by a period of supervision.

84 (19) "Staffing" means the meeting before a drug
85 offender's appearance in drug court in which the drug court
86 team discusses a coordinated response to the drug offender's
87 behavior.

88 (20) "Substance" means drug.

89 (21) "Substance abuse" means the illegal or improper
90 consumption of a drug.

91 (22) "Substance abuse treatment" means a program
92 designed to provide prevention, education, and therapy

93 directed toward ending substance abuse and preventing a
94 return to substance usage.

95 (23) "Ten Key Components" means the following
96 benchmarks intended to describe the very best practices,
97 designs, and operations of drug courts. These benchmarks
98 are meant to serve as a practical, yet flexible framework for
99 developing effective drug courts in vastly different
100 jurisdictions and to provide a structure for conducting
101 research and evaluation for program accountability:

102 (A) Drug courts integrate alcohol and other drug
103 treatment services with justice system case processing;

104 (B) Using a nonadversarial approach, prosecution and
105 defense counsel promote public safety while protecting
106 participants' due process rights;

107 (C) Eligible participants are identified early and promptly
108 placed in the drug court program;

109 (D) Drug courts provide access to a continuum of
110 alcohol, drug, and other related treatment and rehabilitation
111 services;

112 (E) Abstinence is monitored by frequent alcohol and
113 other drug testing;

114 (F) A coordinated strategy governs drug court responses
115 to participants' compliance;

116 (G) Ongoing judicial interaction with each drug court
117 participant is essential;

118 (H) Monitoring and evaluation measure the achievement
119 of program goals and gauge effectiveness;

120 (I) Continuing interdisciplinary education promotes
121 effective drug court planning, implementation, and
122 operations; and

123 (J) Forging partnerships among drug courts, public
124 agencies and community-based organizations generates local
125 support and enhances drug court effectiveness.

§62-15-3. Policy and goals.

1 The Legislature recognizes that a critical need exists in
2 this state for the criminal justice system to reduce the
3 incidence of substance abuse and the crimes resulting from
4 it. For the criminal justice system to maintain credibility, all
5 drug offenders must be held accountable for their actions. A
6 growing body of research demonstrates the impact of
7 substance abuse on public safety, personal health and health
8 care costs, the spread of communicable disease, educational
9 performance and attainment, workforce reliability and
10 productivity, family safety and financial stability. Requiring
11 that accountability and rehabilitating treatment, in addition to
12 or in place of, conventional and expensive incarceration, will
13 promote public safety, the welfare of the individuals
14 involved, reduce the burden upon the public treasury and
15 benefit the common welfare of this state. The goals of this
16 article shall include:

17 (1) Enhancing community safety and quality of life for
18 citizens;

19 (2) Reducing recidivism;

20 (3) Reducing substance abuse;

21 (4) Increasing the personal, familial, and societal
22 accountability of drug offenders;

23 (5) Restoring drug offenders to productive, law-abiding,
24 and taxpaying citizens;

25 (6) Promoting effective interaction and use of resources
26 among criminal justice and community agencies;

27 (7) Reducing the costs of incarceration; and

28 (8) Improving the efficiency of the criminal justice
29 system by enacting an effective methodology.

§62-15-4. Court authorization and structure.

1 (a) Each judicial circuit or two or more adjoining judicial
2 circuits may establish a drug court or regional drug court
3 program under which drug offenders will be processed to
4 address appropriately, the identified substance abuse problem
5 as a condition of pretrial release, probation, incarceration,
6 parole or other release from a correctional facility.

7 (b) The structure, method, and operation of each drug
8 court program may differ and should be based upon the
9 specific needs of and resources available to the judicial
10 circuit or circuits where the drug court program is located.

11 (c) A drug court program may be pre-adjudication or
12 post-adjudication for an adult offender.

13 (d) Participation in drug court, with the consent of the
14 prosecution and the court, shall be pursuant to a written
15 agreement.

16 (e) A drug court may grant reasonable incentives under
17 the written agreement if it finds that the drug offender:

18 (1) Is performing satisfactorily in drug court;

19 (2) Is benefitting from education, treatment and
20 rehabilitation;

21 (3) Has not engaged in criminal conduct; or

22 (4) Has not violated the terms and conditions of the
23 agreement.

24 (f) A drug court may impose reasonable sanctions on the
25 drug offender, including incarceration for the underlying
26 offense or expulsion from the program, pursuant to the
27 written agreement, if it finds that the drug offender:

28 (1) Is not performing satisfactorily in drug court;

29 (2) Is not benefitting from education, treatment or
30 rehabilitation;

31 (3) Has engaged in conduct rendering him or her
32 unsuitable for the program;

33 (4) Has otherwise violated the terms and conditions of the
34 agreement; or

35 (5) Is for any reason unable to participate.

36 (g) Upon successful completion of drug court, a drug
37 offender's case shall be disposed of by the judge in the
38 manner prescribed by the agreement and by the applicable
39 policies and procedures adopted by the drug court. This may
40 include, but is not limited to, withholding criminal charges,
41 dismissal of charges, probation, deferred sentencing,
42 suspended sentencing, split sentencing, or a reduced period
43 of incarceration.

44 (h) Drug court shall include the Ten Key Components
45 and the drug court team shall act to ensure compliance with
46 them.

47 (i) Nothing contained in this article shall confer a right or
48 an expectation of a right to participate in a drug court nor
49 does it obligate a drug court to accept every drug offender.

50 (j) Neither the establishment of a drug court nor anything
51 herein shall be construed as limiting the discretion of the
52 jurisdiction's prosecutor to act on any criminal case which he
53 or she deems advisable to prosecute.

54 (k) Each drug court judge may establish rules and may
55 make special orders as necessary that do not conflict with
56 rules and orders promulgated by the Supreme Court of
57 Appeals which has administrative authority over the courts.
58 The Supreme Court of Appeals shall provide uniform
59 referral, procedure and order forms that shall be used in all
60 drug courts in this state.

§62-15-5. Drug court teams.

1 (a) Each local jurisdiction that intends to establish a drug
2 court, or continue the operation of an existing drug court,
3 shall establish a local drug court team.

4 (b) The drug court team shall, when practicable, conduct
5 a staffing prior to each drug court session to discuss and
6 provide updated information regarding drug offenders. After
7 determining their progress or lack thereof, the drug court
8 team shall recommend the appropriate incentive or sanction
9 to be applied. If the drug court team cannot agree on the
10 appropriate action, the court shall make the decision based on
11 information presented in the staffing.

§62-15-6. Eligibility.

1 (a) A drug offender shall not be eligible for the drug
2 court program if:

3 (1) The underlying offense involves a felony crime of
4 violence, unless there is a specific treatment program
5 available designed to address violent offenders;

6 (2) The underlying offense involves an offense that
7 requires registration as a sex offender pursuant to the article
8 twelve, chapter fifteen of this code;

9 (3) The drug offender has a prior felony conviction in this
10 state or another state for a felony crime of violence; or

11 (4) The drug offender has a prior conviction in this state
12 or another state for a crime that requires registration as a sex
13 offender pursuant to article twelve, chapter fifteen of this
14 code.

15 (b) Eligible offenses may be further restricted by the
16 rules of a specific drug court program.

17 (c) Nothing in this section shall require a drug court
18 judge to consider or accept every offender with a treatable
19 condition or addiction, regardless of the fact that the
20 controlling offense is eligible for consideration in the
21 program.

§62-15-7. Treatment and support services.

1 (a) As part of any diagnostic assessments, the individual
2 assessment should make specific recommendations to the
3 drug court team regarding the type of treatment program and
4 duration necessary so that a drug offender's individualized
5 needs can be addressed. These assessments and resulting
6 recommendations should be based upon objective medical
7 diagnostic criteria. Treatment recommendations accepted by
8 the court, pursuant to the provisions of this article, shall be
9 deemed to be reasonable and necessary.

10 (b) A drug court making a referral for substance abuse
11 treatment shall refer the drug offender to a program that is
12 licensed, certified, or approved by the court.

13 (c) The court shall determine which treatment programs
14 are authorized to provide the recommended treatment to drug
15 offenders. The relationship between the treatment program
16 and the court should be governed by a Memorandum of
17 Understanding, which should include the timely reporting of
18 the drug offender's progress or lack thereof to the drug court.

19 (d) It is essential to provide offenders with adequate
20 support services and aftercare.

21 (e) Recognizing that drug offenders are frequently dually
22 diagnosed, appropriate services should be made available,
23 where practicable.

24 (f) Recognizing that the longer a drug offender stays in
25 treatment, the better the outcome, the length of stay in
26 treatment should be determined by the drug court team based
27 on individual needs and accepted practices: *Provided*, That
28 drug court participation shall not be less than one year
29 duration.

§62-15-8. Drug testing.

1 (a) The drug court team shall ensure fair, accurate, and
2 reliable drug testing procedures, following collection
3 procedures approved by the Supreme Court of Appeals.

4 (b) The drug offender shall be ordered to submit to
5 frequent, random, and observed drug testing to monitor
6 abstinence.

7 (c) Anyone in receipt of drug test results shall maintain
8 the information in compliance with the requirements of
9 federal and state confidentially laws.

§62-15-9. Governance.

1 (a) The Supreme Court of Appeals will be responsible for
2 court funding, administration, and continuance or
3 discontinuance of drug courts, mental health courts, or other
4 problem-solving courts. The administrative director, or his
5 or her designee, will oversee the planning, implementation,
6 and development of these courts as the administrative arm of
7 the Supreme Court of Appeals.

8 (b) The administering drug court judge in each drug
9 court's jurisdiction shall appoint a local advisory committee.
10 The advisory committee shall ensure quality, efficiency, and
11 fairness in planning, implementing, and operating drug courts
12 that serve the jurisdiction, and the provision of a full
13 continuum of care for drug offenders.

14 (c) The local advisory committee shall annually report to
15 the Supreme Court of Appeal's administrative director, or
16 designee, by the thirty-first day of December of each year.
17 The report shall include:

18 (1) A description of all drug courts operating within the
19 jurisdiction;

20 (2) Participating judges and magistrates if applicable;

21 (3) Community involvement;

22 (4) Education and training;

23 (5) Use of existing resources;

24 (6) Collaborative efforts; and

25 (7) An evaluation of the critical data elements required by
26 subsection (a), section ten of this article.

§62-15-10. Program integrity and offender accountability.

1 (a) Drug courts shall collect and maintain the following
2 information and any other information required by the
3 Supreme Court of Appeals or its administrative office:

4 (1) Prior criminal history;

5 (2) Prior substance abuse treatment history, including
6 information on the drug offender's success or failure in those
7 programs;

8 (3) Employment, education, and income histories;

9 (4) Gender, race, ethnicity, marital and family status, and
10 any child custody and support obligations;

11 (5) The number of babies, both addicted and healthy,
12 born to female drug offenders during participation in drug
13 court;

14 (6) Instances of relapse occurring during participation in
15 drug court;

16 (7) Instances of recidivism occurring during and after
17 participation in drug court. Recidivism shall be measured at
18 intervals of six months, one year, two years, and five years
19 after successful graduation from drug court;

20 (8) The number of offenders screened for eligibility, the
21 number of eligible drug offenders who were and were not
22 admitted and their case dispositions;

23 (9) The drug of choice and the estimated daily financial
24 cost to the drug offender at the time of entry into the
25 program; and

26 (10) The costs of operation and sources of funding.

27 (b) A drug offender may be required as a condition of
28 pretrial diversion, probation, or parole to provide the
29 information described in this section. The collection and
30 maintenance of information under this section shall be
31 collected in a standardized format according to applicable
32 guidelines set forth by the Supreme Court of Appeals.

33 (c) To protect drug offenders' privacy in accordance with
34 federal and state confidentiality laws, treatment records must
35 be kept in a secure environment, separated from the court
36 records to which the public has access.

§62-15-11. Funding.

1 (a) Each drug court with the guidance of the Supreme
2 Court of Appeals may establish a schedule for the payment
3 of reasonable fees and costs necessary to conduct the
4 program;

5 (b) Nothing in this article shall prohibit local advisory
6 committees or drug court teams from obtaining supplemental
7 funds or exploring grants to support drug courts.

8 (c) Nothing in this article shall be construed to supplant
9 funds currently utilized for drug courts.

§62-15-12. Immunity from liability.

1 (a) Any individual who, in good faith, provides services
2 pursuant to this article shall not be liable in any civil action.
3 The grant of immunity provided in this subsection shall
4 extend to all employees and administrative personnel.

5 (b) Any qualified person who obtains, in a medically
6 accepted manner, a specimen of breath, blood, urine, or other
7 bodily substance pursuant to any provision of this article
8 shall not be liable in any civil action.

§62-15-13. Statutory construction.

1 The provisions of this article shall be construed to
2 effectuate its remedial purposes.

CHAPTER 80

**(Com. Sub. for H.B. 3208 - By Delegates Fragale, Williams,
Duke, Shott and Smith)**

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

AN ACT to amend and reenact §18-2E-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-4-1 and §18-4-4 of said code; and to amend and reenact §18-5-1a of said code, all relating to reporting hours of certain training received by county board members on county report card; clarifying eligibility for county board of education generally; providing for appointment and term of interim county superintendents to fill vacancies; providing for appointment and terms of acting county superintendents under certain circumstances; requiring certification to state superintendent of certain appointments, reappointments and appointment terminations; modifying deadline for setting annual compensation of county superintendents; establishing county board member training standards review committee; providing for member appointments, duties and certain expenses under certain circumstances; clarifying eligibility requirements for candidates, members and members-elect of county boards of education; prohibiting certain political activities and clarifying which political activities are permissible; removing certain duty

of state board of education regarding members of county boards of education; making technical clarifications of current law; authorizing candidates for county boards of education to hold public office until taking the oath of office as members of county boards; adding definition of neglect of duty; making other technical changes; and clarifying terms.

Be it enacted by the Legislature of West Virginia:

That §18-2E-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-4-1 and §18-4-4 of said code be amended and reenacted; and that §18-5-1a of said code be amended and reenacted, all to read as follows:

Article

- 2E. High Quality Educational Programs.**
- 4. County Superintendent of Schools.**
- 5. County Board of Education.**

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

1 (a) For the purpose of providing information to the
 2 parents of public school children and the general public on
 3 the quality of education in the public schools which is
 4 uniform and comparable between schools within and among
 5 the various school districts, the state board shall prepare
 6 forms for school, school district and statewide school report
 7 cards and shall promulgate rules concerning the collection
 8 and reporting of data and the preparation, printing and
 9 distribution of report cards under this section. The forms
 10 shall provide for brief, concise reporting in nontechnical
 11 language of required information. Any technical or
 12 explanatory material a county board wishes to include shall
 13 be contained in a separate appendix available to the general
 14 public upon request.

15 (b) The school report cards shall include information as
16 prescribed by lawfully promulgated rule by the state board to
17 give the parents of students at the school and the general
18 public an indication of the quality of education at the school
19 and other programs supportive of community needs,
20 including, but not limited to, the following:

21 (1) Indicators of student performance at the school in
22 comparison with the county, state, regional and national
23 student performance, as applicable, including student
24 performance by grade level in the various subjects measured
25 pursuant to a uniform statewide assessment program adopted
26 by the state board; school attendance rates; the percent of
27 students not promoted to next grade; and the graduation rate;

28 (2) Indicators of school performance in comparison with
29 the aggregate of all other schools in the county and the state,
30 as applicable, including average class size; percent of
31 enrollments in courses in high school mathematics, science,
32 English and social science; amount of time per day devoted
33 to mathematics, science, English and social science at
34 middle, junior high and high school grade levels; percentage
35 distribution of students by career cluster as indicated on the
36 individualized student transition plan; pupil-teacher ratio;
37 number of exceptions to pupil-teacher ratio requested by the
38 county board and the number of exceptions granted; the
39 number of split-grade classrooms; pupil-administrator ratio;
40 operating expenditure per pupil; county expenditure by fund
41 in graphic display; and the average degree classification and
42 years of experience of the administrators and teachers at the
43 school;

44 (3) The names of the members of the local school
45 improvement council, created pursuant to section two, article
46 five-a of this chapter; and

47 (4) The name or names of the business partner or partners
48 of the school.

49 In addition, every county board annually shall determine
50 the number of administrators, classroom teachers and service
51 personnel employed that exceeds the number allowed by the
52 public school support plan and determine the amount of
53 salary supplements that would be available per state
54 authorized employee if all expenditures for the excess
55 employees were converted to annual salaries for state
56 authorized administrators, classroom teachers and service
57 personnel within their county. The information shall be
58 published annually in each school report card of each such
59 county.

60 (c) The school district report card shall include the data
61 for each school for each separately listed applicable indicator
62 and the aggregate of the data for all schools, as applicable, in
63 the county for each indicator. The statewide school report
64 card shall include the data for each county for each separately
65 listed indicator and the aggregate for all counties for each
66 indicator.

67 (d) The report cards shall be prepared using actual local
68 school, county, state, regional and national data indicating the
69 present performance of the school and also shall include the
70 state norms and the upcoming year's targets for the school
71 and the county board.

72 The state board shall provide technical assistance to each
73 county board in preparing the school and school district
74 report cards.

75 Each county board shall prepare report cards in
76 accordance with the guidelines set forth in this section. The
77 school district report cards shall be presented at a regular
78 school board meeting subject to applicable notice
79 requirements and shall be made available to a newspaper of
80 general circulation serving the district. The school report
81 cards shall be mailed directly to the parent or parents of each

82 child enrolled in that school. In addition, each county board
83 shall submit the completed report cards to the state board
84 which shall make copies available to any person requesting
85 them.

86 The report cards shall be completed and disseminated
87 prior to January 1, 1989, and in each year thereafter, and
88 shall be based upon information for the current school year,
89 or for the most recent school year for which the information
90 is available, in which case the year shall be clearly footnoted.

91 (e) In addition to the requirements of subsection (c) of
92 this section, the school district report card shall list the
93 following information:

94 (1) The names of the members of the county board, the
95 dates upon which their terms expire and whether they have
96 attended an orientation program for new members approved
97 by the state board and conducted by the West Virginia
98 School Board Association or other approved organizations;

99 (2) The number of hours of training that meets state
100 board standards that county board members have received
101 during the school term reported; and

102 (3) The names of the county school superintendent and
103 every assistant and associate superintendent and any training
104 programs related to their area of school administration which
105 they have attended.

106 The information also shall be reported by district in the
107 statewide school report card.

108 (f) The state board shall develop and implement a
109 separate report card for nontraditional public schools
110 pursuant to the appropriate provisions of this section to the
111 extent practicable.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-1. Election and term; interim superintendent.

§18-4-4. Compensation.

§18-4-1. Election and term; interim superintendent.

1 (a) The county superintendent shall be appointed by the
2 board upon a majority vote of the members thereof to serve
3 for a term of not less than one, nor more than four years. At
4 the expiration of the term or terms for which he or she shall
5 have been appointed, each county superintendent shall be
6 eligible for reappointment for additional terms of not less
7 than one, nor more than four years.

8 (1) At the expiration of his or her term or terms of service
9 the county superintendent may transfer to any teaching
10 position in the county for which he or she is qualified and has
11 seniority, unless dismissed for statutory reasons.

12 (2) The appointment of the county superintendent shall
13 be made between January 1 and June 1 for a term beginning
14 on July 1 following the appointment.

15 (b) In the event of a vacancy in the superintendent's
16 position that results in an incomplete term, the board may
17 appoint an interim county superintendent:

18 (1) To serve until the following July 1 if the vacancy
19 occurs before March 1.

20 (2) To serve until July 1 of the next following year if the
21 vacancy occurs on or after March 1, unless a superintendent
22 is appointed sooner.

23 (c) If the superintendent becomes incapacitated due to
24 accident or illness to an extent that may lead to prolonged
25 absence, the county board, by unanimous vote, may enter an

26 order declaring that an incapacity exists in which case the
27 county board shall appoint an acting superintendent to serve
28 until a majority of the members of the board determine that
29 the incapacity no longer exists. An acting superintendent
30 may not serve in that capacity for more than one year, nor
31 later than the expiration date of the superintendent's term,
32 whichever occurs sooner, unless he or she is reappointed by
33 the county board.

34 (d) Immediately following the appointment of a county
35 superintendent or an interim county superintendent, the
36 president of the county board shall certify the appointment to
37 the state superintendent. Immediately following the
38 appointment of an acting county superintendent or a vote by
39 a majority of the members of the county board that an
40 incapacity no longer exists, the president of the county board
41 shall certify the appointment, reappointment, or appointment
42 termination of the acting superintendent to the state
43 superintendent.

44 (e) During his or her term of appointment, the county
45 superintendent shall be a state resident and shall reside in the
46 county which he or she serves or in a contiguous county. The
47 county superintendent in office on the effective date of this
48 section shall continue in office until the expiration of his or
49 her term.

§18-4-4. Compensation.

1 On or before June 1 of the year in which the
2 superintendent is appointed, the board shall fix the annual
3 salary of the superintendent for the period of appointment for
4 the term beginning on the following July 1. The board shall
5 pay the salary from the general current expense fund of the
6 district.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

1 (a) A person who is a candidate for membership on a
2 county board or who is a member or member-elect of a
3 county board:

4 (1) Shall be a citizen and resident in the county in which
5 he or she serves or seeks to serve on the county board;

6 (2) May not be employed by the county board on which
7 he or she serves or seeks to serve, including employment as
8 a teacher or service person;

9 (3) May not engage in the following political activities:

10 (A) Become a candidate for or hold any other public
11 office, other than to succeed him or herself as a member of a
12 county board subject to the following:

13 (i) A candidate for a county board, who is not currently
14 serving on a county board, may hold another public office
15 while a candidate if he or she resigns from the other public
16 office prior to taking the oath of office as a county board
17 member.

18 (ii) The term “public office” as used in this section does
19 not include service on any other board, elected or appointed,
20 profit or nonprofit, under the following conditions:

21 (I) The person does not receive compensation; and

22 (II) The primary scope of the board is not related to
23 public schools.

24 (B) Become a candidate for, or serve as, an elected
25 member of any political party executive committee;

26 (C) Become a candidate for, or serve as, a delegate,
27 alternate or proxy to a national political party convention;

28 (D) Solicit or receive political contributions to support
29 the election of, or to retire the campaign debt of, any
30 candidate for partisan office;

31 (4) May engage in any or all of the following political
32 activities:

33 (A) Make campaign contributions to partisan or
34 bipartisan candidates;

35 (B) Attend political fund raisers for partisan or bipartisan
36 candidates;

37 (C) Serve as an unpaid volunteer on a partisan campaign;

38 (D) Politically endorse any candidate in a partisan or
39 bipartisan election; or

40 (E) Attend a county, state or national political party
41 convention.

42 (b) A member or member-elect of a county board, or a
43 person desiring to become a member of a county board, may
44 make a written request to the West Virginia Ethics
45 Commission for an advisory opinion to determine if another
46 elected or appointed position held or sought by the person is
47 an office or public office which would bar service on a
48 county board pursuant to subsection (a) of this section.

49 (1) Within thirty days of receipt of the request, the Ethics
50 Commission shall issue a written advisory opinion in
51 response to the request and also shall publish the opinion in
52 a manner which, to the fullest extent possible, does not reveal
53 the identity of the person making the request.

54 (2) A county board member who relies in good faith upon
55 an advisory opinion issued by the West Virginia Ethics
56 Commission to the effect that holding a particular office or
57 public office is not a bar from membership on a county board
58 and against whom proceedings are subsequently brought for
59 removal from the county board on the basis of holding that
60 office or offices is entitled to reimbursement by the county
61 board for reasonable attorney's fees and court costs incurred
62 by the member in defending against these proceedings,
63 regardless of the outcome of the proceedings.

64 (3) A vote cast by the member at a meeting of the county
65 board may not be invalidated due to a subsequent finding that
66 holding the particular office or public office is a bar to
67 membership on the county board.

68 (4) Good faith reliance on a written advisory opinion of
69 the West Virginia Ethics Commission that a particular office
70 or public office is not a bar to membership on a county board
71 is an absolute defense to any civil suit or criminal
72 prosecution arising from any proper action taken within the
73 scope of membership on the county board, becoming a
74 member-elect of the county board or seeking election to the
75 county board.

76 (c) To be eligible for election or appointment as a
77 member of a county board on or after May 5, 1992, a person
78 shall possess at least a high school diploma or a general
79 educational development (GED) diploma. This provision
80 does not apply to members or members-elect who have taken
81 office prior to May 5, 1992, and who serve continuously
82 from that date forward.

83 (d) A person elected to a county board after July 1, 1990,
84 may not assume the duties of county board member unless he
85 or she has first attended and completed a course of
86 orientation relating to boardsmanship and governance

87 effectiveness which shall be given between the date of
88 election and the beginning of the member's term of office
89 under the following conditions:

90 (1) A portion or portions of subsequent training such as
91 that offered in orientation may be provided to members after
92 they have commenced their term of office;

93 (2) Attendance at the session of orientation given
94 between the date of election and the beginning of the
95 member's term of office permits the member-elect to assume
96 the duties of county board member, as specified in this
97 section;

98 (3) Members appointed to the county board shall attend
99 and complete the next such course offered following their
100 appointment; and

101 (4) The provisions of this subsection relating to
102 orientation do not apply to members who have taken office
103 prior to July 1, 1988, and who serve continuously from that
104 date forward.

105 (e) Annually, each member of a county board shall
106 receive seven clock hours of training in areas relating to
107 boardsmanship, governance effectiveness, and school
108 performance issues including, but not limited to, pertinent
109 state and federal statutes such as the "Process for Improving
110 Education" set forth in section five, article two-e of this
111 chapter and the "No Child Left Behind Act" and their
112 respective administrative rules.

113 (1) The orientation and training shall be approved by the
114 state board and conducted by the West Virginia School Board
115 Association or other organization or organizations approved
116 by the state board:

117 (A) The state board may exclude time spent in training on
118 school performance issues from the requisite seven hours
119 herein required; and

120 (B) If the state board elects to exclude time spent in
121 training on school performance issues from the requisite
122 seven hours, the state board shall limit the training to a
123 feasible and practicable amount of time.

124 (2) Failure to attend and complete the approved course
125 of orientation and training relating to boardsmanship and
126 governance effectiveness without good cause as determined
127 by the state board by duly promulgated legislative rules
128 constitutes neglect of duty under section seven, article six,
129 chapter six of this code.

130 (g) In the final year of any four-year term of office, a
131 member shall satisfy the annual training requirement before
132 January 1. Failure to comply with the training requirements
133 of this section without good cause as defined by the state
134 board by duly promulgated legislative rules constitutes
135 neglect of duty under section seven, article six, chapter six of
136 this code.

137 (h) The state board shall appoint a committee named the
138 "county board member training standards review committee"
139 whose members shall meet at least annually. Subject to state
140 board approval, the committee shall determine which
141 particular trainings and training organizations shall be
142 approved and whether county board members have satisfied
143 the annual training requirement. Members of the committee
144 serve without compensation, but may be reimbursed by their
145 agencies or employers for all reasonable and necessary
146 expenses actually incurred in the performance of their duties
147 under this subsection.

●

CHAPTER 81

**(Com. Sub. for H.B. 3313 - By Delegates Cann, Varner,
Klempa, Craig and Manchin)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §18-9-6 of the Code of West Virginia, 1931, as amended, relating to allowing depositories and banks to meet the security requirement necessary to be a depository for boards of education by providing a letter of credit from a federal home loan bank.

Be it enacted by the Legislature of West Virginia:

That §18-9-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

1 The sheriff of each county shall remit to the board of
2 education all moneys in his or her possession held on behalf
3 of the county board of education, whether or not deposited in
4 a bank or depository, unless the sheriff has been designated
5 treasurer of the board of education as provided in this
6 section. The transfer of funds shall be made as of the
7 balances on hand on June 30 of the year in which the board

8 of education appoints a treasurer other than the sheriff, and
9 shall be completed no later than August 1 of that year. The
10 transfer shall be adjudged complete and final upon the
11 approval of the sheriff's official settlement for the fiscal year
12 ending on June 30 of the year in which the board of
13 education appoints a treasurer other than the sheriff, and any
14 minor adjustment made necessary by the actually known
15 figures shall also be made at that time. All balances in all
16 county school funds at the end of each month after June 30
17 of the year in which the board of education appoints a
18 treasurer other than the sheriff shall be transferred by the
19 sheriff to the county board of education not later than the
20 tenth day of the following month.

21 On or before the first Monday in May each county board
22 of education shall upon recommendation of the county
23 superintendent appoint a treasurer for the board. The
24 treasurer is the fiscal officer of the board, or an employee
25 commonly designated as the person in charge of the financial
26 affairs of the county board, or the county sheriff: *Provided*,
27 That once a board of education has appointed a treasurer
28 other than the sheriff, the sheriff may not be named treasurer
29 of the board in a subsequent year. Upon appointment this
30 person shall be titled and referred to as treasurer of the board
31 of education. For the faithful performance of this duty, the
32 treasurer shall execute a bond, to be approved by the board
33 of education, in the penalty to be fixed by the board of
34 education, not to exceed the amount of school funds which it
35 is estimated the treasurer will handle within any period of
36 two months. The premium on the bond shall be paid by the
37 board of education.

38 The board of education may open a bank account, or
39 accounts, as required to adequately and properly transact the
40 business of the district in a depository, or banks, within the
41 county. The depositories, or banks, shall provide bond to
42 cover the maximum amount to be deposited at any one time.

43 However, the county board of education may, in lieu of such
44 bond, accept as security for money deposited letters of credit
45 from a federal home loan bank, securities of the United
46 States, or of a state, county, district or municipal corporation,
47 or federal agency securities: *Provided*, That a banking
48 institution is not required to provide a bond or security in
49 lieu of bond if the deposits accepted are placed in certificates
50 of deposit meeting the following requirements: (1) The funds
51 are invested through a designated state depository selected by
52 the county board of education; (2) the selected depository
53 arranges for the deposit of the funds in certificates of deposit
54 in one or more banks or savings and loan associations
55 wherever located in the United States, for the account of the
56 county board of education; (3) the full amount of principal
57 and accrued interest of each certificate of deposit is insured
58 by the Federal Deposit Insurance Corporation; (4) the
59 selected depository acts as custodian for the county board of
60 education with respect to such certificates of deposit issued
61 for the county's account; and (5) at the same time that the
62 county board of education's funds are deposited and the
63 certificates of deposit are issued, the selected depository
64 receives an amount of deposits from customers of other
65 financial institutions wherever located in the United States
66 equal to or greater than the amount of the funds invested by
67 the county board of education through the selected
68 depository. One hundred ten percent of the face or par value
69 of the securities may not be less than the sum hereinbefore
70 specified as the amount to be named in the bond in lieu of
71 which the securities are accepted, or the county board of
72 education may accept the securities as partial security to the
73 extent of their face value for the money so deposited and
74 require bond for the remainder of the full amount
75 hereinbefore specified, to be named in the bond, and, in the
76 bond so required, the acceptance of securities as partial
77 security and the extent thereof shall be set forth. The
78 hypothecation of the securities shall be by proper legal
79 transfer as collateral security to protect and indemnify by

80 trust any and all loss in case of any default on the part of the
81 banking institution in its capacity as depository as aforesaid.
82 All such securities shall be delivered to or deposited for the
83 account of the county board of education, and withdrawal or
84 substitution thereof may be permitted from time to time upon
85 approval by the county board of education by order of record,
86 but the collateral security shall be released only by order of
87 record of the county board of education when satisfied that
88 full and faithful accounting and payment of all the moneys
89 has been made under the provisions hereof. In the event
90 actual possession of the hypothecated securities is delivered
91 to the county board of education, it shall make ample
92 provision for the safekeeping thereof, and the interest thereon
93 when paid shall be turned over to the banking institution, so
94 long as it is not in default as aforesaid. The county board of
95 education may permit the deposit under proper receipt of
96 such securities with one or more banking institutions within
97 the State of West Virginia and may contract with any such
98 institution for safekeeping and exchange of any such
99 hypothecated securities, and may prescribe the rules for
100 handling and protecting the same.

101 On and after July 1, 1973, all levies and any other school
102 moneys received by the sheriff and paid to the treasurer of
103 the county board of education shall be deposited in these
104 accounts, and all proper payments from such funds shall be
105 made by the designated depository or bank upon order or
106 draft presented for payment and signed by the duly
107 authorized signatories of the board of education: *Provided*,
108 That in determining the depository for board of education
109 funds a board member who has a pecuniary interest in a bank
110 within the county shall not participate in the determination of
111 the depository for such funds.

112 If it is considered that sufficient funds are on hand in any
113 account at any one time which may be more than are
114 normally required for the payment of incurred expenses, the

115 funds in the amount so considered available may be invested
116 by the treasurer of the county board with the West Virginia
117 Municipal Bond Commission, or in guaranteed certificates of
118 deposit issued by the depository or bank, or other guaranteed
119 investments such as treasury bills, treasury notes or
120 certificates of deposit issued by either the United States
121 government or a banking institution in which federal or state
122 guarantees are applicable. Interest earned in such investments
123 is to be credited to the fund from which the moneys were
124 originally available.

CHAPTER 82

(Com. Sub. for H.B. 2530 - By Delegates Perry and M. Poling)

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §18-9A-2, §18-9A-3a and §18-9A-9 of the Code of West Virginia, 1931, as amended, all relating to further defining professional student support personnel; clarifying definition of net enrollment; modifying method for computing increase in net enrollment for certain counties; providing for computation of certain personnel allowances for certain fiscal years based on number of personnel that would be eligible based on net enrollment; and including professional student support personnel in the public school support formula allowance calculations for current expense and faculty senates.

Be it enacted by the Legislature of West Virginia:

That §18-9A-2, §18-9A-3a and §18-9A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

§18-9A-3a. Total state basic foundation program for fiscal years 2009 through 2013, only.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

§18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) “State board” means the West Virginia Board of
3 Education.

4 (b) “County board” or “board” means a county board of
5 education.

6 (c) “Professional salaries” means the state legally
7 mandated salaries of the professional educators as provided
8 in article four, chapter eighteen-a of this code.

9 (d) “Professional educator” shall be synonymous with
10 and shall have the same meaning as “teacher” as defined in
11 section one, article one of this chapter, and includes
12 technology integration specialists.

13 (e) “Professional instructional personnel” means a
14 professional educator whose regular duty is as that of a
15 classroom teacher, librarian, attendance director or school
16 psychologist. A professional educator having both
17 instructional and administrative or other duties shall be
18 included as professional instructional personnel for that ratio
19 of the school day for which he or she is assigned and serves
20 on a regular full-time basis in appropriate instruction, library,
21 attendance, or psychologist duties.

22 (f) "Professional student support personnel" means a
23 "teacher" as defined in section one, article one of this chapter
24 who is assigned and serves on a regular full-time basis as a
25 counselor or as a school nurse with a bachelor's degree and
26 who is licensed by the West Virginia Board of Examiners for
27 Registered Professional Nurses. For all purposes except for
28 the determination of the allowance for professional educators
29 pursuant to section four of this article, professional student
30 support personnel are professional educators.

31 (g) "Service personnel salaries" means the state legally
32 mandated salaries for service personnel as provided in
33 section eight-a, article four, chapter eighteen-a of this code.

34 (h) "Service personnel" means all personnel as provided
35 in section eight, article four, chapter eighteen-a of this code.
36 For the purpose of computations under this article of ratios of
37 service personnel to net enrollment, a service employee shall
38 be counted as that number found by dividing his or her
39 number of employment days in a fiscal year by two hundred:
40 *Provided*, That the computation for any service person
41 employed for three and one-half hours or less per day as
42 provided in section eight-a, article four, chapter eighteen-a of
43 this code shall be calculated as one-half an employment day.

44 (i) "Net enrollment" means the number of pupils enrolled
45 in special education programs, kindergarten programs and
46 grades one to twelve, inclusive, of the public schools of the
47 county. Net enrollment further shall include:

48 (1) Adults enrolled in regular secondary vocational
49 programs existing as of the effective date of this section,
50 subject to the following:

51 (A) Net enrollment includes no more than one thousand
52 of those adults counted on the basis of full-time equivalency
53 and apportioned annually to each county in proportion to the

54 adults participating in regular secondary vocational programs
55 in the prior year counted on the basis of full-time
56 equivalency; and

57 (B) Net enrollment does not include any adult charged
58 tuition or special fees beyond that required of the regular
59 secondary vocational student;

60 (2) Students enrolled in early childhood education
61 programs as provided in section forty-four, article five of this
62 chapter, counted on the basis of full-time equivalency;

63 (3) No pupil shall be counted more than once by reason
64 of transfer within the county or from another county within
65 the state, and no pupil shall be counted who attends school in
66 this state from another state;

67 (4) The enrollment shall be modified to the equivalent of
68 the instructional term and in accordance with the eligibility
69 requirements and rules established by the state board; and

70 (5) For the purposes of determining the county's basic
71 foundation program, only, for any county whose net
72 enrollment as determined under all other provisions of this
73 definition is less than one thousand four hundred, the net
74 enrollment of the county shall be increased by an amount to
75 be determined in accordance with the following:

76 (A) Divide the state's lowest county student population
77 density by the county's actual student population density;

78 (B) Multiply the amount derived from the calculation in
79 paragraph (A) of this subdivision by the difference between
80 one thousand four hundred and the county's actual net
81 enrollment;

82 (C) If the increase in net enrollment as determined under
83 this subdivision plus the county's net enrollment as

84 determined under all other provisions of this subsection is
85 greater than one thousand four hundred, the increase in net
86 enrollment shall be reduced so that the total does not exceed
87 one thousand four hundred; and

88 (D) During the 2008-2009 interim period and every three
89 interim periods thereafter, the Legislative Oversight
90 Commission on Education Accountability shall review the
91 provisions of this subdivision to determine whether or not
92 they properly address the needs of counties with low
93 enrollment and a sparse population density.

94 (j) "Sparse-density county" means a county whose ratio
95 of net enrollment, excluding any increase in the net
96 enrollment of counties pursuant to subdivision (5) of the
97 definition of net enrollment, to the square miles of the county
98 is less than five.

99 (k) "Low-density county" means a county whose ratio of
100 net enrollment, excluding any increase in the net enrollment
101 of counties pursuant to subdivision (5) of the definition of net
102 enrollment, to the square miles of the county is equal to or
103 greater than five but less than ten.

104 (l) "Medium-density county" means a county whose ratio
105 of net enrollment, excluding any increase in the net
106 enrollment of counties pursuant to subdivision (5) of the
107 definition of net enrollment, to the square miles of the county
108 is equal to or greater than ten but less than twenty.

109 (m) "High-density county" means a county whose ratio
110 of net enrollment, excluding any increase in the net
111 enrollment of counties pursuant to subdivision (5) of the
112 definition of net enrollment, to the square miles of the county
113 is equal to or greater than twenty.

114 (n) "Levies for general current expense purposes" means
115 ninety-four percent of the levy rate for county boards of

116 education calculated or set by the Legislature pursuant to the
117 provisions of section six-f, article eight, chapter eleven of this
118 code: *Provided*, That beginning July 1, 2008, “levies for
119 general current expense purposes” means ninety percent of
120 the levy rate for county boards of education calculated or set
121 by the Legislature pursuant to the provisions of section six-f,
122 article eight, chapter eleven of this code: *Provided, however*,
123 That effective July 1, 2010, the definitions set forth in this
124 subsection are subject to the provisions of section two-a of
125 this article.

126 (o) “Technology integration specialist” means a
127 professional educator who has expertise in the technology
128 field and is assigned as a resource teacher to provide
129 information and guidance to classroom teachers on the
130 integration of technology into the curriculum.

131 (p) “State aid eligible personnel” means all professional
132 educators and service personnel employed by a county board
133 in positions that are eligible to be funded under this article
134 and whose salaries are not funded by a specific funding
135 source such as a federal or state grant, donation, contribution
136 or other specific funding source not listed.

**§18-9A-3a. Total state basic foundation program for fiscal
years 2009 through 2013, only.**

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, the total basic foundation program for the state
3 for the fiscal year 2009 through 2013 shall be the sum of the
4 amounts computed for each county in accordance with this
5 section, less the county’s local share:

6 (1) For the fiscal year 2009, the Department of Education
7 shall compute the total basic foundation program for each
8 county in accordance with the provisions of this article and
9 in accordance with the provisions of this article in effect for

10 fiscal year 2008. The total basic foundation program for each
11 county computed in accordance with this article is limited to
12 a growth of one-fifth above the amount computed for the
13 county in accordance with the provisions in effect for fiscal
14 year 2008. The total basic foundation program for the county
15 is the greater of the two computations.

16 (2) For the fiscal year 2010, the Department of Education
17 shall compute the total basic foundation program for each
18 county in accordance with the provisions of this article and
19 in accordance with the provisions of this article in effect for
20 fiscal year 2008. The total basic foundation program for each
21 county computed in accordance with this article is limited to
22 a growth of two-fifths above the amount computed for the
23 county in accordance with the provisions in effect for fiscal
24 year 2008. The total basic foundation program for the county
25 is the greater of the two computations.

26 (3) For the fiscal year 2011, the Department of Education
27 shall compute the total basic foundation program for each
28 county in accordance with the provisions of this article and
29 in accordance with the provisions of this article in effect for
30 fiscal year 2008. The total basic foundation program for each
31 county computed in accordance with this article is limited to
32 a growth of three-fifths above the amount computed for the
33 county in accordance with the provisions in effect for fiscal
34 year 2008. The total basic foundation program for the county
35 is the greater of the two computations.

36 (4) For the fiscal year 2012, the Department of Education
37 shall compute the total basic foundation program for each
38 county in accordance with the provisions of this article and
39 in accordance with the provisions of this article in effect for
40 fiscal year 2008. The total basic foundation program for each
41 county computed in accordance with this article is limited to
42 a growth of four-fifths above the amount computed for the
43 county in accordance with the provisions in effect for fiscal

44 year 2008. The total basic foundation program for the county
45 is the greater of the two computations.

46 (5) For the fiscal year 2013 and each year thereafter, the
47 Department of Education shall compute the total basic
48 foundation program for each county in accordance with the
49 provisions of this article and in accordance with the
50 provisions of this article in effect for fiscal year 2008. For
51 the fiscal year 2013 only, the total basic foundation program
52 for the county is the greater of the two computations.

53 (b) When computing the basic foundation program for
54 fiscal years 2010 through 2013 only, the allowance for
55 professional educators and the allowance for service
56 personnel computed for each school district in accordance
57 with the provisions of this article that became effective on
58 July 1, 2008, shall be based on the number of personnel that
59 would be eligible based on the net enrollment of the county
60 notwithstanding the number employed for the second month
61 of the prior school term and notwithstanding the pro rata
62 reduction for failure to establish and maintain the minimum
63 professional instructional personnel ratios set forth in section
64 four of this article.

**§18-9A-9. Foundation allowance for other current expense and
substitute employees.**

1 The total allowance for other current expense and
2 substitute employees shall be the sum of the following:

3 (1) For current expense, ten percent of the sum of the
4 computed state allocation for professional educators,
5 professional student support personnel and service personnel
6 as determined in sections four, five and eight of this article.
7 Distribution to the counties shall be made proportional to the
8 average of each county's average daily attendance for the
9 preceding year and the county's second month net
10 enrollment; plus

11 (2) For professional educator substitutes or current
12 expense, two and five-tenths percent of the computed state
13 allocation for professional educators and professional student
14 support personnel as determined in sections four and eight of
15 this article. Distribution to the counties shall be made
16 proportional to the number of professional educators and
17 professional student support personnel authorized for the
18 county in compliance with sections four and eight of this
19 article; plus

20 (3) For service personnel substitutes or current expense,
21 two and five-tenths percent of the computed state allocation
22 for service personnel as determined in section five of this
23 article. Distribution to the counties shall be made
24 proportional to the number of service personnel authorized
25 for the county in compliance with section five of this article;
26 plus

27 (4) For academic materials, supplies and equipment for
28 use in instructional programs, \$200 multiplied by the number
29 of professional instructional personnel and professional
30 student support personnel employed in the schools of the
31 county. Distribution shall be made to each county for
32 allocation to the faculty senate of each school in the county
33 on the basis of \$200 per professional instructional personnel
34 employed at the school. Faculty senate means a faculty
35 senate created pursuant to section five, article five-a of this
36 chapter. Decisions for the expenditure of such funds shall be
37 made at the school level by the faculty senate in accordance
38 with the provisions of said section five, article five-a and
39 shall not be used to supplant the current expense
40 expenditures of the county. Beginning on September 1,
41 1994, and every September thereafter, county boards shall
42 forward to each school for the use by faculty senates the
43 appropriation specified in this section. Each school shall be
44 responsible for keeping accurate records of expenditures.

CHAPTER 83

**(Com. Sub. for H.B. 3146 - By Delegates Moye, Perry,
Shaver, Caputo, Fragale and Rodighiero)**

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

AN ACT to amend and reenact §18A-4-8b and §18A-4-17 of the Code of West Virginia, 1931, as amended, all relating to seniority rights for school service personnel; revising criteria for consideration of applicants; providing for assignment based on seniority in certain circumstances in certain classifications; specifying certain rights, privileges and benefits of certain professional and service personnel providing middle college services in public community and technical colleges; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8b and §18A-4-17 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-4-8b. Seniority rights for school service personnel.

§18A-4-17. Health and other facility employee salaries.

§18A-4-8b. Seniority rights for school service personnel.

- 1 (a) A county board shall make decisions affecting
- 2 promotions and the filling of any service personnel positions

3 of employment or jobs occurring throughout the school year
4 that are to be performed by service personnel as provided in
5 section eight of this article, on the basis of seniority,
6 qualifications and evaluation of past service.

7 (b) Qualifications means the applicant holds a
8 classification title in his or her category of employment as
9 provided in this section and is given first opportunity for
10 promotion and filling vacancies. Other employees then shall
11 be considered and shall qualify by meeting the definition of
12 the job title that relates to the promotion or vacancy, as
13 defined in section eight of this article. If requested by the
14 employee, the county board shall show valid cause why a
15 service person with the most seniority is not promoted or
16 employed in the position for which he or she applies.
17 Qualified applicants shall be considered in the following
18 order:

19 (1) Regularly employed service personnel who hold a
20 classification title within the classification category of the
21 vacancy;

22 (2) Service personnel who have held a classification title
23 within the classification category of the vacancy whose
24 employment has been discontinued in accordance with this
25 section;

26 (3) Regularly employed service personnel who do not
27 hold a classification title within the classification category of
28 vacancy;

29 (4) Service personnel who have not held a classification
30 title within the classification category of the vacancy and
31 whose employment has been discontinued in accordance with
32 this section;

33 (5) Substitute service personnel who hold a classification
34 title within the classification category of the vacancy;

35 (6) Substitute service personnel who do not hold a
36 classification title within the classification category of the
37 vacancy; and

38 (7) New service personnel.

39 (c) The county board may not prohibit a service person
40 from retaining or continuing his or her employment in any
41 positions or jobs held prior to the effective date of this
42 section and thereafter.

43 (d) A promotion means any change in employment that
44 the service person considers to improve his or her working
45 circumstance within the classification category of
46 employment.

47 (1) A promotion includes a transfer to another
48 classification category or place of employment if the position
49 is not filled by an employee who holds a title within that
50 classification category of employment.

51 (2) Each class title listed in section eight of this article is
52 considered a separate classification category of employment
53 for service personnel, except for those class titles having
54 Roman numeral designations, which are considered a single
55 classification of employment:

56 (A) The cafeteria manager class title is included in the
57 same classification category as cooks;

58 (B) The executive secretary class title is included in the
59 same classification category as secretaries;

60 (C) Paraprofessional, autism mentor and braille or sign
61 language specialist class titles are included in the same
62 classification category as aides; and

63 (D) The mechanic assistant and chief mechanic class
64 titles are included in the same classification category as
65 mechanics.

66 (3) The assignment of an aide to a particular position
67 within a school is based on seniority within the aide
68 classification category if the aide is qualified for the position.

69 (4) Assignment of a custodian to work shifts in a school
70 or work site is based on seniority within the custodian
71 classification category.

72 (e) For purposes of determining seniority under this
73 section a service person's seniority begins on the date that he
74 or she enters into the assigned duties.

75 (f) *Extra-duty assignments.* --

76 (1) For the purpose of this section, "extra-duty
77 assignment" means an irregular job that occurs periodically
78 or occasionally such as, but not limited to, field trips, athletic
79 events, proms, banquets and band festival trips.

80 (2) Notwithstanding any other provisions of this chapter
81 to the contrary, decisions affecting service personnel with
82 respect to extra-duty assignments are made in the following
83 manner:

84 (A) A service person with the greatest length of service
85 time in a particular category of employment is given priority
86 in accepting extra duty assignments, followed by other fellow
87 employees on a rotating basis according to the length of their
88 service time until all employees have had an opportunity to
89 perform similar assignments. The cycle then is repeated.

90 (B) An alternative procedure for making extra-duty
91 assignments within a particular classification category of

92 employment may be used if the alternative procedure is
93 approved both by the county board and by an affirmative
94 vote of two thirds of the employees within that classification
95 category of employment.

96 (g) County boards shall post and date notices of all job
97 vacancies of existing or newly created positions in
98 conspicuous places for all school service personnel to
99 observe for at least five working days.

100 (1) Posting locations include any website maintained by
101 or available for the use of the county board.

102 (2) Notice of a job vacancy shall include the job
103 description, the period of employment, the amount of pay and
104 any benefits and other information that is helpful to
105 prospective applicants to understand the particulars of the
106 job. Job postings for vacancies made pursuant to this section
107 shall be written to ensure that the largest possible pool of
108 qualified applicants may apply. Job postings may not require
109 criteria which are not necessary for the successful
110 performance of the job and may not be written with the intent
111 to favor a specific applicant.

112 (3) After the five-day minimum posting period, all
113 vacancies shall be filled within twenty working days from the
114 posting date notice of any job vacancies of existing or newly
115 created positions.

116 (4) The county board shall notify any person who has
117 applied for a job posted pursuant to this section of the status
118 of his or her application as soon as possible after the county
119 board makes a hiring decision regarding the posted position.

120 (h) All decisions by county boards concerning reduction
121 in work force of service personnel shall be made on the basis
122 of seniority, as provided in this section.

123 (i) The seniority of a service person is determined on the
124 basis of the length of time the employee has been employed
125 by the county board within a particular job classification. For
126 the purpose of establishing seniority for a preferred recall list
127 as provided in this section, a service person who has been
128 employed in one or more classifications retains the seniority
129 accrued in each previous classification.

130 (j) If a county board is required to reduce the number of
131 service personnel within a particular job classification, the
132 following conditions apply:

133 (1) The employee with the least amount of seniority
134 within that classification or grades of classification is
135 properly released and employed in a different grade of that
136 classification if there is a job vacancy;

137 (2) If there is no job vacancy for employment within that
138 classification or grades of classification, the service person is
139 employed in any other job classification which he or she
140 previously held with the county board if there is a vacancy
141 and retains any seniority accrued in the job classification or
142 grade of classification.

143 (k) After a reduction in force or transfer is approved, but
144 prior to August 1, a county board in its sole and exclusive
145 judgment may determine that the reason for any particular
146 reduction in force or transfer no longer exists.

147 (1) If the board makes this determination, it shall rescind
148 the reduction in force or transfer and notify the affected
149 employee in writing of the right to be restored to his or her
150 former position of employment.

151 (2) The affected employee shall notify the county board
152 of his or her intent to return to the former position of

153 employment within five days of being notified or lose the
154 right to be restored to the former position.

155 (3) The county board may not rescind the reduction in
156 force of an employee until all service personnel with more
157 seniority in the classification category on the preferred recall
158 list have been offered the opportunity for recall to regular
159 employment as provided in this section.

160 (4) If there are insufficient vacant positions to permit
161 reemployment of all more senior employees on the preferred
162 recall list within the classification category of the service
163 person who was subject to reduction in force, the position of
164 the released service person shall be posted and filled in
165 accordance with this section.

166 (l) If two or more service persons accumulate identical
167 seniority, the priority is determined by a random selection
168 system established by the employees and approved by the
169 county board.

170 (m) All service personnel whose seniority with the
171 county board is insufficient to allow their retention by the
172 county board during a reduction in work force are placed
173 upon a preferred recall list and shall be recalled to
174 employment by the county board on the basis of seniority.

175 (n) A service person placed upon the preferred recall list
176 shall be recalled to any position openings by the county
177 board within the classification(s) where he or she had
178 previously been employed, to any lateral position for which
179 the service person is qualified or to a lateral area for which a
180 service person has certification and/or licensure.

181 (o) A service person on the preferred recall list does not
182 forfeit the right to recall by the county board if compelling

183 reasons require him or her to refuse an offer of reemployment
184 by the county board.

185 (p) The county board shall notify all service personnel on
186 the preferred recall list of all position openings that exist
187 from time to time. The notice shall be sent by certified mail
188 to the last known address of the service person. Each service
189 person shall notify the county board of any change of
190 address.

191 (q) No position openings may be filled by the county
192 board, whether temporary or permanent, until all service
193 personnel on the preferred recall list have been properly
194 notified of existing vacancies and have been given an
195 opportunity to accept reemployment.

196 (r) A service person released from employment for lack
197 of need as provided in sections six and eight-a, article two of
198 this chapter is accorded preferred recall status on July 1 of
199 the succeeding school year if he or she has not been
200 reemployed as a regular employee.

201 (s) A county board failing to comply with the provisions
202 of this article may be compelled to do so by mandamus and
203 is liable to any party prevailing against the board for court
204 costs and the prevailing party's reasonable attorney fee, as
205 determined and established by the court.

206 (1) A service person denied promotion or employment in
207 violation of this section shall be awarded the job, pay and any
208 applicable benefits retroactively to the date of the violation
209 and shall be paid entirely from local funds.

210 (2) The county board is liable to any party prevailing
211 against the board for any court reporter costs including
212 copies of transcripts.

§18A-4-17. Health and other facility employee salaries.

1 (a) The minimum salary scale for professional personnel
2 and service personnel employed by the State Department of
3 Education to provide education and support services to
4 residents of State Department of Health and Human
5 Resources facilities, corrections facilities providing services
6 to juvenile and youthful offenders, in the West Virginia
7 schools for the deaf and the blind and in public community
8 and technical colleges providing middle college services is
9 the same as set forth in sections two, three and eight-a of this
10 article. Additionally, those personnel shall receive the
11 equivalent of salary supplements paid to professional and
12 service personnel employed by the county board in the
13 county wherein each facility is located, as set forth in
14 sections five-a and five-b of this article. Professional
15 personnel and service personnel in these facilities who earn
16 advanced classification of training after the effective date of
17 this section shall be paid the advanced salary from the date
18 the classification of training is earned. The professional
19 personnel shall be certified, licensed or trained, and shall
20 meet other eligibility classifications as may be required by
21 the provisions of this chapter and by state board regulations
22 for comparable instructional personnel who are employed by
23 county boards. The professional personnel shall be paid at
24 the equivalent rate of pay of teachers as set forth in section
25 two of this article, but outside the public support plan, plus
26 the equivalent of the salary supplement paid to teachers
27 employed by the county board in the county in which each
28 facility is located, as set forth in section five-a of this article.

29 (b) Professional personnel employed by the department
30 to provide education services to residents in State
31 Department of Health and Human Resources facilities,
32 corrections facilities providing services to juvenile and
33 youthful offenders, in the West Virginia schools for the deaf
34 and the blind or in public community and technical colleges

35 providing middle college services are afforded all the rights,
36 privileges and benefits established for the professional
37 personnel under this article, subject to the following:

38 (1) The benefits apply only within the facility at which
39 the professional personnel are employed;

40 (2) The benefits exclude salaries unless explicitly
41 provided for under this or other sections of this article; and

42 (3) Seniority for the professional personnel is determined
43 on the basis of the length of time the employee has been
44 professionally employed at the facility, regardless of which
45 state agency was the actual employer.

46 (c) Professional personnel and service personnel
47 employed by the department of education to provide
48 education and support services to residents in State
49 Department of Health and Human Resources facilities,
50 corrections facilities providing services to juvenile and
51 youthful offenders, the West Virginia schools for the deaf
52 and the blind and in public community and technical colleges
53 providing middle college services are state employees.

54 (d) *Additional seniority provisions.*

55 (1) Notwithstanding any other provision of this section to
56 the contrary, professional and service personnel employed in
57 an educational facility operated by the West Virginia
58 Department of Education accrue seniority at that facility on
59 the basis of the length of time the employee has been
60 employed at the facility. Professional and service personnel
61 whose employment at the facility was preceded immediately
62 by employment with the county board previously providing
63 education services at the facility or whose employment
64 contract was with the county board previously providing
65 education services at the facility:

66 (A) Retains any seniority accrued during employment by
67 the county board;

68 (B) Accrues seniority as a regular employee with the
69 county board during employment at the facility;

70 (C) Attains continuing contract status in accordance with
71 section two, article two, chapter eighteen-a of this code with
72 both the county and the facility if the sum of the years
73 employed by the county and the facility equals the statutory
74 number required for continuing contract status; and

75 (D) Retains and continues to accrue county and facility
76 seniority in the event of reemployment by the county as a
77 result of direct transfer from the facility or recall from the
78 preferred list.

79 (2) Reductions in work force in the facility or
80 employment by the facility or county board are made in
81 accordance with the provisions of sections seven-a and eight-
82 b of this chapter. Only years of employment within the
83 facility are considered for purposes of reduction in force
84 within the facility.

85 (3) The seniority conferred in this section applies
86 retroactively to all affected professional and service
87 personnel, but the rights incidental to the seniority commence
88 on the effective date of this section.

89 (4) Amendments made to this section during the 2009
90 regular session of the Legislature do not abrogate any rights,
91 privileges or benefits bestowed under previous enactments of
92 this section.

CHAPTER 84

**(Com. Sub. for S.B. 373 - By Senators Tomblin,
Mr. President, and Caruth)
[By Request of the Executive]**

[Passed April 11, 2009; in effect July 1, 2009.]

[Approved by the Governor on May 11, 2009.]

AN ACT to repeal §18C-7-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18B-1D-9; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18C-1-1, §18C-1-4 and §18C-1-5 of said code; to amend and reenact §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code; and to amend and reenact §29-22-18a of said code, all relating to higher education in West Virginia generally; requiring training and development opportunities for members of the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional governing boards; revising criteria for membership of certain institutional governing board and designating the manner in which the membership is determined; requiring the Governor to consider certain factors and seek a certain balance when appointing members; reconstituting the Higher Education Student Financial Aid Advisory Board; providing for member appointments; setting forth member qualifications and terms of office; setting forth duties of the advisory board; modifying conditions upon which students who attended high school outside the state may be eligible for certain financial aid; dissolving the PROMISE Scholarship Board and transferring

its powers and duties to the Higher Education Policy Commission and under the administration of the Vice Chancellor for Administration; requiring the Vice Chancellor for Administration to submit an annual report; defining terms; authorizing investment of certain funds with the West Virginia Investment Management Board; increasing the aggregate and excess lottery amounts the Legislature intends to allocate to PROMISE scholarship program for certain fiscal years; setting a minimum amount for the PROMISE scholarship annual award and authorizing the Higher Education Policy Commission to provide annual awards greater than the minimum under certain circumstances if funds are available; increasing flexibility for adjusting requirements to receive a PROMISE scholarship; providing conditions under which PROMISE scholarship annual awards are continued to certain students under certain circumstances; establishing citizenship and legal immigrant conditions of eligibility for a PROMISE scholarship; clarifying that a PROMISE scholarship may supplement certain tuition and fee waivers; and authorizing the Higher Education Policy Commission to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That §18C-7-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18B-1D-9; that §18B-2A-1 of said code be amended and reenacted; that §18C-1-1, §18C-1-4 and §18C-1-5 of said code be amended and reenacted; that §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted; and that §29-22-18a of said code be amended and reenacted, all to read as follows:

Chapter

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

29. Miscellaneous Boards and Officers.

CHAPTER 18B. HIGHER EDUCATION.

Article

1D. Higher Education Accountability.

2A. Institutional Boards of Governors.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.**§18B-1D-9. Commission, council and institutional governing board training and development; training and development requirements, applicability and exceptions.**

1 (a) The commission and council, either jointly or
2 separately, shall coordinate periodic training and
3 development opportunities for members of the commission,
4 council and institutional governing boards as provided in this
5 section.

6 (b) Within six months of beginning service on the
7 commission, council or a governing board, each new member
8 shall complete at least three hours of training and
9 development. The training and development shall address
10 the following topics:

11 (1) State goals, objectives and priorities for higher
12 education;

13 (2) The accountability system for higher education set
14 forth in this article;

15 (3) The general powers and duties of members; and

16 (4) Ethical considerations arising from board
17 membership.

18 (c) With the exception of the ex officio members of the
19 commission and the council and the student member of a
20 governing board, each member shall complete at least six
21 hours of training and development related to his or her duties

22 within two years of beginning service and within every two
23 years of service thereafter.

24 (d) By July 31 each year, the chair of the commission,
25 council and each governing board shall certify to the
26 commission or council, as appropriate, the number of hours
27 of training and development that each member received
28 during the preceding fiscal year.

29 (e) If the certification indicates that a board member has
30 not completed the training and development required by this
31 section, the commission or council, as appropriate, shall send
32 a notice to the Governor and the Secretary of State or to the
33 institutional appointing entity that the board member is
34 disqualified from continued service notwithstanding the
35 provisions of sections five and six, article six, chapter six of
36 this code. The commission or council, as appropriate, shall
37 request the Governor or appointing entity to appoint a
38 replacement for that board member.

39 (f) By September 30 each year, the commission and
40 council shall report to the Legislative Oversight Commission
41 on Education Accountability on the training and development
42 that members of the commission and the council and the
43 governing boards under their respective jurisdictions have
44 received during the preceding fiscal year and shall include
45 this information in the institutional and statewide report cards
46 provided in section eight of this article.

47 (g) As used in this section, “member” means all members
48 of the commission, council and the governing boards unless
49 a specific exception is provided in this section.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

1 (a) *Findings.* --

2 The Legislature finds that the State of West Virginia is
3 served best when the membership of each governing board
4 includes the following:

5 (1) The academic expertise and institutional experience
6 of faculty members and a student of the institution governed
7 by the board;

8 (2) The technical or professional expertise and
9 institutional experience of a classified employee of the
10 institution governed by the board;

11 (3) An awareness and understanding of the issues facing
12 the institution governed by the board; and

13 (4) The diverse perspectives that arise from a
14 membership that is balanced in terms of gender and varied in
15 terms of race and ethnic heritage.

16 (b) *Boards of governors established.* --

17 A board of governors is continued at each of the
18 following institutions: Bluefield State College, Blue Ridge
19 Community and Technical College, The Community and
20 Technical College at West Virginia University Institute of
21 Technology, Concord University, Eastern West Virginia
22 Community and Technical College, Fairmont State
23 University, Glenville State College, Marshall Community
24 and Technical College, Marshall University, New River
25 Community and Technical College, Pierpont Community and
26 Technical College, Shepherd University, Southern West

27 Virginia Community and Technical College, West Liberty
28 State University, West Virginia Northern Community and
29 Technical College, the West Virginia School of Osteopathic
30 Medicine, West Virginia State Community and Technical
31 College, West Virginia State University, West Virginia
32 University and West Virginia University at Parkersburg.

33 (c) *Board Membership.* --

34 (1) An appointment to fill a vacancy on the board or
35 reappointment of a member who is eligible to serve an
36 additional term is made in accordance with the provisions of
37 this section.

38 (2) The board of governors for Marshall University
39 consists of sixteen persons. The board of governors for West
40 Virginia University consists of seventeen persons. The
41 boards of governors of the other state institutions of higher
42 education consist of twelve persons.

43 (3) Each board of governors includes the following
44 members:

45 (A) A full-time member of the faculty with the rank of
46 instructor or above duly elected by the faculty of the
47 respective institution;

48 (B) A member of the student body in good academic
49 standing, enrolled for college credit work and duly elected by
50 the student body of the respective institution; and

51 (C) A member from the institutional classified employees
52 duly elected by the classified employees of the respective
53 institution;

54 (4) For the board of governors at Marshall University,
55 thirteen lay members appointed by the Governor, by and with
56 the advice and consent of the Senate, pursuant to this section;

57 (5) For the board of governors at West Virginia
58 University, twelve lay members appointed by the Governor,
59 by and with the advice and consent of the Senate, pursuant to
60 this section, and additionally:

61 (A) The chairperson of the board of visitors of West
62 Virginia University Institute of Technology;

63 (B) A full-time faculty member representing the
64 extension service at the institution or a full-time faculty
65 member representing the health sciences, selected by the
66 faculty senate.

67 (6) For each board of governors of the other state
68 institutions of higher education, nine lay members appointed
69 by the Governor, by and with the advice and consent of the
70 Senate, pursuant to this section.

71 (A) Of the nine members appointed by the Governor, no
72 more than five may be of the same political party. Of the
73 thirteen members appointed by the Governor to the governing
74 board of Marshall University, no more than eight may be of
75 the same political party. Of the twelve members appointed
76 by the Governor to the governing board of West Virginia
77 University, no more than seven may be of the same political
78 party.

79 (B) Of the nine members appointed by the Governor, at
80 least five shall be residents of the state. Of the thirteen
81 members appointed by the Governor to the governing board
82 of Marshall University, at least eight shall be residents of the
83 state. Of the twelve members appointed by the Governor to
84 the governing board of West Virginia University, at least
85 seven shall be residents of the state.

86 (7) In making lay appointments, the Governor shall
87 consider the institutional mission and membership
88 characteristics including the following:

89 (A) The need for individual skills, knowledge and
90 experience relevant to governing the institution;

91 (B) The need for awareness and understanding of
92 institutional problems and priorities, including those related
93 to research, teaching and outreach;

94 (C) The value of gender, racial and ethnic diversity; and

95 (D) The value of achieving balance in gender and
96 diversity in the racial and ethnic characteristics of the lay
97 membership of each board.

98 (d) *Board member terms.* --

99 (1) The student member serves for a term of one year.
100 Each term begins on the first day of July.

101 (2) The faculty member serves for a term of two years.
102 Each term begins on the first day of July. Faculty members
103 are eligible to succeed themselves for three additional terms,
104 not to exceed a total of eight consecutive years.

105 (3) The member representing classified employees serves
106 for a term of two years. Each term begins on the first day of
107 July. Members representing classified employees are eligible
108 to succeed themselves for three additional terms, not to
109 exceed a total of eight consecutive years.

110 (4) The appointed lay citizen members serve terms of up
111 to four years each and are eligible to succeed themselves for
112 no more than one additional term.

113 (5) A vacancy in an unexpired term of a member shall be
114 filled for the unexpired term within thirty days of the
115 occurrence of the vacancy in the same manner as the original
116 appointment or election. Except in the case of a vacancy, all

117 elections are held and all appointments are made no later than
118 June 30 preceding the commencement of the term. Each
119 board of governors shall elect one of its appointed lay
120 members to be chairperson in June of each year. A member
121 may not serve as chairperson for more than four consecutive
122 years.

123 (6) The appointed members of the boards of governors
124 serve staggered terms of up to four years except that four of
125 the initial appointments to the governing boards of
126 community and technical colleges that became independent
127 July 1, 2008, are for terms of two years and five of the initial
128 appointments are for terms of four years.

129 (e) *Board member eligibility, expenses.* --

130 (1) A person is ineligible for appointment to membership
131 on a board of governors of a state institution of higher
132 education under the following conditions:

133 (A) For a baccalaureate institution or university, a person
134 is ineligible for appointment who is an officer, employee or
135 member of any other board of governors; an employee of any
136 institution of higher education; an officer or member of any
137 political party executive committee; the holder of any other
138 public office or public employment under the government of
139 this state or any of its political subdivisions; an employee of
140 any affiliated research corporation created pursuant to article
141 twelve of this chapter; an employee of any affiliated
142 foundation organized and operated in support of one or more
143 state institutions of higher education; or a member of the
144 council or commission. This subsection does not prevent the
145 representative from the faculty, classified employees,
146 students or the superintendent of a county board of education
147 from being members of the governing boards.

148 (B) For a community and technical college, a person is
149 ineligible for appointment who is an officer, employee or
150 member of any other board of governors; a member of a
151 board of visitors of any public institution of higher education;
152 an employee of any institution of higher education; an officer
153 or member of any political party executive committee; the
154 holder of any other public office, other than an elected county
155 office, or public employment, other than employment by the
156 county board of education, under the government of this state
157 or any of its political subdivisions; an employee of any
158 affiliated research corporation created pursuant to article
159 twelve of this chapter; an employee of any affiliated
160 foundation organized and operated in support of one or more
161 state institutions of higher education; or a member of the
162 council or commission. This subsection does not prevent the
163 representative from the faculty, classified employees or
164 students from being members of the governing boards.

165 (2) Before exercising any authority or performing any
166 duties as a member of a governing board, each member shall
167 qualify as such by taking and subscribing to the oath of office
168 prescribed by section five, article IV of the Constitution of
169 West Virginia and the certificate thereof shall be filed with
170 the Secretary of State.

171 (3) A member of a governing board appointed by the
172 Governor may not be removed from office by the Governor
173 except for official misconduct, incompetence, neglect of duty
174 or gross immorality and then only in the manner prescribed
175 by law for the removal of the state elective officers by the
176 Governor.

177 (4) The members of the board of governors serve without
178 compensation, but are reimbursed for all reasonable and
179 necessary expenses actually incurred in the performance of
180 official duties under this article upon presentation of an
181 itemized sworn statement of expenses.

182 (5) The president of the institution shall make available
 183 resources of the institution for conducting the business of its
 184 board of governors. All expenses incurred by the board of
 185 governors and the institution under this section are paid from
 186 funds allocated to the institution for that purpose.

**CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS
 AND STATE AID.**

Article

- 1. **Financial Assistance Generally.**
- 2. **West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence Scholarship Program.**

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

- §18C-1-1. Legislative findings; purpose; administration generally; reporting.
- §18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.
- §18C-1-5. Higher Education Student Financial Aid Advisory Board.

§18C-1-1. Legislative findings; purpose; administration generally; reporting.

- 1 (a) The Legislature makes the following findings:
- 2 (1) Although enrollments in institutions of higher
 3 education in this state and throughout the nation continue to
 4 increase at a rapid pace, West Virginia has not developed
 5 sufficiently the state’s human talent and resources because
 6 many able, but needy, students are not able to finance a
 7 higher education program;
- 8 (2) The state can achieve its full economic and social
 9 potential only when the following elements are in place:
- 10 (A) Every individual has the opportunity to contribute to
 11 the full extent of his or her capability; and
- 12 (B) The state assists in removing financial barriers to the
 13 individual’s education goals that remain after he or she has
 14 used all resources and work opportunities available;

15 (b) The ultimate state goal in providing student financial
16 aid is to create a culture that values education, to improve the
17 quality of the workforce and to enhance the quality of life for
18 the citizens of West Virginia.

19 (c) The Vice Chancellor for Administration has a
20 ministerial duty to administer, oversee and monitor all state
21 and federal student financial aid programs administered at the
22 state level in accordance with established rules under the
23 direction of the commission and council and in consultation
24 with the Higher Education Student Financial Aid Advisory
25 Board.

26 (d) These programs include, but are not limited to, the
27 following programs:

28 (1) The Guaranteed Student Loan Program, which may
29 be administered by a private nonprofit agency;

30 (2) The Medical Student Loan Program;

31 (3) The Underwood-Smith Teacher Scholarship Program;

32 (4) The Engineering, Science and Technology
33 Scholarship Program;

34 (5) The West Virginia Higher Education Grant Program;

35 (6) The Higher Education Adult Part-Time Student Grant
36 Program;

37 (7) The West Virginia Providing Real Opportunities for
38 Maximizing In-State Student Excellence (PROMISE)
39 Scholarship Program;

40 (8) The Higher Education Student Assistance Loan
41 Program established pursuant to article twenty-two-d, chapter
42 eighteen of this code;

43 (9) The West Virginia College Prepaid Tuition and
44 Savings Program established pursuant to article thirty,
45 chapter eighteen of this code, which is administered by the
46 State Treasurer;

47 (10) The state aid programs for students of optometry,
48 pursuant to article three of this chapter;

49 (11) The state aid programs for students of veterinary
50 medicine pursuant to section six-a, article eleven, chapter
51 eighteen of this code;

52 (12) Any reciprocal program and contract program for
53 student aid established pursuant to sections three and four,
54 article four, chapter eighteen-b of this code;

55 (13) Any other state-level student aid programs in this
56 code; and

57 (14) Any federal grant or contract student assistance or
58 support programs administered at the state level.

59 (e) Notwithstanding any provision of this chapter to the
60 contrary, the Vice Chancellor for Administration shall
61 prepare a single, comprehensive report regarding the
62 implementation of the financial aid programs identified in
63 subsection (d) of this section which are administered under
64 his or her supervision. The report shall be provided to the
65 commission and the council and shall be presented to the
66 Legislative Oversight Commission on Education
67 Accountability no later than November 30, 2009, and
68 annually thereafter. The report shall address all financial aid
69 issues for which reports are required in this code, as well as
70 any findings and recommendations.

§18C-1-4. Eligibility of commuting students and children of military personnel for state funded student financial aid, grants and scholarships.

1 (a) Notwithstanding any other provision of this code or
2 rule to the contrary, a student who attended a public or
3 private high school outside the state is eligible for state
4 funded student financial aid, grants and scholarships if:

5 (1) The student meets all other eligibility requirements
6 for the aid, grant or scholarship; and

7 (2) The student resided in West Virginia while attending
8 high school in another state, and:

9 (A) The student resided with his or her parent or legal
10 guardian who:

11 (i) Was a resident of this state; and

12 (ii) Had been a resident of this state for at least two years
13 immediately preceding the student's attendance at the school;

14 (B) The student commuted during the school term on a
15 daily basis from this state to the school;

16 (C) The student is a dependent of the parent or legal
17 guardian upon which eligibility is based;

18 (D) The student has not established domicile outside the
19 state; and

20 (E) At the discretion of the State Superintendent of
21 Schools, as defined in section one, article one, chapter
22 eighteen of this code:

23 (i) The school is fully accredited in that state to the
24 degree acceptable to the State Superintendent of Schools; and

25 (ii) The school's curriculum requirements for graduation
26 are equivalent to the curriculum requirements for graduation
27 in this state, or sufficiently similar to those requirements, as
28 determined by the State Superintendent of Schools; or

29 (3) The student resided and attended high school in
30 another state or a United States territory, United States
31 possession or foreign country and:

32 (A) The student resided with his or her parent or legal
33 guardian; and

34 (B) The student's parent or legal guardian:

35 (i) Served in the United States armed forces while the
36 student attended high school in such state, territory,
37 possession or country;

38 (ii) Was stationed for military purposes in such state,
39 territory, possession or country; and

40 (iii) Maintained legal residence in West Virginia while
41 stationed in such state, territory, possession or country.

42 (b) This section does not alter, amend or extend any
43 application deadlines or other requirements established by
44 law or policy.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

1 (a) The Higher Education Student Financial Aid
2 Advisory Board is established.

3 (b) The purpose of the board is to provide financial aid
4 expertise and policy guidance to the commission, the council
5 and the Vice Chancellor for Administration on all matters

6 related to federal, state and private student financial aid
7 resources and programs.

8 (c) It is the intent of the Legislature that the advisory
9 board:

10 (1) Recommend methods to balance the needs of state
11 students from all levels of financial need and academic
12 ability;

13 (2) Recommend methods for achieving a comprehensive
14 system of student financial aid to maximize the return on the
15 state's investment in student financial aid programs by
16 increasing the skills, qualifications and education
17 achievement of the citizens receiving the benefits;

18 (3) Recommend methods to coordinate state-funded
19 student financial aid programs so that the state achieves the
20 appropriate blend of programs to expand the range of
21 economic opportunities available to state citizens;

22 (4) Recommend ways to improve state-level
23 administration of financial aid programs for the benefit of
24 students and institutions;

25 (5) Recommend ways to improve financial aid outreach
26 activities;

27 (6) Make recommendations, consistent with the nature of
28 the PROMISE scholarship program as a merit-based student
29 financial aid program;

30 (7) Study feasibility of including for-profit institutions as
31 eligible institutions for PROMISE scholarship awards and
32 requirements, if any, for inclusion; and

33 (8) Recommend rules that align with the goals, objectives
34 and priorities set forth in section one-a, article one, chapter

35 eighteen-b of this code and article one-d of said chapter and
36 with other state and system public policy goals, objectives
37 and priorities.

38 (d) *Advisory board membership.* --

39 (1) The advisory board shall consist of seven members
40 selected as follows:

41 (A) Three members appointed by the commission;

42 (B) Two members appointed by the council;

43 (C) One member appointed by the West Virginia
44 Independent Colleges and Universities; and

45 (D) One member appointed by the West Virginia School
46 Counselor Association.

47 (2) Members appointed by the commission and the
48 council shall possess a broad knowledge of state and federal
49 higher education student financial aid programs and have
50 experience in administering these programs, preferably at the
51 campus or system level.

52 (3) The initial appointments of members shall be made as
53 follows:

54 (A) The commission shall appoint one member to a one-
55 year term, one member to a two-year term and one member
56 to a three-year term;

57 (B) The council shall appoint one member to a one-year
58 term and one member to a three-year term;

59 (C) The West Virginia Independent Colleges and
60 Universities shall appoint one member to a one-year term;
61 and

62 (D) The West Virginia School Counselor Association
63 shall appoint one member to a two-year term.

64 (4) After the initial terms are completed, appointments
65 shall be made as follows:

66 (A) Members shall be appointed for three-year terms; and

67 (B) Members are eligible to succeed themselves for one
68 additional consecutive term.

69 (5) The term of each member begins on July 1 of the year
70 in which the appointment is made and ends on June 30 of the
71 year in which the appointment expires.

72 (e) The first meeting of the advisory board shall be called
73 by the Vice Chancellor for Administration, at which time the
74 members shall elect a chairperson for an initial term ending
75 on July 31, 2010. The chairperson may succeed himself or
76 herself for an additional one-year term as chairperson.
77 Thereafter, the term of the chairperson is for one year
78 beginning on August 1 of the year in which elected and
79 ending on July 31 of the following year. A member may not
80 serve more than two consecutive terms as chairperson.

81 (f) In the event of a vacancy, a successor shall be
82 appointed by the entity which appointed the vacating member
83 for the unexpired term of the vacating member. A person
84 appointed to fill a vacancy is eligible for reappointment for
85 one additional consecutive term unless the time remaining in
86 the unexpired term is less than six months in which case the
87 person filling the vacancy is eligible for reappointment for
88 two additional terms.

89 (g) Members of the advisory board serve without
90 compensation, but are entitled to reimbursement by the
91 commission for expenses, including travel expenses, which

92 are actually incurred by the member in the official conduct of
93 the business of the advisory board.

**ARTICLE 7. WEST VIRGINIA PROVIDING REAL
OPPORTUNITIES FOR MAXIMIZING
IN-STATE STUDENT EXCELLENCE
SCHOLARSHIP PROGRAM.**

§18C-7-3. Definitions.

§18C-7-4. Dissolution of the PROMISE Scholarship Board; transfer of funds.

§18C-7-5. Powers and duties of the West Virginia Higher Education Policy Commission regarding the PROMISE Scholarship.

§18C-7-6. Promise scholarship program requirements; legislative rule.

§18C-7-7. West Virginia PROMISE Scholarship Fund continued.

§18C-7-3. Definitions.

1 (a) *General.* -- For the purposes of this article, terms
2 have the meaning ascribed to them in section two, article one
3 of this chapter, unless the context in which the term is used
4 clearly requires a different meaning or a specific definition is
5 provided in this section.

6 (b) *Definitions.* --

7 (1) "Eligible institution" means:

8 (A) A state institution of higher education as defined in
9 section two, article one, chapter eighteen-b of this code;

10 (B) Alderson-Broaddus College, Appalachian Bible
11 College, Bethany College, Davis and Elkins College,
12 Mountain State University, Ohio Valley University, the
13 University of Charleston, West Virginia Wesleyan College
14 and Wheeling Jesuit University, all in West Virginia. Any
15 institution listed in this subdivision ceases to be an eligible
16 institution if it meets either of the following conditions:

17 (i) It loses regional accreditation; or

18 (ii) It changes its status as a private, not-for-profit
19 institution;

20 (C) Any other public or private regionally accredited
21 institution in this state approved by the commission.

22 (2) "Tuition" means the quarter, semester or term charges
23 imposed by an eligible state institution of higher education
24 and, additionally, all mandatory fees required as a condition
25 of enrollment by all students. For the purposes of this article,
26 the following conditions apply:

27 (A) West Virginia University, Potomac State College and
28 West Virginia University Institute of Technology are
29 considered separate institutions for purposes of determining
30 tuition rates; and

31 (B) The tuition amount paid by undergraduate health
32 sciences students at West Virginia University is considered
33 to be the same as the amount of tuition paid by all other West
34 Virginia University undergraduate students.

35 (3) "Enrolled" means either currently enrolled or in the
36 process of enrolling in an eligible institution.

**§18C-7-4. Dissolution of the PROMISE Scholarship Board;
transfer of funds.**

1 (a) The West Virginia PROMISE Scholarship Board is
2 hereby dissolved.

3 (b) All funds administered by the former PROMISE
4 Scholarship Board shall be administered by the Higher
5 Education Policy Commission.

**§18C-7-5. Powers and duties of the West Virginia Higher
Education Policy Commission regarding the
PROMISE Scholarship.**

1 (a) *Powers of commission.* -- In addition to the powers
2 granted by any other provision of this code, the commission
3 has the powers necessary or convenient to carry out the
4 purposes and provisions of this article including, but not
5 limited to, the following express powers:

6 (1) To promulgate legislative rules in accordance with the
7 provisions of article three-a, chapter twenty-nine-a of this
8 code to effectuate the purposes of this article;

9 (2) To invest any of the funds of the West Virginia
10 PROMISE Scholarship Fund established in section seven of
11 this article with the West Virginia Investment Management
12 Board in accordance with the provisions of article six,
13 chapter twelve of this code. Any investments made pursuant
14 to this article shall be made with the care, skill, prudence and
15 diligence under the circumstances then prevailing that a
16 prudent person acting in a like capacity and familiar with
17 such matters would use in conducting an enterprise of a like
18 character and with like aims. Fiduciaries shall diversify plan
19 investments to the extent permitted by law to minimize the
20 risk of large losses, unless under the circumstances it is
21 clearly prudent not to do so;

22 (3) To execute contracts and other necessary instruments;

23 (4) To impose reasonable requirements for residency for
24 students applying for the PROMISE scholarship. Except as
25 provided in section four, article one of this chapter, a student
26 shall have met the following requirements to be eligible:

27 (A) Completed at least one half of the credits required for
28 high school graduation in a public or private high school in
29 this state; or

30 (B) Received instruction in the home or other approved
31 place pursuant to subsection (c), section one, article eight,

32 chapter eighteen of this code for the two years immediately
33 preceding application;

34 (C) This subsection does not establish residency
35 requirements for matriculation or fee payment purposes at
36 state institutions of higher education;

37 (5) To contract for necessary goods and services, to
38 employ necessary personnel and to engage the services of
39 private persons for administrative and technical assistance in
40 carrying out the responsibilities of the scholarship program.
41 Any services provided or secured to implement or administer
42 the provisions of this section remain under the direction and
43 authority of the Vice Chancellor for Administration;

44 (6) To solicit and accept gifts, including bequests or other
45 testamentary gifts made by will, trust or other disposition,
46 grants, loans and other aid from any source and to participate
47 in any federal, state or local governmental programs in
48 carrying out the purposes of this article;

49 (7) To define the terms and conditions under which
50 scholarships are awarded with the minimum requirements
51 being set forth in section six of this article; and

52 (8) To establish other policies, procedures and criteria
53 necessary to implement and administer the provisions of this
54 article.

55 (b) *Duties of commission.* -- In addition to any duty
56 required by any other provision of this code, the commission
57 has the following responsibilities:

58 (1) To operate the program in a fiscally responsible
59 manner and within the limits of available funds;

60 (2) To operate the program as a merit-based program;

61 (3) To adjust academic eligibility requirements should
62 projections indicate that available funds will not be sufficient
63 to cover future costs; and

64 (4) To maintain contact with graduates who have
65 received PROMISE scholarships and to provide a written
66 statement of intent to recipients who are selected to receive
67 a PROMISE scholarship notifying them that acceptance of
68 the scholarship entails a responsibility to supply the
69 following:

70 (A) Information requested by the commission to
71 determine the number and percentage of recipients who shall:

72 (i) Continue to live in West Virginia after graduation;

73 (ii) Obtain employment in West Virginia after
74 graduation; and

75 (iii) Enroll in post-graduate education programs;

76 (B) For PROMISE scholars who enroll in post-graduate
77 education programs, the name of the state in which each post-
78 graduate institution is located; and

79 (C) Any other relevant information the commission
80 reasonably requests to implement the provisions of this
81 subdivision;

82 (5) To analyze and use the data collected pursuant to
83 subdivision (4) of this subsection to:

84 (A) Report the findings annually to the Legislative
85 Oversight Commission on Education Accountability; and

86 (B) Make annual recommendations to the Legislative
87 Oversight Commission on Education Accountability

88 regarding any actions the commission considers necessary or
89 expedient to encourage PROMISE recipients to live and work
90 in the state after graduation.

**§18C-7-6. Promise scholarship program requirements;
legislative rule.**

1 (a) A PROMISE scholarship annual award shall meet the
2 following conditions:

3 (1) For a student enrolled in a state institution of higher
4 education, the annual award is equal to the lesser of the cost
5 of tuition or \$4,750, except that a student who was awarded
6 and used a PROMISE scholarship annual award prior to
7 January 1, 2010, shall continue to receive the annual award
8 calculated under the same terms and conditions that applied
9 on the day before the effective date of this article;

10 (2) For a student enrolled in an eligible institution other
11 than a state institution of higher education, the annual award
12 is equal to, but may not exceed, the lesser of the cost of
13 tuition or \$4,750, except that a student who was awarded and
14 used a PROMISE scholarship annual award prior to January
15 1, 2010, shall continue to receive the annual award calculated
16 under the same terms and conditions that applied on the day
17 before the effective date of this article;

18 (3) The annual award may exceed \$4,750, if the
19 commission determines that adequate funds are available, but
20 in any case, may not be greater than the actual cost of tuition;

21 (4) The annual award shall be used by an eligible
22 institution to supplement, but may not supplant, a tuition and
23 fee waiver for which the individual is eligible pursuant to
24 section five, six-a, seven or seven-b, article ten, chapter
25 eighteen-b of this code.

26 (b) The total cost of all scholarships awarded by the
27 commission in any year may not exceed the amount of funds
28 available to the commission during that fiscal year.

29 (c) In order to be eligible to receive a PROMISE
30 scholarship award an individual shall:

31 (1) Submit a scholarship award application to the
32 commission:

33 (A) Within two years of graduating from high school or
34 within two years of acquiring a general equivalency degree
35 if provided instruction in the home or other approved place
36 pursuant to subsection (c), section one, article eight, chapter
37 eighteen of this code; or

38 (B) Within seven years of initially entering military
39 service, and within one year of discharge from military
40 service, if the individual has entered the United States armed
41 services within two years after graduating from high school;

42 (2) Apply for and submit a Free Application for Federal
43 Student Aid;

44 (3) Maintain a grade point average of at least 3.0 on a 4.0
45 grading scale in the required core and elective course work
46 necessary to prepare students for success in post-secondary
47 education at the associate and baccalaureate degree levels as
48 determined by the commission, if the individual has
49 completed not more than one semester or term at an
50 institution of higher education, excluding credits earned in
51 advanced placement, international baccalaureate, dual credit
52 and comparable courses while the student is enrolled in high
53 school;

54 (4) Maintain appropriate academic progress toward the
55 completion of a degree at the undergraduate education level

56 as determined by the commission if the individual has
57 completed more than one semester or term at an institution of
58 higher education, excluding credits earned in advanced
59 placement, international baccalaureate, dual credit and
60 comparable courses while the student is enrolled in high
61 school;

62 (5) Be a United States citizen or legal immigrant to the
63 United States;

64 (6) Meet additional objective standards the commission
65 considers necessary to promote academic excellence and to
66 maintain the financial stability of the fund; and

67 (7) Enroll in an eligible institution. A student enrolled at
68 an eligible institution who receives a PROMISE scholarship
69 award may retain and renew the scholarship to complete his
70 or her undergraduate education at that institution or any other
71 eligible institution under the following circumstances:

72 (A) The institution at which the student is enrolled loses
73 its status as an eligible institution pursuant to the provisions
74 of subdivision (1), subsection (b), section three of this article;
75 and

76 (B) The student meets all other renewal requirements of
77 this code and of commission rules.

78 (d) It is the intent of the Legislature that the commission
79 shall strongly encourage prospective candidates for the
80 PROMISE scholarship to perform at least twenty hours of
81 unpaid community service while in high school to help
82 prepare them for success in post-secondary education. The
83 community service may include, but is not limited to,
84 participation with nonprofit, governmental or community-
85 based organizations designed with any or all of the following
86 purposes:

- 87 (1) Improving the quality of life for community residents;
- 88 (2) Meeting the needs of community residents; or
- 89 (3) Fostering civic responsibility.
- 90 (e) The commission shall promulgate a legislative rule in
91 accordance with the provisions of article three-a, chapter
92 twenty-nine-a of this code.
- 93 (1) The rule shall include at least the following
94 provisions:
- 95 (A) The amount of a PROMISE scholarship award in
96 combination with aid from all other sources may not exceed
97 the cost of education at the institution the recipient is
98 attending. This provision does not apply to members of the
99 West Virginia National Guard, recipients of an Underwood-
100 Smith teacher scholarship and recipients of a West Virginia
101 engineering, science and technology scholarship;
- 102 (B) Additional objective standards the commission
103 considers necessary:
- 104 (i) To promote academic excellence;
- 105 (ii) To maintain the financial stability of the fund; and
- 106 (iii) To operate the program within the limits of available
107 funds.
- 108 (C) Provisions for making the highest and best use of the
109 PROMISE Scholarship Program in conjunction with the
110 West Virginia College Prepaid Tuition and Savings Program
111 Act set forth in article thirty, chapter eighteen of this code;
- 112 (D) A provision defining the relationship of PROMISE
113 scholarship awards to all other sources of student financial

114 aid to ensure maximum coordination. The provision shall
115 include the following:

116 (i) Methods to maximize student eligibility for federal
117 student financial aid;

118 (ii) A requirement that PROMISE scholarship awards not
119 supplant tuition and fee waivers; and

120 (iii) Clarification of the relationship between the
121 PROMISE Scholarship Program, tuition savings plans and
122 other state-funded student financial aid programs;

123 (E) A method for awarding scholarships within the limits
124 of available appropriations, including circumstances when
125 program funds are not sufficient to provide awards to all
126 eligible applicants. The commission may not use any of the
127 following methods:

128 (i) Providing for an annual PROMISE scholarship award
129 that is less than the amounts provided for in this section; or

130 (ii) Eliminating any current recipient from eligibility; and

131 (F) A method for applicants to appeal determinations of
132 eligibility and renewal.

133 (2) The rule may provide for or require the following at
134 the commission's discretion:

135 (A) Requiring repayment of the amount of the
136 scholarship, in whole or in part, if a scholarship recipient
137 chooses to work outside the state after graduation. The rule
138 may not require a recipient to repay a scholarship, in whole
139 or in part, unless the prospective recipient has been informed
140 of this requirement in writing before initial acceptance of the
141 PROMISE scholarship award;

142 (B) Targeting a portion of the scholarship funds to be
143 used for applicants enrolled in an engineering, science,
144 technology or other designated program;

145 (C) Determining what other sources of funding for higher
146 education are to be deducted from the PROMISE scholarship
147 award; and

148 (D) Providing additional criteria as determined by the
149 commission.

150 (3) The Legislature finds that an emergency exists and,
151 therefore, the commission shall file a rule to implement the
152 provisions of this section as an emergency rule pursuant to
153 the provisions of article three-a, chapter twenty-nine-a of this
154 code. The rule is subject to the prior approval of the
155 Legislative Oversight Commission on Education
156 Accountability.

157 (4) Any rule promulgated by the commission pursuant to
158 previous enactments of this article in effect on the effective
159 date of the amendment and reenactment of this article in the
160 year 2009 remains in effect until amended, modified,
161 repealed or replaced by the commission.

**§18C-7-7. West Virginia PROMISE Scholarship Fund
continued.**

1 (a) The special revenue fund in the State Treasury
2 designated and known as the PROMISE Scholarship Fund is
3 continued. The fund consists of moneys from the following
4 sources:

5 (1) All appropriations to the fund from the West Virginia
6 Lottery, video lottery and taxes on amusement devices;

7 (2) All appropriations by the Legislature for the
8 PROMISE Scholarship Fund;

9 (3) Any gifts, grants or contributions received for the
10 PROMISE Scholarship Program; and

11 (4) All interest or other income earned from investment
12 of the fund.

13 (b) The allocations to the fund are subject to
14 appropriation by the Legislature. Nothing in this article
15 requires any specific level of funding by the Legislature nor
16 guarantees nor entitles any individual to any benefit or grant
17 of funds.

18 (c) For the fiscal year beginning July 1, 2006, it is the
19 intent of the Legislature that the aggregate of the amount of
20 moneys transferred to the fund pursuant to section eighteen-a,
21 article twenty-two, chapter twenty-nine of this code, and any
22 other amounts of public moneys that may be transferred to
23 the fund by appropriation of the Legislature, shall equal, but
24 may not exceed, \$40 million. For each fiscal year thereafter
25 until and including the fiscal year ending June 30, 2009, it is
26 the intent of the Legislature that this aggregate be an amount
27 two percent greater than the aggregate established by this
28 subsection for the prior fiscal year. For the fiscal year
29 beginning July 1, 2009, it is the intent of the Legislature that
30 the aggregate of the amount of moneys transferred to the fund
31 pursuant to section eighteen-a, article twenty-two, chapter
32 twenty-nine of this code and any other amounts of public
33 moneys that may be transferred to the fund by appropriation
34 of the Legislature shall equal \$45 million. For the fiscal year
35 beginning July 1, 2010, it is the intent of the Legislature that
36 the aggregate of the amount of moneys transferred to the fund
37 shall equal \$48 million. For the fiscal year beginning July 1,
38 2011, and every fiscal year thereafter, it is the intent of the
39 Legislature that the aggregate of the amount of moneys
40 transferred to the fund shall equal \$47,500,000 .

41 (d) The commission may expend the moneys in the fund
42 to implement the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

1 (a) The State Lottery Fund in the State Treasury which is
2 designated and known as the State Excess Lottery Revenue
3 Fund is continued. The fund consists of all appropriations to
4 the fund and all interest earned from investment of the fund
5 and any gifts, grants or contributions received by the fund.
6 All revenues received under the provisions of sections ten-b
7 and ten-c, article twenty-two-a of this chapter and under
8 article twenty-two-b of this chapter, except the amounts due
9 the commission under subdivision (1), subsection (a), section
10 one thousand four hundred eight, article twenty-two-b of this
11 chapter, shall be deposited in the State Treasury and placed
12 into the State Excess Lottery Revenue Fund. The revenue
13 shall be disbursed in the manner provided in this section for
14 the purposes stated in this section and shall not be treated by
15 the State Auditor and the State Treasurer as part of the
16 general revenue of the state.

17 (b) For the fiscal year beginning July 1, 2002, the
18 commission shall deposit: (1) \$65 million into the subaccount
19 of the state Excess Lottery Revenue Fund hereby created in
20 the State Treasury to be known as the General Purpose
21 Account to be expended pursuant to appropriation of the
22 Legislature; (2) \$10 million into the Education Improvement
23 Fund for appropriation by the Legislature to the PROMISE
24 Scholarship Fund created in section seven, article seven,
25 chapter eighteen-c of this code; (3) \$19 million into the
26 Economic Development Project Fund created in subsection
27 (e) of this section for the issuance of revenue bonds and to be
28 spent in accordance with the provisions of said subsection;
29 (4) \$20 million into the School Building Debt Service Fund

30 created in section six, article nine-d, chapter eighteen of this
31 code for the issuance of revenue bonds; (5) \$40 million into
32 the West Virginia Infrastructure Fund created in section nine,
33 article fifteen-a, chapter thirty-one of this code to be spent in
34 accordance with the provisions of said article; (6) \$10 million
35 into the Higher Education Improvement Fund for Higher
36 Education; and (7) \$5 million into the State Park
37 Improvement Fund for Park Improvements. For the fiscal
38 year beginning July 1, 2003, the commission shall deposit:
39 (1) \$65 million into the General Purpose Account to be
40 expended pursuant to appropriation of the Legislature; (2)
41 \$17 million into the Education Improvement Fund for
42 appropriation by the Legislature to the PROMISE
43 Scholarship Fund created in section seven, article seven,
44 chapter eighteen-c of this code; (3) \$19 million into the
45 Economic Development Project Fund created in subsection
46 (e) of this section for the issuance of revenue bonds and to be
47 spent in accordance with the provisions of said subsection;
48 (4) \$20 million into the School Building Debt Service Fund
49 created in section six, article nine-d, chapter eighteen of this
50 code for the issuance of revenue bonds; (5) \$40 million into
51 the West Virginia Infrastructure Fund created in section nine,
52 article fifteen-a, chapter thirty-one of this code to be spent in
53 accordance with the provisions of said article; (6) \$10 million
54 into the Higher Education Improvement Fund for Higher
55 Education; and (7) \$7 million into the State Park
56 Improvement Fund for Park Improvements.

57 (c) For the fiscal year beginning July 1, 2004, and
58 subsequent fiscal years through the fiscal year ending June
59 30, 2009, the commission shall deposit: (1) \$65 million into
60 the General Purpose Account to be expended pursuant to
61 appropriation of the Legislature; (2) \$27 million into the
62 Education Improvement Fund for appropriation by the
63 Legislature to the PROMISE Scholarship Fund created in
64 section seven, article seven, chapter eighteen-c of this code;
65 (3) \$19 million into the Economic Development Project Fund

66 created in subsection (e) of this section for the issuance of
67 revenue bonds and to be spent in accordance with the
68 provisions of said subsection; (4) \$19 million into the School
69 Building Debt Service Fund created in section six, article
70 nine-d, chapter eighteen of this code for the issuance of
71 revenue bonds: *Provided*, That for the fiscal year beginning
72 July 1, 2008, and subsequent fiscal years, no moneys shall be
73 deposited in the School Building Debt Service Fund pursuant
74 to this subsection and instead \$19 million shall be deposited
75 into the Excess Lottery School Building Debt Service Fund;
76 (5) \$40 million into the West Virginia Infrastructure Fund
77 created in section nine, article fifteen-a, chapter thirty-one of
78 this code to be spent in accordance with the provisions of
79 said article; (6) \$10 million into the Higher Education
80 Improvement Fund for Higher Education; and (7) \$5 million
81 into the State Park Improvement Fund for Park
82 Improvements. No portion of the distributions made as
83 provided in this subsection and subsection (b) of this section,
84 except distributions made in connection with bonds issued
85 under subsection (e) of this section, may be used to pay debt
86 service on bonded indebtedness until after the Legislature
87 expressly authorizes issuance of the bonds and payment of
88 debt service on the bonds through statutory enactment or the
89 adoption of a concurrent resolution by both houses of the
90 Legislature. Until subsequent legislative enactment or
91 adoption of a resolution that expressly authorizes issuance of
92 the bonds and payment of debt service on the bonds with
93 funds distributed under this subsection and subsection (b) of
94 this section, except distributions made in connection with
95 bonds issued under subsection (d) of this section, the
96 distributions may be used only to fund capital improvements
97 that are not financed by bonds and only pursuant to
98 appropriation of the Legislature.

99 (d) For the fiscal year beginning July 1, 2009, and
100 subsequent fiscal years, the commission shall deposit: (1) \$65
101 million into the General Purpose Account to be expended

102 pursuant to appropriation of the Legislature; (2) \$29 million
103 into the Education Improvement Fund for appropriation by
104 the Legislature to the PROMISE Scholarship Fund created in
105 section seven, article seven, chapter eighteen-c of this code;
106 (3) \$19 million into the Economic Development Project Fund
107 created in subsection (e) of this section for the issuance of
108 revenue bonds and to be spent in accordance with the
109 provisions of said subsection; (4) \$19 million into the Excess
110 Lottery School Building Debt Service Fund created in section
111 six, article nine-d, chapter eighteen of this code; (5) \$40
112 million into the West Virginia Infrastructure Fund created in
113 section nine, article fifteen-a, chapter thirty-one of this code
114 to be spent in accordance with the provisions of said article;
115 (6) \$10 million into the Higher Education Improvement Fund
116 for Higher Education; and (7) \$5 million into the State Park
117 Improvement Fund for Park Improvements. No portion of
118 the distributions made as provided in this subsection and
119 subsection (b) of this section, except distributions made in
120 connection with bonds issued under subsection (e) of this
121 section, may be used to pay debt service on bonded
122 indebtedness until after the Legislature expressly authorizes
123 issuance of the bonds and payment of debt service on the
124 bonds through statutory enactment or the adoption of a
125 concurrent resolution by both houses of the Legislature.
126 Until subsequent legislative enactment or adoption of a
127 resolution that expressly authorizes issuance of the bonds and
128 payment of debt service on the bonds with funds distributed
129 under this subsection and subsection (b) of this section,
130 except distributions made in connection with bonds issued
131 under subsection (e) of this section, the distributions may be
132 used only to fund capital improvements that are not financed
133 by bonds and only pursuant to appropriation of the
134 Legislature.

135 (e) The Legislature finds and declares that in order to
136 attract new business, commerce and industry to this state, to
137 retain existing business and industry providing the citizens of

138 this state with economic security and to advance the business
139 prosperity of this state and the economic welfare of the
140 citizens of this state, it is necessary to provide public
141 financial support for constructing, equipping, improving and
142 maintaining economic development projects, capital
143 improvement projects and infrastructure which promote
144 economic development in this state.

145 (1) The West Virginia Economic Development Authority
146 created and provided for in article fifteen, chapter thirty-one
147 of this code shall, by resolution, in accordance with the
148 provisions of this article and article fifteen, chapter thirty-one
149 of this code, and upon direction of the Governor, issue
150 revenue bonds of the Economic Development Authority in no
151 more than two series to pay for all or a portion of the cost of
152 constructing, equipping, improving or maintaining projects
153 under this section or to refund the bonds at the discretion of
154 the authority. Any revenue bonds issued on or after July 1,
155 2002, which are secured by state excess lottery revenue
156 proceeds shall mature at a time or times not exceeding thirty
157 years from their respective dates. The principal of and the
158 interest and redemption premium, if any, on the bonds shall
159 be payable solely from the special fund provided in this
160 section for the payment.

161 (2) The special revenue fund named the Economic
162 Development Project Fund into which shall be is deposited
163 the amounts to be deposited in the fund as specified in
164 subsections (b), (c) and (d) of this section is continued. The
165 Economic Development Project Fund shall consist of all such
166 moneys, all appropriations to the fund, all interest earned
167 from investment of the fund and any gifts, grants or
168 contributions received by the fund. All amounts deposited in
169 the fund shall be pledged to the repayment of the principal,
170 interest and redemption premium, if any, on any revenue
171 bonds or refunding revenue bonds authorized by this section,
172 including any and all commercially customary and

173 reasonable costs and expenses which may be incurred in
174 connection with the issuance, refunding, redemption or
175 defeasance of the bonds. The West Virginia Economic
176 Development Authority may further provide in the resolution
177 and in the trust agreement for priorities on the revenues paid
178 into the Economic Development Project Fund that are
179 necessary for the protection of the prior rights of the holders
180 of bonds issued at different times under the provisions of this
181 section. The bonds issued pursuant to this subsection shall be
182 separate from all other bonds which may be or have been
183 issued, from time to time, under the provisions of this article.

184 (3) After the West Virginia Economic Development
185 Authority has issued bonds authorized by this section and
186 after the requirements of all funds have been satisfied,
187 including any coverage and reserve funds established in
188 connection with the bonds issued pursuant to this subsection,
189 any balance remaining in the Economic Development Project
190 Fund may be used for the redemption of any of the
191 outstanding bonds issued under this subsection which, by
192 their terms, are then redeemable or for the purchase of the
193 outstanding bonds at the market price, but not to exceed the
194 price, if any, at which redeemable, and all bonds redeemed or
195 purchased shall be immediately canceled and shall not again
196 be issued.

197 (4) Bonds issued under this subsection shall state on their
198 face that the bonds do not constitute a debt of the State of
199 West Virginia; that payment of the bonds, interest and
200 charges thereon cannot become an obligation of the State of
201 West Virginia; and that the bondholders' remedies are limited
202 in all respects to the Special Revenue Fund established in this
203 subsection for the liquidation of the bonds.

204 (5) The West Virginia Economic Development Authority
205 shall expend the bond proceeds from the revenue bond issues
206 authorized and directed by this section for projects certified

207 under the provision of this subsection: *Provided*, That the
208 bond proceeds shall be expended in accordance with the
209 requirements and provisions of article five-a, chapter
210 twenty-one of this code and either article twenty-two or
211 twenty-two-a, chapter five of this code, as the case may be:
212 *Provided, however*, That if the bond proceeds are expended
213 pursuant to article twenty-two-a, chapter five of this code and
214 if the Design-Build Board created under said article
215 determines that the execution of a design-build contract in
216 connection with a project is appropriate pursuant to the
217 criteria set forth in said article and that a competitive bidding
218 process was used in selecting the design builder and
219 awarding the contract, the determination shall be conclusive
220 for all purposes and shall be considered to satisfy all the
221 requirements of said article.

222 (6) For the purpose of certifying the projects that will
223 receive funds from the bond proceeds, a committee is hereby
224 established and comprised of the Governor, or his or her
225 designee, the Secretary of the Department of Revenue, the
226 Executive Director of the West Virginia Development Office
227 and six persons appointed by the Governor: *Provided*, That
228 at least one citizen member must be from each of the state's
229 three congressional districts. The committee shall meet as
230 often as necessary and make certifications from bond
231 proceeds in accordance with this subsection. The committee
232 shall meet within thirty days of the effective date of this
233 section.

234 (7) Applications for grants submitted on or before July 1,
235 2002, shall be considered refiled with the committee. Within
236 ten days from the effective date of this section as amended in
237 the year 2003, the lead applicant shall file with the committee
238 any amendments to the original application that may be
239 necessary to properly reflect changes in facts and
240 circumstances since the application was originally filed with
241 the committee.

242 (8) When determining whether or not to certify a project,
243 the committee shall take into consideration the following:

244 (A) The ability of the project to leverage other sources of
245 funding;

246 (B) Whether funding for the amount requested in the
247 grant application is or reasonably should be available from
248 commercial sources;

249 (C) The ability of the project to create or retain jobs,
250 considering the number of jobs, the type of jobs, whether
251 benefits are or will be paid, the type of benefits involved and
252 the compensation reasonably anticipated to be paid persons
253 filling new jobs or the compensation currently paid to
254 persons whose jobs would be retained;

255 (D) Whether the project will promote economic
256 development in the region and the type of economic
257 development that will be promoted;

258 (E) The type of capital investments to be made with bond
259 proceeds and the useful life of the capital investments; and

260 (F) Whether the project is in the best interest of the
261 public.

262 (9) A grant may not be awarded to an individual or other
263 private person or entity. Grants may be awarded only to an
264 agency, instrumentality or political subdivision of this state
265 or to an agency or instrumentality of a political subdivision
266 of this state.

267 The project of an individual or private person or entity
268 may be certified to receive a low-interest loan paid from bond
269 proceeds. The terms and conditions of the loan, including,
270 but not limited to, the rate of interest to be paid and the

271 period of the repayment, shall be determined by the
272 Economic Development Authority after considering all
273 applicable facts and circumstances.

274 (10) Prior to making each certification, the committee
275 shall conduct at least one public hearing, which may be held
276 outside of Kanawha County. Notice of the time, place, date
277 and purpose of the hearing shall be published in at least one
278 newspaper in each of the three congressional districts at least
279 fourteen days prior to the date of the public hearing.

280 (11) The committee may not certify a project unless the
281 committee finds that the project is in the public interest and
282 the grant will be used for a public purpose. For purposes of
283 this subsection, projects in the public interest and for a public
284 purpose include, but are not limited to:

285 (A) Sports arenas, fields, parks, stadiums and other sports
286 and sports-related facilities;

287 (B) Health clinics and other health facilities;

288 (C) Traditional infrastructure, such as water and
289 wastewater treatment facilities, pumping facilities and
290 transmission lines;

291 (D) State-of-the-art telecommunications infrastructure;

292 (E) Biotechnical incubators, development centers and
293 facilities;

294 (F) Industrial parks, including construction of roads,
295 sewer, water, lighting and other facilities;

296 (G) Improvements at state parks, such as construction,
297 expansion or extensive renovation of lodges, cabins,
298 conference facilities and restaurants;

299 (H) Railroad bridges, switches and track extension or
300 spurs on public or private land necessary to retain existing
301 businesses or attract new businesses;

302 (I) Recreational facilities, such as amphitheaters, walking
303 and hiking trails, bike trails, picnic facilities, restrooms, boat
304 docking and fishing piers, basketball and tennis courts, and
305 baseball, football and soccer fields;

306 (J) State-owned buildings that are registered on the
307 National Register of Historic Places;

308 (K) Retail facilities, including related service, parking
309 and transportation facilities, appropriate lighting, landscaping
310 and security systems to revitalize decaying downtown areas;
311 and

312 (L) Other facilities that promote or enhance economic
313 development, educational opportunities or tourism
314 opportunities thereby promoting the general welfare of this
315 state and its residents.

316 (12) Prior to the issuance of bonds under this subsection,
317 the committee shall certify to the Economic Development
318 Authority a list of those certified projects that will receive
319 funds from the proceeds of the bonds. Once certified, the list
320 may not thereafter be altered or amended other than by
321 legislative enactment.

322 (13) If any proceeds from sale of bonds remain after
323 paying costs and making grants and loans as provided in this
324 subsection, the surplus may be deposited in an account in the
325 State Treasury known as the Economic Development Project
326 Bridge Loan Fund administered by the Economic
327 Development Authority created in article fifteen, chapter
328 thirty-one of this code. Expenditures from the fund are not
329 authorized from collections but are to be made only in

330 accordance with appropriation by the Legislature and in
331 accordance with the provisions of article three, chapter
332 twelve of this code and upon fulfillment of the provisions of
333 article two, chapter five-a of this code. Loan repayment
334 amounts, including the portion attributable to interest, shall
335 be paid into the fund created in this subdivision.

336 (f) If the commission receives revenues in an amount that
337 is not sufficient to fully comply with the requirements of
338 subsections (b), (c), (d) and (i) of this section, the
339 commission shall first make the distribution to the Economic
340 Development Project Fund; second, make the distribution or
341 distributions to the other funds from which debt service is to
342 be paid; third, make the distribution to the Education
343 Improvement Fund for appropriation by the Legislature to the
344 PROMISE Scholarship Fund; and fourth, make the
345 distribution to the General Purpose Account: *Provided*, That,
346 subject to the provisions of this subsection, to the extent the
347 revenues are not pledged in support of revenue bonds which
348 are or may be issued, from time to time, under this section,
349 the revenues shall be distributed on a pro rata basis.

350 (g) Each fiscal year, the commission shall, after meeting
351 the requirements of subsections (b), (c), (d) and (i) of this
352 section and after transferring to the State Lottery Fund
353 created under section eighteen of this article an amount equal
354 to any transfer from the State Lottery Fund to the Excess
355 Lottery Fund pursuant to subsection (f), section eighteen of
356 this article, deposit fifty percent of the amount by which
357 annual gross revenue deposited in the State Excess Lottery
358 Revenue Fund exceeds \$225 million in a fiscal year in a
359 separate account in the State Lottery Fund to be available for
360 appropriation by the Legislature.

361 (h) When bonds are issued for projects under subsection
362 (d) (e) of this section or for the School Building Authority,
363 infrastructure, higher education or park improvement

364 purposes described in this section that are secured by profits
365 from lotteries deposited in the State Excess Lottery Revenue
366 Fund, the Lottery Director shall allocate first to the Economic
367 Development Project Fund an amount equal to one tenth of
368 the projected annual principal, interest and coverage
369 requirements on any and all revenue bonds issued, or to be
370 issued as certified to the Lottery Director; and second, to the
371 fund or funds from which debt service is paid on bonds
372 issued under this section for the School Building Authority,
373 infrastructure, higher education and park improvements an
374 amount equal to one tenth of the projected annual principal,
375 interest and coverage requirements on any and all revenue
376 bonds issued, or to be issued as certified to the Lottery
377 Director. In the event there are insufficient funds available
378 in any month to transfer the amounts required pursuant to this
379 subsection, the deficiency shall be added to the amount
380 transferred in the next succeeding month in which revenues
381 are available to transfer the deficiency.

382 (i) Prior to the distributions provided in subsection (d) of
383 this section, the Lottery Commission shall deposit into the
384 General Revenue Fund amounts necessary to provide
385 reimbursement for the refundable credit allowable under
386 section twenty-one, article twenty-one, chapter eleven of this
387 code.

388 (j) (1) The Legislature considers the following as
389 priorities in the expenditure of any surplus revenue funds:

390 (A) Providing salary and/or increment increases for
391 professional educators and public employees;

392 (B) Providing adequate funding for the Public Employees
393 Insurance Agency; and

394 (C) Providing funding to help address the shortage of
395 qualified teachers and substitutes in areas of need, both in
396 number of teachers and in subject matter areas.

397 (2) The provisions of this subsection may not be
398 construed by any court to require any appropriation or any
399 specific appropriation or level of funding for the purposes set
400 forth in this subsection.

401 (k) The Legislature further directs the Governor to focus
402 resources on the creation of a prescription drug program for
403 senior citizens by pursuing a Medicaid waiver to offer
404 prescription drug services to senior citizens; by investigating
405 the establishment of purchasing agreements with other
406 entities to reduce costs; by providing discount prices or
407 rebate programs for seniors; by coordinating programs
408 offered by pharmaceutical manufacturers that provide
409 reduced cost or free drugs; by coordinating a collaborative
410 effort among all state agencies to ensure the most efficient
411 and cost-effective program possible for the senior citizens of
412 this state; and by working closely with the state's
413 congressional delegation to ensure that a national program is
414 implemented. The Legislature further directs that the
415 Governor report his or her progress back to the Joint
416 Committee on Government and Finance on an annual basis
417 until a comprehensive program has been fully implemented.



CHAPTER 85

(H.B. 3340 - By Delegates M. Poling and Paxton)

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §18B-1D-10,
relating to entry into a data state compact among the Higher

Education Policy Commission, Council for Community and Technical College Education and State Board of Education; authorizing disclosures of information among the parties; requiring that personal privacy laws be obeyed and security measures and procedures be developed; and setting forth requirements for data sharing arrangements with research organizations.

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 §18B-1D-10, to read as follows:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-10. State data sharing compact; legislative intent; findings; definitions.

1 (a) The intent of the Legislature in enacting this section
2 is to direct the commission, council and State Board of
3 Education to enter into a state compact, consistent with the
4 provisions of section six of this article, on or before July 1,
5 2009, to develop and maintain a longitudinal education data
6 system and to share educational information.

7 (b) The Legislature makes the following findings:

8 (1) Sound data collection, reporting and analysis are
9 critical to building an education system capable of ensuring
10 that all West Virginia students are adequately prepared for
11 college and the global workforce. Elementary schools,
12 middle schools, secondary schools and higher education
13 institutions can improve instructional and educational
14 decision-making using data that are collected and made
15 available to them.

16 (2) State education policymaking benefits from
17 partnerships between state education agencies and entities
18 with expertise in education research. It is beneficial for West
19 Virginia to establish systems and processes that permit
20 qualified researchers to assist with state evaluation and
21 research functions in a manner that is consistent with privacy
22 protection laws.

23 (3) West Virginia is committed to establishing and
24 maintaining a longitudinal student unit record data system
25 that educators and policymakers can use to analyze and
26 assess student progress beginning with early learning
27 programs and continuing through post-secondary education
28 and into employment. The commission, council and State
29 Board of Education have designed, built and deployed some
30 of the fundamental components of a longitudinal data system
31 and have engaged in extensive efforts to link and use
32 available education data effectively. Now, it is necessary to
33 integrate and manage the various education data components
34 in a cooperative manner to establish a data-driven,
35 decision-making environment for this state's education
36 system.

37 (4) Students will achieve improved learning outcomes
38 because of the longitudinal data system established through
39 the state compact mandated by this section.

40 (6) State use and management of education data shall be
41 in accordance with all legal requirements protecting student
42 privacy and shall protect personal information from
43 intentional or accidental release to unauthorized persons and
44 from intentional or accidental use for unauthorized purposes.

45 (c) Definitions:

46 (1) "Longitudinal data system" means a student unit
47 record data system that links student records beginning with

48 early learning programs and continuing through post-
49 secondary education, entry into the workforce and beyond.
50 The system may consist of separate student unit record
51 systems integrated through agreement and data transfer
52 mechanisms.

53 (2) "Privacy protection laws" means the federal Family
54 Educational Rights and Privacy Act of 1974 (20 U.S.C.
55 1232g) and any other state or federal laws relating to the
56 confidentiality and protection of personally identifiable
57 information.

58 (3) "Research organization" means a governmental entity,
59 institution of higher education, public policy organization or
60 other person or entity conducting educational research that
61 meets the following conditions:

62 (i) Qualified to perform educational research and protect
63 the privacy of student data;

64 (ii) Seeks to perform research for a non-commercial
65 purpose authorized by privacy protection laws; and

66 (iii) Agrees to perform the research pursuant to a written
67 agreement meeting the requirements of privacy protection
68 laws and best research practices.

69 (d) The state data-sharing compact entered into by the
70 commission, council and State Board of Education shall
71 contain the following:

72 (1) A plan to establish and maintain a longitudinal data
73 system that links early learning, elementary, middle and
74 secondary school student unit records with higher education
75 institution student unit records;

76 (2) A plan to establish a data warehouse that integrates
77 data from multiple student unit record systems and supports
78 all of the uses and functions of the longitudinal data system;

79 (3) A list of areas for collaborative research and a
80 preliminary plan for conducting that research;

81 (4) A system for entering into data sharing arrangements
82 with each other and with research organizations consistent
83 with subsection (f) of this section; and

84 (5) A provision that allows another party to the compact
85 to review any draft report or study generated using that
86 party's data at least ten days before the report or study is
87 released publicly. During that ten-day period, each party
88 shall be given the opportunity to submit comments regarding
89 the accuracy, conclusions and recommendations of the report
90 or study.

91 (e) To facilitate implementation of the requirements of
92 this section:

93 (1) The commission, council and State Board of
94 Education are authorized to disclose data to the longitudinal
95 data system and to each other consistent with the purposes of
96 this section;

97 (2) With the assistance of the State Board of Education,
98 the commission, council and state institutions of higher
99 education shall collect the State Board of Education's unique
100 identifier for all students who have attended public schools
101 in West Virginia to facilitate better matching of student unit
102 record data.

103 (3) The commission, council and State Board of
104 Education shall collect, use, maintain, disclose and share data
105 in accordance with personal privacy laws and shall develop
106 security measures and procedures that protect personal
107 information from intentional or accidental release to
108 unauthorized persons and from intentional or accidental use
109 for unauthorized purposes.

110 (f) A data sharing arrangement entered into with a
111 research organization pursuant to this section shall meet the
112 following criteria:

113 (1) Permitted by and undertaken in accordance with
114 privacy protection laws;

115 (2) Receives prior approval from the State Superintendent
116 of Schools or designee, the Chancellor for Higher Education
117 or designee, and the Chancellor for Community and
118 Technical College Education or designee, as appropriate, if
119 data from that entity are being utilized in the research;

120 (3) Prohibits the personal identification of any person by
121 individuals other than authorized representatives of the
122 research organization who have legitimate interests in the
123 information;

124 (4) Ensures the destruction or return of the data when no
125 longer needed for the authorized purposes under the data
126 sharing arrangement;

127 (5) Performed pursuant to a written agreement with the
128 research organization that does the following:

129 (A) Specifies the purpose, scope and duration of the data
130 sharing arrangement;

131 (B) Requires the recipient of the data to use personally
132 identifiable information from education records only to meet
133 the purpose or purposes of the data sharing arrangement
134 stated in the written agreement;

135 (C) Describes specific data access, use and security
136 restrictions that the recipient will undertake; and

137 (D) Contains such other terms and provisions as the
138 commission, council and State Board of Education, as
139 appropriate, consider necessary or appropriate.

140 (g) As a condition of participating in state-level financial
141 aid programs provided for in chapter eighteen-c of this code,
142 the commission may require non-public institutions of higher
143 education to provide data for the longitudinal data system and
144 data warehouse.



CHAPTER 86

**(Com. Sub. for H.B. 2335 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §18B-10-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-10-7c, all relating to higher education tuition and fee waivers; tuition and fee waivers for certain military personnel; the federal “Yellow Ribbon G.I. Education Enhancement Program”; requiring state institutions of higher education to participate in the program; requiring state institutions of higher education to enter into agreements with the United States Secretary of Veterans Affairs to provide matching contributions toward the cost of tuition and mandatory fees not otherwise covered under the Post-9/11 Veterans Educational Assistance Act of 2008; and clarifying residency requirement for certain tuition and fee waivers.

Be it enacted by the Legislature of West Virginia:

That §18B-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §18B-10-7c, all to read as follows:

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.**

§18B-10-7. Tuition and fee waivers for children and spouses of officers, firefighters, National Guard personnel, reserve personnel and active military duty personnel killed in the line of duty.

§18B-10-7c. Tuition and fee waivers for certain veterans receiving federal educational assistance benefits.

**§18B-10-7. Tuition and fee waivers for children and spouses of
officers, firefighters, National Guard personnel,
reserve personnel and active military duty
personnel killed in the line of duty.**

1 (a) Each state institution of higher education shall waive
2 tuition and fees for any person who is the child or spouse of
3 an individual who:

4 (1) Was employed or serving as:

5 (A) A law-enforcement officer as defined in section one,
6 article twenty-nine, chapter thirty of this code;

7 (B) A correctional officer at a state penal institution;

8 (C) A parole officer;

9 (D) A probation officer;

10 (E) A conservation officer; or

11 (F) A registered firefighter; and

12 (2) Was killed in the line of duty while:

13 (A) Employed by the state or any political subdivision of
14 the state; or

15 (B) A member of a volunteer fire department serving a
16 political subdivision of this state.

17 (b) Each state institution of higher education shall waive
18 tuition and fees for any person who is the child or spouse of:

19 (1) A National Guard member or a member of a reserve
20 component of the armed forces of the United States who is a
21 resident of this state and is killed in the line of duty. The
22 member is considered to have been killed in the line of duty
23 if death resulted from performing a duty required by his or
24 her orders or commander while in an official duty status,
25 other than on federal active duty, authorized under federal or
26 state law; or

27 (2) A person on federal or state active military duty who
28 is a resident of this state and is killed in the line of duty. The
29 person is considered to have been killed in the line of duty if
30 death resulted from performance of a duty required by his or
31 her orders or commander while in an official duty status.

32 (c) Any waiver granted pursuant to this section is subject
33 to the following:

34 (1) The recipient may attend any undergraduate course if
35 classroom space is available;

36 (2) The recipient has applied and been admitted to the
37 institution;

38 (3) The recipient has applied for and submitted the Free
39 Application for Federal Student Aid;

40 (4) The recipient has exhausted all other sources of
41 student financial assistance dedicated solely to tuition and
42 fees that exceed other grant assistance that are available to
43 him or her, excluding student loans;

44 (5) Waiver renewal is contingent upon the recipient
45 continuing to meet the academic progress standards
46 established by the institution.

47 (d) The state institution of higher education may require
48 the person to pay:

49 (1) Special fees, including any laboratory fees, if the fees
50 are required of all other students taking a single course or that
51 particular course; and

52 (2) Parking fees.

53 (e) The governing boards may promulgate rules:

54 (1) For determining the availability of classroom space;

55 (2) As each considers necessary to implement this
56 section; and

57 (3) Regarding requirements for attendance, which may
58 not exceed the requirements for other students.

59 (f) The governing boards may extend to persons
60 attending courses and classes under this section any rights,
61 privileges or benefits extended to other students which it
62 considers appropriate.

§18B-10-7c. Tuition and fee waivers for certain veterans receiving federal educational assistance benefits.

1 (a) The Legislature finds that:

2 (1) The United States Congress, in enacting the Post-9/11
3 Veterans Educational Assistance Act of 2008, 38 U.S.C.
4 §3301, *et seq.*, has established a program within the United
5 States Department of Veterans Affairs known as the “Yellow
6 Ribbon G.I. Education Enhancement Program”;

7 (2) Under the Act, certain individuals who served or are
8 serving on active duty in the United States Armed Forces
9 after September 11, 2001, are eligible to receive educational
10 assistance benefits equal to the cost of undergraduate resident
11 tuition and mandatory fees charged by a state institution of
12 higher education; and

13 (3) The Program provides additional educational
14 assistance benefits above the cost of undergraduate resident
15 tuition and mandatory fees to veterans receiving benefits
16 under the Act.

17 (b) The purpose of this section is to require state
18 institutions of higher education to participate in the Program
19 and encourage private institutions of higher education located
20 in the state to participate.

21 (c) As soon as practicable after the effective date of this
22 section, the governing board of each state institution of
23 higher education shall enter into an agreement with the
24 United States Secretary of Veterans Affairs to participate in
25 the Program. For every eligible veteran who is enrolled or
26 will be enrolled as an undergraduate student, the agreement
27 shall provide for a waiver of the cost of tuition and

28 mandatory fees not otherwise covered under 38 U.S.C.
29 §3313(c)(1)(A) at a percentage equal to the maximum
30 contribution available for match by the United States
31 Department of Veterans Affairs. The agreement also may
32 provide for a waiver of the cost of tuition and mandatory fees
33 not otherwise covered under 38 U.S.C. §3313(c)(1)(A) at a
34 percentage equal to the maximum contribution available for
35 match by the United States Department of Veterans Affairs
36 for every eligible veteran who is or will be enrolled in a
37 graduate or professional program.

38 (d) For the purposes of the limitation on the amount of
39 fee waivers permitted at state institutions of higher education
40 set forth in sections five and six of this article, any waiver
41 granted by a state institution of higher education in
42 connection with the Program is not counted toward the
43 amount of undergraduate, graduate or professional fee
44 waivers permitted at that institution.

45 (e) The Legislature encourages every private institution
46 of higher education located in the state to participate in the
47 Program.

48 (f) For the purposes of this section:

49 (1) “The Act” means the Post-9/11 Veterans Educational
50 Assistance Act of 2008, 38 U.S.C. §3301, *et seq.*;

51 (2) “The Program” means the Yellow Ribbon G.I.
52 Education Enhancement Program, 38 U.S.C. §3317; and

53 (3) “Eligible veteran” means any individual who is
54 eligible to participate in the Program.



CHAPTER 87

**(Com. Sub. for H.B. 2904 - By Delegates M. Poling
and Paxton)**

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

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules for higher education; authorizing rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education; and authorizing rules regarding Guidelines for Governing Boards in Employing and Evaluating Presidents, Employing and Evaluating Presidents, the Medical Student Loan Program, the West Virginia Higher Education Grant Program, the Research Trust Fund Program, Accountability System, Performance Indicators, and Finance.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18-17-2. Authorizing rules of Higher Education Policy Commission.

§18-17-3. Authorizing rule of the Council for Community and Technical College Education.

**§18B-17-2. Authorizing rules of Higher Education Policy
Commission.**

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship
4 Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science and
8 Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (Authorization of degree-granting institutions)
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy

30 Commission (Guidelines for Governing Boards in Employing
31 and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program) is authorized,
35 with the following amendment:

36 On page 2, subsection 5.1, following the words “financial
37 aid office” by inserting a new subdivision 5.1.3 to read as
38 follows: “United States citizenship or legal immigrant status
39 while actively pursuing United States citizenship.”

40 (j) The legislative rule filed in the State Register on
41 December 1, 2008, relating to the Higher Education Policy
42 Commission (West Virginia Higher Education Grant
43 Program) is authorized.

44 (k) The legislative rule filed in the State Register on
45 January 26, 2009, relating to the Higher Education Policy
46 Commission (Accountability System) is authorized.

**§18B-17-3. Authorizing rule of the Council for Community and
Technical College Education.**

1 (a) The legislative rule filed in the State Register on
2 September 29, 2004, relating to the West Virginia Council
3 for Community and Technical College Education
4 (performance indicators rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 13, 2005, relating to the West Virginia Council for
7 Community and Technical College Education (Authorization
8 of degree-granting institutions) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 30, 2006, relating to the West Virginia Council for
11 Community and Technical College Education (Workforce
12 Development Initiative Program) is authorized.

13 (d) The legislative rule filed in the State Register on
14 December 4, 2008, relating to the West Virginia Council for
15 Community and Technical College Education (Employing
16 and Evaluating Presidents) is authorized.

17 (e) The legislative rule filed in the State Register on
18 December 23, 2008, relating to the West Virginia Council for
19 Community and Technical College Education (Performance
20 Indicators) is authorized.

21 (f) The legislative rule filed in the State Register on
22 February 5, 2009, relating to the West Virginia Council for
23 Community and Technical College Education (Finance) is
24 authorized.

25 (g) The legislative rule filed in the State Register on
26 February 5, 2009, relating to the West Virginia Council for
27 Community and Technical College Education
28 (Accountability System) is authorized.



CHAPTER 88

**(H.B. 3229 - By Delegates M. Poling, Paxton, Stowers,
Ennis, Moye, Shaver, Williams, Perry, Shott, Sumner
and Canterbury)**

[Passed April 8, 2009; in effect July 1, 2009.]
[Approved by the Governor on April 20, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §18B-18B-1 and
18B-18B-2, all relating to creation of the Science and Research
Council; establishing purposes; providing for membership

appointments, qualifications, and terms of office; providing that the council replaces the EPSCoR Advisory Council; requiring development of a strategic state plan for science and technology research; and requiring annual reports to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-18B-1 and 18B-18B-2, all to read as follows:

ARTICLE 18B. SCIENCE AND RESEARCH COUNCIL.

§18B-18B-1. Science and Research Council established; purposes.

§18B-18B-2. Strategic plan; reports.

§18B-18B-1. Science and Research Council established; purposes.

1 (a) The Science and Research Council is hereby
2 established. For the purposes of this article only, “council”
3 means the Science and Research Council established herein.

4 (b) The purposes of the council include, but are not
5 limited to, the following:

6 (1) Increasing the capacity of the state and state
7 institutions of higher education to attract, implement and use
8 cutting-edge, competitive research funds and infrastructure;

9 (2) Providing expertise and policy guidance in science
10 and research to the state, its agencies and state institutions of
11 higher education regarding federal programs such as the
12 Experimental Program to Stimulate Competitive Research
13 (“EPSCoR”) and similar state programs such as the West
14 Virginia Research Trust Fund established in article eighteen-

15 a of this chapter and the Research Challenge Fund
16 established in section twelve, article one-b of this chapter;

17 (3) Encouraging research collaboration among public
18 and private institutions of higher education and the private
19 sector, both within and outside the state;

20 (4) Promoting education at all levels in the fields of
21 science, technology, engineering and mathematics; and

22 (5) Providing recommendations to the Commission and
23 state policymakers, including the Governor and Legislature,
24 regarding science and research initiatives and effective
25 programmatic activities, budgets and investments to
26 implement those initiatives.

27 (c) The council replaces the EPSCoR State Advisory
28 Council and consists of fifteen members as follows:

29 (1) The vice presidents in charge of research at Marshall
30 University and West Virginia University;

31 (2) A representative of health sciences at Marshall
32 University and a representative of health sciences at West
33 Virginia University, appointed by the deans of the respective
34 schools of medicine;

35 (3) The Secretary of Education and the Arts or designee;

36 (4) The State Superintendent of Schools or designee;

37 (5) The Secretary of Commerce or designee;

38 (6) The Vice Chancellor for Science and Research of the
39 Commission;

40 (7) The Chancellor of the Commission who chairs the
41 council;

42 (8) One member engaged in applied research at Marshall
43 University and one member engaged in applied research at
44 West Virginia University, appointed by the provosts of the
45 respective universities; and

46 (9) Four members, appointed by the Governor, who
47 have demonstrated interest, knowledge, skill and experience
48 in academic research and scientific innovation and who
49 possess recognized credentials and expertise in one or more
50 of the following areas:

51 (A) Science, technology, engineering or mathematics
52 (“STEM”) fields;

53 (B) Cyberinfrastructure, information technology or
54 computer science;

55 (C) Research and development;

56 (D) Technology based economic development or
57 industry; or

58 (E) Undergraduate research or science education.

59 At least two of the members appointed by the Governor
60 shall be representatives of business or industry.

61 (d) Of the initial appointments made by the Governor,
62 one member shall be appointed to a one-year term; one
63 member shall be appointed to a two-year term; one member
64 shall be appointed to a three-year term; and one member shall
65 be appointed to a four-year term. Of the initial appointments
66 made by the deans of schools of medicine, the member
67 appointed by the dean of the Marshall University School of
68 Medicine shall be appointed to a two-year term, and the
69 member appointed by the dean of the West Virginia
70 University School of Medicine shall be appointed to a three-
71 year term. Of the initial appointments made by the provosts,

72 the member appointed by the West Virginia University
73 provost shall be appointed to a two-year term, and the
74 member appointed by the Marshall University provost shall
75 be appointed to a four-year term.

76 (e) After the initial appointments, all members serve
77 terms of four years. Each appointed member who qualifies
78 under the provisions of this section may serve for no more
79 than two successive terms. An appointment to fill a vacancy
80 on the council or reappointment of a member who is eligible
81 to serve an additional term is made in accordance with the
82 provisions of this section.

83 (f) Members of the council serve without
84 compensation, but are entitled to reimbursement by the
85 commission for expenses, including travel expenses,
86 actually incurred by the member in the official conduct of
87 the business of the council.

§18B-18B-2. Strategic plan; reports.

1 (a) The council shall develop a strategic state plan for
2 science and technology research that establishes a
3 collaborative process to engage all scientific research
4 resources, both public and private, in a comprehensive,
5 strategic network. The council's strategic state plan serves as
6 the state plan for science and technology research.

7 (b) At a minimum, the strategic plan shall address
8 science and technology research resources and their relation
9 to the following areas of research:

10 (1) Human and physical infrastructure;

11 (2) Policy development;

12 (3) Education and outreach;

13 (4) Research innovation; and

14 (5) Economic development.

15 (c) Periodically, the council shall reassess the strategic
16 state plan and update it as needed. Any new or updated
17 strategic state plan shall be approved by the commission prior
18 to becoming effective.

19 (d) The EPSCoR Advisory Council's current "Vision
20 2015: The West Virginia Science and Technology Strategic
21 Plan" serves as the state plan for science and technology
22 research until a plan is approved by the council.

23 (e) The council shall report to the Legislative Oversight
24 Commission on Education Accountability by July 1, 2010,
25 and annually thereafter, on progress in implementing the
26 strategic state plan, as well as any updates to the plan.



CHAPTER 89

(Com. Sub. for S.B. 261 - By Senator Jenkins)

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

AN ACT to amend and reenact §3-1-30 of the Code of West Virginia, 1931, as amended, relating to requiring party executive committees to submit their list of nominees to serve as election officials no later than the seventieth day before the election.

Be it enacted by the Legislature of West Virginia:

That §3-1-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commissioners
3 may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the
6 committee at a duly called meeting, nominate one qualified
7 person for each team of poll clerks and one qualified person
8 for each team of election commissioners to be appointed for
9 the election;

10 (2) The appointing body shall select one qualified person
11 as the additional election commissioner for each board of
12 election officials;

13 (3) Each county executive committee shall also nominate
14 qualified persons as alternates for at least ten percent of the
15 poll clerks and election commissioners to be appointed in the
16 county and is authorized to nominate as many qualified
17 persons as alternates as there are precincts in the county to be
18 called upon to serve in the event any of the persons originally
19 appointed fail to accept appointment or fail to appear for the
20 required training or for the preparation or execution of their
21 duties;

22 (4) When an executive committee nominates qualified
23 persons as poll clerks, election commissioners or alternates,
24 the committee, or its chairman or secretary on its behalf, shall

25 file in writing with the appointing body, no later than the
26 seventieth day before the election, a list of those persons
27 nominated and the positions for which they are designated.

28 (b) For any municipal primary, general or special
29 election, the poll clerks and election commissioners may be
30 nominated as follows:

31 (1) In municipalities which have municipal executive
32 committees for the two major political parties in the
33 municipality, each committee may nominate election officials
34 in the manner provided for the nomination of election
35 officials by county executive committees in subsection (a) of
36 this section;

37 (2) In municipalities which do not have executive
38 committees, the governing body shall provide by ordinance
39 for a method of nominating election officials or shall
40 nominate as many eligible persons as are required, giving due
41 consideration to any recommendations made by voters of the
42 municipality or by candidates on the ballot.

43 (c) The governing body responsible for appointing
44 election officials is:

45 (1) The county commission for any primary, general or
46 special election ordered by the county commission and any
47 joint county and municipal election;

48 (2) The board of education for any special election
49 ordered by the board of education conducted apart from any
50 other election;

51 (3) The municipal governing body for any primary,
52 general or special municipal election ordered by the
53 governing body.

54 (d) The qualifications for persons nominated to serve as
55 election officials may be confirmed prior to appointment by

56 the clerk of the county commission for any election ordered
57 by the county commission or for any joint county and
58 municipal election and by the official recorder of the
59 municipality for a municipal election.

60 (e) The appropriate governing body shall appoint the
61 election officials for each designated election board no later
62 than the forty-ninth day before the election as follows:

63 (1) Those eligible persons whose nominations for poll
64 clerk and election commissioner were timely filed by the
65 executive committees and those additional persons selected
66 to serve as an election commissioner are to be appointed;

67 (2) The governing body shall fill any positions for which
68 no nominations were filed.

69 (f) At the same time as the appointment of election
70 officials or at a subsequent meeting the governing body shall
71 appoint persons as alternates. However, no alternate may be
72 eligible for compensation for election training unless the
73 alternate is subsequently appointed as an election official or
74 is instructed to attend and actually attends training as an
75 alternate and is available to serve on election day. Alternates
76 shall be appointed and serve as follows:

77 (1) Those alternates nominated by the executive
78 committees shall be appointed;

79 (2) The governing body may appoint additional alternates
80 who may be called upon to fill vacancies after all alternates
81 designated by the executive committees have been assigned,
82 have declined to serve or have failed to attend training; and

83 (3) The governing body may determine the number of
84 persons who may be instructed to attend training as
85 alternates.

86 (g) The clerk of the county commission shall appoint
87 qualified persons to fill all vacancies existing after all
88 previously appointed alternates have been assigned, have
89 declined to serve or have failed to attend training.

90 (h) Within seven days following appointment, the clerk
91 of the county commission shall notify, by first-class mail, all
92 election commissioners, poll clerks and alternates of the fact
93 of their appointment and include with the notice a response
94 notice form for the appointed person to return indicating
95 whether or not he or she agrees to serve in the specified
96 capacity in the election.

97 (i) The position of any person notified of appointment
98 who fails to return the response notice or otherwise confirm
99 to the clerk of the county commission his or her agreement to
100 serve within fourteen days following the date of appointment
101 is considered vacant and the clerk shall proceed to fill the
102 vacancies according to the provisions of this section.

103 (j) If an appointed election official fails to appear at the
104 polling place by forty-five minutes past five o'clock a. m. on
105 election day, the election officials present shall contact the
106 office of the clerk of the county commission for assistance in
107 filling the vacancy. The clerk shall proceed as follows:

108 (1) The clerk may attempt to contact the person originally
109 appointed, may assign an alternate nominated by the same
110 political party as the person absent if one is available or, if no
111 alternate is available, may appoint another eligible person;

112 (2) If the election officials present are unable to contact
113 the clerk within a reasonable time, they shall diligently
114 attempt to fill the position with an eligible person of the same
115 political party as the party that nominated the person absent
116 until a qualified person has agreed to serve;

117 (3) If two teams of election officials, as defined in section
118 twenty-nine of this article, are present at the polling place, the
119 person appointed to fill a vacancy in the position of the
120 additional commissioner may be of either political party.

121 (k) In a municipal election, the recorder or other official
122 designated by charter or ordinance to perform election
123 responsibilities shall perform the duties of the clerk of the
124 county commission as provided in this section.



CHAPTER 90

**(Com. Sub. for H.B. 2464 - By Delegates Spencer, Hatfield,
Guthrie, M. Poling and Morgan)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating to early voting and authorizing county commissions to designate voting locations other than the county courthouse or annex of the courthouse; requiring the Secretary of State to propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §3-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the
2 courthouse or annex to the courthouse as the primary location
3 for early voting and in addition, the commission may
4 designate other locations as provided in subsection (b).

5 (b) The county commission may, with the approval of the
6 county clerk or other official charged with the administration
7 of elections, and the written agreement of the chairpersons of
8 the county executive committees of the two major political
9 parties, designate additional locations for early voting other
10 than the county courthouse or courthouse annex. The
11 additional locations shall comply with the requirements of
12 this article for early in-person voting and criteria prescribed
13 by the Secretary of State.

14 (c) The Secretary of State is hereby directed to propose
15 legislative and emergency rules in accordance with the
16 provisions of article three, chapter twenty-nine-a of this code
17 as may be necessary to implement the provisions of this
18 section. The rules shall include establishment of criteria to
19 assure neutrality and security in the selection of additional
20 locations.

21 (d) Throughout the period of early in-person voting, the
22 official designated to supervise and conduct absentee voting
23 shall make the following provisions for voting:

24 (1) The official shall provide a sufficient number of
25 voting booths or devices appropriate to the voting system at
26 which voters may prepare their ballots. The booths or
27 devices are to be in an area separate from but within clear
28 view of the public entrance area of the official's office or
29 other area designated by the county commission for absentee
30 voting and are to be arranged to ensure the voter complete
31 privacy in casting the ballot.

32 (2) The official shall make the voting area secure from
33 interference with the voter and shall ensure that voted and
34 unvoted ballots are at all times secure from tampering. No
35 person, other than a person lawfully assisting the voter
36 according to the provisions of this chapter, may be permitted
37 to come within five feet of the voting booth while the voter
38 is voting. No person, other than the officials or employees of
39 the official designated to supervise and conduct absentee
40 voting or members of the board of ballot commissioners
41 assigned to conduct absentee voting, may enter the area or
42 room set aside for voting.

43 (3) The official designated to supervise and conduct
44 absentee voting shall request the county commission
45 designate another area within the county courthouse, any
46 annex of the courthouse or any other designated as early in-
47 person voting locations within the county, as a portion of the
48 official's office, for the purpose of absentee in-person voting
49 in the following circumstances:

50 (A) If the voting area is not accessible to voters with
51 physical disabilities;

52 (B) If the voting area is not within clear view of the
53 public entrance of the office of the official designated to
54 supervise and conduct absentee voting; or

55 (C) If there is no suitable area for absentee in-person
56 voting within the office.

57 Any designated area is subject to the same requirements
58 as the regular absentee voting area.

59 (4) The official designated to supervise and conduct
60 absentee voting shall have at least two representatives to
61 assist with absentee voting: *Provided*, That the two
62 representatives may not be registered with the same political
63 party affiliation or two persons registered with no political

64 party affiliation. The representatives may be full-time
65 employees, temporary employees hired for the period of
66 absentee voting in person or volunteers.

67 (5) No person may do any electioneering nor may any
68 person display or distribute in any manner, or authorize the
69 display or distribution of, any literature, posters or material
70 of any kind which tends to influence the voting for or against
71 any candidate or any public question on the property of the
72 county courthouse, any annex facilities, or any other
73 designated early voting locations within the county, during
74 the entire period of regular in-person absentee voting. The
75 official designated to supervise and conduct absentee voting
76 is authorized to remove the material and to direct the sheriff
77 of the county to enforce the prohibition.



CHAPTER 91

**(Com. Sub. for H.B. 3134 - By Delegates Fleischauer, Beach,
Marshall, Shook, Hunt, Frazier, Brown, Miley, Longstreth,
Lawrence and Manchin)**

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §3-3A-1, §3-3A-2,
§3-3A-3, §3-3A-4 and §3-3A-5, all relating to voting by mail;
creating a two phase vote by mail pilot program for
municipalities; allowing class IV municipalities to conduct
early voting in municipal elections by mail; requiring adoption
of an ordinance; requiring the Secretary of State select five

municipalities for a pilot project; allowing selected municipalities conduct municipal elections by mail; requiring emergency and legislative rules; setting forth criteria; granting authority to conduct voting by mail; and providing for termination of phase two of the pilot project.

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 §3-3A-1, §3-3A-2, §3-3A-3, §3-3A-4 and §3-3A-5, all to read as follows:

ARTICLE 3A. VOTE BY MAIL PILOT PROGRAM.

§3-3A-1. Short title.

§3-3A-2. Vote by mail pilot program.

§3-3A-3. Secretary of State Rulemaking.

§3-3A-4. Authority to conduct voting by mail.

§3-3A-5. Termination of pilot program.

§3-3A-1. Short title.

- 1 This article shall be known as the “West Virginia Vote
- 2 By Mail Pilot Program”.

§3-3A-2. Vote by mail pilot program.

- 1 This article establishes a two phase pilot project that will
- 2 allow certain municipalities to vote by mail. Phase one
- 3 authorizes Class IV municipalities to conduct only early
- 4 voting for municipal elections by mail beginning with the
- 5 municipal election of 2010. Phase two authorizes five
- 6 municipalities in the state to conduct all voting by mail
- 7 beginning with the primary election of 2011. The pilot
- 8 project will permit registered and other qualified voters of the
- 9 authorized municipalities to vote a ballot by mail during the
- 10 pilot program period. The Class IV municipalities that
- 11 choose to participate in phase one may conduct only the early
- 12 voting for the municipal elections entirely by mail. The five

13 municipalities selected for participation in phase two may
14 conduct both the primary and general elections entirely by
15 mail.

§3-3A-3. Secretary of State Rulemaking.

1 (a) The Secretary of State is hereby directed to propose
2 emergency and legislative rules in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code
4 necessary to implement phase one of the vote by mail pilot
5 program. In addition to any other provisions the Secretary
6 believes are necessary to provide for the effective, efficient
7 and orderly administration of phase one of the vote by mail
8 pilot program, the rules proposed by the Secretary shall
9 provide for phase one municipal elections the requirements
10 and procedures for conducting an election by mail including:

11 (1) That a notice of early voting by mail will be mailed to
12 each registered voter in the municipality no more than four
13 weeks nor less than two weeks prior to the start of the early
14 voting period. The notice may be included in any utility or
15 service statement or invoice mailed to every household in the
16 municipality or a postcard sent to all registered voters in the
17 municipality;

18 (2) That each ballot packet shall consist of the actual
19 ballot, instructions, a secrecy envelope and a ballot return
20 envelope;

21 (3) That each ballot will be mailed with detailed
22 instructions on how to mark the ballot, place it in the secrecy
23 envelop and the ballot return envelope and how to sign the
24 ballot return envelope, a warning that the ballot return
25 envelope must be signed or the ballot will not be counted, a
26 warning that signing someone else's ballot return envelope is
27 illegal, an alternative procedure for any person who is unable
28 to sign a ballot return envelope and a procedure for returning

29 a spoiled ballot should the voter make a mistake or otherwise
30 need a new ballot; and

31 (4) That each ballot must be mailed or brought to the
32 municipal precinct by the close of the early voting period.

33 (b) The Secretary of State is hereby directed to propose
34 legislative rules in accordance with the provisions of article
35 three, chapter twenty-nine-a of this code necessary to
36 implement the phase two vote by mail pilot program. In
37 addition to any other provisions the Secretary believes are
38 necessary to provide for the effective, efficient and orderly
39 administration of phase two of the vote by mail pilot
40 program, the rules proposed by the Secretary shall include:

41 (1) Criteria for the selection of up to five municipalities
42 to participate in the vote by mail pilot program;

43 (2) Procedures for conducting voting by mail including
44 those specified in subsection (a) of this section;

45 (3) Requirements and criteria for the designation of
46 places of deposit for the ballots cast in an election; and

47 (4) Dates and times the places of deposit must be open
48 and the security requirements for the places of deposit.
49 Places of deposit shall be open on the date of the election for
50 a period of eight or more hours, but must be open until at
51 least eight p.m., at a minimum.

52 (c) Each municipality wishing to conduct early voting by
53 mail shall adopt an ordinance expressing the municipality's
54 intent and notifying the public of the changes in voting.

55 (d) It is the duty of all officials designated to supervise
56 and conduct the vote by mail program, other municipal
57 officials, and all election commissioners and poll clerks to
58 abide by the Secretary of State's rules, orders and instructions

nomination of third-party candidates; making filing deadline for the nomination of candidates August 1; eliminating requirement that persons signing nomination certificate state a desire to vote for nominated candidate; permitting duly registered voters who sign nomination certificates to vote in the corresponding primary election; establishing the date by which the filing fee must be paid; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-5-7, §3-5-23 and §3-5-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcement of candidacies; requirements; withdrawal of candidates when section applicable.

§3-5-23. Certificate nominations; requirements and control; penalties.

§3-5-24. Filing of nomination certificates; time.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

1 (a) Any person who is eligible and seeks to hold an office
2 or political party position to be filled by election in any
3 primary or general election held under the provisions of this
4 chapter shall file a certificate of announcement declaring his
5 or her candidacy for the nomination or election to the office.

6 (b) The certificate of announcement shall be filed as
7 follows:

8 (1) Candidates for the House of Delegates or the State
9 Senate and any other office or political position to be filled
10 by the voters of more than one county shall file a certificate
11 of announcement with the Secretary of State;

12 (2) Candidates for an office or political position to be
13 filled by the voters of a single county or a subdivision of a
14 county, except for candidates for the House of Delegates or
15 State Senate, shall file a certificate of announcement with the
16 clerk of the county commission;

17 (3) Candidates for an office to be filled by the voters of
18 a municipality shall file a certificate of announcement with
19 the recorder or city clerk.

20 (c) The certificate of announcement shall be filed with
21 the proper officer not earlier than the second Monday in
22 January next preceding the primary election day, and not later
23 than the last Saturday in January next preceding the primary
24 election day, and must be received before midnight, eastern
25 standard time, of that day or, if mailed, shall be postmarked
26 by the United States Postal Service before that hour.

27 (d) The certificate of announcement shall be on a form
28 prescribed by the Secretary of State on which the candidate
29 shall make a sworn statement before a notary public or other
30 officer authorized to administer oaths, containing the
31 following information:

32 (1) The date of the election in which the candidate seeks
33 to appear on the ballot;

34 (2) The name of the office sought; the district, if any; and
35 the division, if any;

36 (3) The legal name of the candidate and the exact name
37 the candidate desires to appear on the ballot, subject to
38 limitations prescribed in section thirteen, article five of this
39 chapter;

40 (4) The county of residence and a statement that the
41 candidate is a legally qualified voter of that county; and the

42 magisterial district of residence for candidates elected from
43 magisterial districts or under magisterial district limitations;

44 (5) The specific address designating the location at which
45 the candidate resides at the time of filing, including number
46 and street or rural route and box number and city, state and
47 zip code;

48 (6) For partisan elections, the name of the candidate's
49 political party and a statement that the candidate: (A) Is a
50 member of and affiliated with that political party as
51 evidenced by the candidate's current registration as a voter
52 affiliated with that party; and (B) has not been registered as
53 a voter affiliated with any other political party for a period of
54 sixty days before the date of filing the announcement;

55 (7) For candidates for delegate to national convention, the
56 name of the presidential candidate to be listed on the ballot as
57 the preference of the candidate on the first convention ballot;
58 or a statement that the candidate prefers to remain
59 "uncommitted";

60 (8) A statement that the person filing the certificate of
61 announcement is a candidate for the office in good faith;

62 (9) The words "subscribed and sworn to before me this
63 _____ day of _____, 20____" and a space for the
64 signature of the officer giving the oath.

65 (e) The Secretary of State or the board of ballot
66 commissioners, as the case may be, may refuse to certify the
67 candidacy or may remove the certification of the candidacy
68 upon receipt of a certified copy of the voter's registration
69 record of the candidate showing that the candidate was
70 registered as a voter in a party other than the one named in
71 the certificate of announcement during the sixty days
72 immediately preceding the filing of the certificate: *Provided,*

73 That unless a signed formal complaint of violation of this
74 section and the certified copy of the voter's registration
75 record of the candidate are filed with the officer receiving
76 that candidate's certificate of announcement no later than ten
77 days following the close of the filing period, the candidate
78 may not be refused certification for this reason.

79 (f) The certificate of announcement shall be subscribed
80 and sworn to by the candidate before some officer qualified
81 to administer oaths, who shall certify the same. Any person
82 who knowingly provides false information on the certificate
83 is guilty of false swearing and shall be punished in
84 accordance with section three, article nine of this chapter.

85 (g) Any candidate for delegate to a national convention
86 may change his or her statement of presidential preference by
87 notifying the Secretary of State by letter received by the
88 Secretary of State no later than the third Tuesday following
89 the close of candidate filing. When the rules of the political
90 party allow each presidential candidate to approve or reject
91 candidates for delegate to convention who may appear on the
92 ballot as committed to that presidential candidate, the
93 presidential candidate or the candidate's committee on his or
94 her behalf may file a list of approved or rejected candidates
95 for delegate and the Secretary of State shall list as
96 "uncommitted" any candidate for delegate who is
97 disapproved by the presidential candidate.

98 (h) A person may not be a candidate for more than one
99 office or office division at any election: *Provided*, That a
100 candidate for an office may also be a candidate for President
101 of the United States, for membership on political party
102 executive committees or for delegate to a political party
103 national convention.

104 (i) A candidate who files a certificate of announcement
105 for more than one office or division and does not withdraw,

106 as provided by section eleven, article five of this chapter,
107 from all but one office prior to the close of the filing period
108 may not be certified by the Secretary of State or placed on the
109 ballot for any office by the board of ballot commissioners.

110 (j) The provisions of this section enacted during the
111 regular session of the Legislature in the year 1991 shall apply
112 to the primary election held in the year 1992 and every
113 primary election held thereafter. The provisions of this
114 section enacted during the regular session of the Legislature
115 in the year 2009 shall apply to the primary election held in
116 the year 2010 and every primary election held thereafter.

**§3-5-23. Certificate nominations; requirements and control;
penalties.**

1 (a) Groups of citizens having no party organization may
2 nominate candidates who are not already candidates in the
3 primary election for public office otherwise than by
4 conventions or primary elections. In that case, the candidate
5 or candidates, jointly or severally, shall file a nomination
6 certificate in accordance with the provisions of this section
7 and the provisions of section twenty-four of this article.

8 (b) The person or persons soliciting or canvassing
9 signatures of duly qualified voters on the certificate or
10 certificates, may solicit or canvass duly registered voters
11 residing within the county, district or other political division
12 represented by the office sought, but must first obtain from
13 the clerk of the county commission credentials which must be
14 exhibited to each voter canvassed or solicited, which
15 credentials may be in the following form or effect:

16 State of West Virginia, County of, ss:

17 This certifies that the holder of this credential is hereby
18 authorized to solicit and canvass duly registered voters

19 residing in (here place the county, district or
20 other political division represented by the office sought) to
21 sign a certificate purporting to nominate
22 (here place name of candidate heading list on certificate) for
23 the office of and others, at the general
24 election to be held on, 20.....

25 Given under my hand and the seal of my office this
26 day of, 20.....

27

28 Clerk, county commission of County.

29 The clerk of each county commission, upon proper
30 application made as herein provided, shall issue such
31 credentials and shall keep a record thereof.

32 (c) The certificate shall be personally signed by duly
33 registered voters, in their own proper handwriting or by their
34 marks duly witnessed, who must be residents within the
35 county, district or other political division represented by the
36 office sought wherein the canvass or solicitation is made by
37 the person or persons duly authorized. The signatures need
38 not all be on one certificate. The number of signatures shall
39 be equal to not less than one percent of the entire vote cast at
40 the last preceding general election for the office in the state,
41 district, county or other political division for which the
42 nomination is to be made, but in no event shall the number be
43 less than twenty-five. The number of signatures shall be
44 equal to not less than one percent of the entire vote cast at the
45 last preceding general election for any statewide,
46 congressional or presidential candidate, but in no event shall
47 the number be less than twenty-five. Where two or more
48 nominations may be made for the same office, the total of the
49 votes cast at the last preceding general election for the
50 candidates receiving the highest number of votes on each
51 ticket for the office shall constitute the entire vote. A

52 signature on a certificate may not be counted unless it be that
53 of a duly registered voter of the county, district or other
54 political division represented by the office sought wherein the
55 certificate was presented.

56 (d) The certificates shall state the name and residence of
57 each of the candidates; that he or she is legally qualified to
58 hold the office; that the subscribers are legally qualified and
59 duly registered as voters and desire to have the candidates
60 placed on the ballot; and may designate, by not more than
61 five words, a brief name of the party which the candidates
62 represent and may adopt a device or emblem to be printed on
63 the official ballot. All candidates nominated by the signing
64 of the certificates shall have their names placed on the
65 official ballot as candidates, as if otherwise nominated under
66 the provisions of this chapter.

67 The Secretary of State shall prescribe the form and
68 content of the nomination certificates to be used for soliciting
69 signatures.

70 Offices to be filled by the voters of more than one county
71 shall use separate petition forms for the signatures of
72 qualified voters for each county.

73 Notwithstanding any other provision of this code to the
74 contrary, a duly registered voter may sign the certificate
75 provided in this section and may vote for candidates of his or
76 her choosing in the corresponding primary election.

77 (e) The Secretary of State, or the clerk of the county
78 commission, as the case may be, may investigate the validity
79 of the certificates and the signatures thereon. If, upon
80 investigation, there is doubt as to the legitimacy and the
81 validity of certificate, the Secretary of State may ask the
82 Attorney General of the state, or the clerk of the county
83 commission may ask the prosecuting attorney of the county,
84 to institute a quo warranto proceeding against the nominee by

85 certificate to determine his or her right to the nomination to
86 public office and upon request being made, the Attorney
87 General or prosecuting attorney shall institute the quo
88 warranto proceeding. The clerk of the county commission
89 shall, at the request of the Secretary of State or the clerk of
90 the circuit court, compare the information from any
91 certificate to the county voter registration records in order to
92 assist in determining the validity of any certificates.

93 (f) In addition to penalties prescribed elsewhere for
94 violation of this chapter, any person violating the provisions
95 of this section is guilty of a misdemeanor and, upon
96 conviction, shall be fined not more than \$1,000, or confined
97 in jail not more than one year, or both fined and imprisoned:
98 *Provided*, That a criminal penalty may not be imposed upon
99 anyone who signs a nomination certificate and votes in the
100 primary election held after the date the certificate was signed.

§3-5-24. Filing of nomination certificates; time.

1 (a) All certificates nominating candidates for office under
2 the preceding section shall be filed, in the case of a candidate
3 to be voted for by the voters of the entire state or by any
4 subdivision of the state other than a single county, with the
5 Secretary of State, and in the case of all candidates for county
6 and magisterial district offices, including all offices to be
7 filled by the voters of a single county, with the clerk of the
8 county commission, not later than August 1 preceding the
9 general election.

10 (b) Each candidate shall pay the filing fee required by
11 section eight of this article, at the time of the filing of the
12 nomination certificate. If any nomination certificate is not
13 timely filed or if the filing fee is not timely paid, the
14 certificate may not be received by the Secretary of State, or
15 by the clerk of the county commission, as the case may be.

CHAPTER 93

(S.B. 764 - By Senators Kessler, Browning, Chafin, Foster, Jenkins, Laird, Minard, Oliverio, Palumbo, Snyder, Stollings, Williams, Yost, Caruth, Deem and Hall)

[Passed April 8, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend and reenact §3-6-9 of the Code of West Virginia, 1931, as amended, relating to election recount procedures; providing that certification of results in multiple county races will not be made final until each county has declared results of election; and requiring Secretary of State notify each county that results have been declared.

Be it enacted by the Legislature of West Virginia:

That §3-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CANVASS OF RETURNS; DECLARATION OF RESULTS; RECORDKEEPING.

§3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping.

- 1 (a) The commissioners of the county commission shall be
- 2 ex officio a board of canvassers and, as such, shall keep in a
- 3 well-bound book, marked "election record", a complete

4 record of all their proceedings in ascertaining and declaring
5 the results of every election in their respective counties.

6 (1) They shall convene as the canvassing board at the
7 courthouse on the fifth day (Sundays excepted) after every
8 election held in their county, or in any district of the county,
9 and the officers in whose custody the ballots, pollbooks,
10 registration records, tally sheets and certificates have been
11 placed shall lay them before the board for examination.

12 (2) They may, if considered necessary, require the
13 attendance of any of the commissioners, poll clerks or other
14 persons present at the election to appear and testify
15 respecting the election and make other orders as shall seem
16 proper to procure correct returns and ascertain the true results
17 of the election in their county; but in this case all the
18 questions to the witnesses and all the answers to the
19 questions and evidence shall be taken down in writing and
20 filed and preserved. All orders made shall be entered upon
21 the record.

22 (3) They may adjourn, from time to time, but no longer
23 than absolutely necessary.

24 (4) When a majority of the commissioners are not
25 present, the meeting shall stand adjourned until the next day
26 and so from day to day, until a quorum is present.

27 (5) All meetings of the commissioners sitting as a board
28 of canvassers shall be open to the public.

29 (6) The board shall proceed to open each sealed package
30 of ballots laid before them and, without unfolding them,
31 count the number in each package and enter the number upon
32 their record.

33 (7) The ballots shall then be again sealed carefully in a
34 new envelope and each member of the board shall write his
35 or her name across the place where the envelope is sealed.

36 (8) After canvassing the returns of the election, the board
37 shall publicly declare the results of the election.

38 (A) For a candidate on the ballot in entirely one county,
39 the board shall not enter an order certifying the election
40 results for a period of forty-eight hours after the declaration.
41 At the end of the 48-hour period, an order shall be entered
42 certifying all election results except for those offices in which
43 a recount has been demanded.

44 (B) For a candidate on the ballot in more than one
45 county, the board may not enter an order certifying the
46 election results for a period of forty-eight hours after the final
47 county's board has publicly declared the results of the
48 election. In such case, each relevant board shall notify the
49 Secretary of State immediately following each relevant
50 board's public declaration of results. For offices on the ballot
51 in more than one county, the Secretary of State shall notify
52 the board of each relevant county when the final county has
53 made a public declaration of the results of the election. At
54 the end of the 48-hour period in this section, an order shall be
55 entered by each relevant county certifying all election results
56 except for those offices in which a recount has been
57 demanded.

58 (b) Within the 48-hour period, a candidate on the ballot
59 in entirely one county may demand the board to open and
60 examine any of the sealed packages of ballots and recount
61 them.

62 (c) If a candidate is on the ballot in more than one county,
63 then within the 48-hour period after the final county's board
64 has made a public declaration of the results, such candidate

65 may demand the board to open and examine any of the sealed
66 packages of ballots and recount them.

67 (d) After any recount pursuant to either subsection (b) or
68 (c) of this section the board shall seal the ballots again, along
69 with the envelope above named, and the clerk of the county
70 commission and each member of the board shall write his or
71 her name across the places where it is sealed and endorse in
72 ink, on the outside: "Ballots of the election held at precinct
73 No. _____, in the district of _____, and county of
74 _____, on the _____ day of
75 _____."

76 (e) In computing the 48-hour period as used in this
77 section, Saturdays, Sundays and legal holidays shall be
78 excluded. A candidate on the ballot in more than one county
79 shall not be precluded from demanding a recount in any
80 county in which the candidate is on the ballot until the final
81 county in which the candidate is on the ballot has certified
82 the election results.

83 (f) If a recount has been demanded, the board shall have
84 forty-eight hours in which to send notice to all candidates
85 who filed for the office in which a recount has been
86 demanded of the date, time and place where the board will
87 convene to commence the recount. The notice shall be
88 served under the provisions of subsection (g) of this section.
89 The recount shall be set for no sooner than three days after
90 the serving of the notice: *Provided*, That after the notice is
91 served, candidates so served shall have an additional
92 twenty-four hours in which to notify the board, in writing, of
93 their intention to preserve their right to demand a recount of
94 precincts not requested to be recounted by the candidate
95 originally requesting a recount of ballots cast: *Provided*,
96 *however*, That there shall be only one recount of each
97 precinct, regardless of the number of requests for a recount
98 of any precinct. A demand for the recount of ballots cast at

99 any precinct may be made during the recount proceedings
100 only by the candidate originally requesting the recount and
101 those candidates who notify the board, pursuant to this
102 subdivision, of their intention to preserve their right to
103 demand a recount of additional precincts.

104 (g) Any sheriff of the county in which the recount is to
105 occur shall deliver a copy thereof in writing to the candidate
106 in person; or if the candidate is not found, by delivering the
107 copy at the usual place of abode of the candidate and giving
108 information of its purport, to the spouse of the candidate or
109 any other person found there who is a member of his or her
110 family and above the age of sixteen years; or if neither the
111 spouse of the candidate nor any other person be found there
112 and the candidate is not found, by leaving the copy posted at
113 the front door of the place of abode. Any sheriff, thereto
114 required, shall serve a notice within his or her county and
115 make return of the manner and time of service; for a failure
116 so to do, he or she shall forfeit \$20. The return shall be
117 evidence of the manner and time of service.

118 (h) Every candidate who demands a recount shall be
119 required to furnish bond in a reasonable amount with good
120 sufficient surety to guarantee payment of the costs and the
121 expenses of the recount in the event the result of the election
122 is not changed by the recount; but the amount of the bond
123 shall in no case exceed three hundred dollars.

124 (i) After the board of canvassers has made their
125 certificates and declared the results as hereinafter provided,
126 they shall deposit the sealed packages of ballots, absent voter
127 ballots, registration records, pollbooks, tally sheets and
128 precinct certificates with the clerk of the county commission
129 from whom they were received, who shall carefully preserve
130 them for twenty-two months: *Provided*, That the clerk may
131 use these records to update the voter registration records in
132 accordance with subsection (d), section eighteen, article two

133 of this chapter. If there is no contest pending as to any
134 election and their further preservation is not required by any
135 order of a court, the ballots, pollbooks, tally sheets and
136 certificates shall be destroyed by fire or otherwise, without
137 opening the sealed packages of ballots. If there is a contest
138 pending, they shall be destroyed as soon as the contest is
139 ended.

140 (j) If the result of the election is not changed by the
141 recount, the costs and expenses of the recount shall be paid
142 by the party at whose instance the recount was made.



CHAPTER 94

**(Com. Sub. for H.B. 2869 - By Delegates Fleischauer,
Staggers, Susman, Caputo, Ferro, Michael, Brown, Hunt,
Miley, Barker and Moore)**

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

AN ACT to amend and reenact §3-8-5 and §3-8-7 of the Code of West Virginia, 1931, as amended, all relating to lengthening the time frame for the filing of final post-primary and post-general campaign financial statements.

Be it enacted by the Legislature of West Virginia:

That §3-8-5 and §3-8-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

§3-8-5. Detailed accounts and verified financial statements required.

1 (a) Every candidate, treasurer, person and association of
2 persons, organization of any kind, including every
3 corporation, directly, or by an independent expenditure,
4 supporting a political committee established pursuant to
5 paragraph (C), subdivision (1), subsection (b), section eight
6 of this article or engaging in other activities permitted by this
7 section and also including the treasurer or equivalent officer
8 of the association or organization, expressly advocating the
9 election or defeat of a clearly identified candidate for state,
10 district, county or municipal office, and the treasurer of every
11 political committee shall keep detailed accounts of every sum
12 of money or other thing of value received by him or her,
13 including all loans of money or things of value and of all
14 expenditures and disbursements made, liabilities incurred, by
15 the candidate, financial agent, person, association or
16 organization or committee, for political purposes, or by any
17 of the officers or members of the committee, or any person
18 acting under its authority or on its behalf.

19 (b) Every person or association of persons required to
20 keep detailed accounts under this section shall file with the
21 officers hereinafter prescribed a detailed itemized sworn
22 statement:

23 (1) Of all financial transactions, whenever the total
24 exceeds \$500, which have taken place before the last
25 Saturday in March, to be filed within six days thereafter and
26 annually whenever the total of all financial transactions
27 relating to an election exceeds \$500;

28 (2) Of all financial transactions which have taken place
29 before the fifteenth day preceding each primary or other
30 election and subsequent to the previous statement, if any, to
31 be filed within four business days after the fifteenth day;

32 (3) Of all financial transactions which have taken place
33 before the thirteenth day after each primary or other election
34 and subsequent to the previous statement, if any, to be filed
35 within twenty business days after the thirteenth day; and

36 (4) Of all financial transactions, whenever the total
37 exceeds \$500 or whenever any loans are outstanding, which
38 have taken place before the forty-third day preceding the
39 general election day, to be filed within four business days
40 after the forty-third day.

41 (c) Every person who announces as a write-in candidate
42 for any elective office and his or her financial agent or
43 election organization of any kind shall comply with all of the
44 requirements of this section after public announcement of the
45 person's candidacy has been made.

46 (d) For purposes of this section, the term "financial
47 transactions" includes all contributions or loans received and
48 all repayments of loans or expenditures made to promote the
49 candidacy of any person by any candidate or any
50 organization advocating or opposing the nomination, election
51 or defeat of any candidate to be voted on.

52 (e) Candidates for the office of conservation district
53 supervisor elected pursuant to the provisions of article
54 twenty-one-a, chapter nineteen of this code are required to
55 file only the reports required by subdivisions (2) and (3),
56 subsection (b) of this section immediately prior to and after
57 the primary election: *Provided*, That during the election in
58 the year 2008, the statements required by this subsection

59 shall be filed immediately prior to and after the general
60 election.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

1 (a) Any person, candidate, financial agent or treasurer of
2 a political party committee who fails to file a sworn, itemized
3 statement required by this article within the time limitations
4 specified in this article or who willfully files a grossly
5 incomplete or grossly inaccurate statement shall be guilty of
6 a misdemeanor and, upon conviction thereof, shall be fined
7 not less than \$500 or confined in jail for not more than one
8 year, or both, in the discretion of the court. Sixty days after
9 any primary or other election, the Secretary of State, or
10 county clerk, or municipal recorder, as the case may be, shall
11 give notice of any failure to file a sworn statement or the
12 filing of any grossly incomplete or grossly inaccurate
13 statement by any person, candidate, financial agent or
14 treasurer of a political party committee and forward copies of
15 any grossly incomplete or grossly inaccurate statement to the
16 prosecuting attorney of the county where the person,
17 candidate, financial agent, or treasurer resides, is located or
18 has its principal place of business.

19 (b) (1) Any person, candidate, financial agent or treasurer
20 of a political party committee who fails to file a sworn,
21 itemized statement as required in this article or who files a
22 grossly incomplete or grossly inaccurate statement may be
23 assessed a civil penalty by the Secretary of State of \$25 a day
24 for each day after the due date the statement is delinquent,
25 grossly incomplete or grossly inaccurate. Sixty days after
26 any primary or other election, the county clerk shall give
27 notice to the Secretary of State of any failure to file a sworn
28 statement or the filing of any grossly incomplete or grossly
29 inaccurate statement by any person, candidate, financial
30 agent or treasurer of a political party committee and forward

31 copies of such delinquent, incomplete or inaccurate
32 statements to the Secretary of State.

33 (2) A civil penalty assessed pursuant to this section shall
34 be payable to the State of West Virginia and is collectable as
35 authorized by law for the collection of debts.

36 (3) The Secretary of State may negotiate and enter into
37 settlement agreements for the payment of civil penalties
38 assessed as a result of the filing of a delinquent, grossly
39 incomplete or inaccurate statement.

40 (4) The Secretary of State and county clerk may review
41 and audit any sworn statement required to be filed pursuant
42 to this article. The State Election Commission shall propose
43 legislative rules for promulgation, in accordance with chapter
44 twenty-nine-a of this code, to establish procedures for the
45 assessment of civil penalties as provided in this section.

46 (c) No candidate nominated at a primary election who has
47 failed to file a sworn statement, as required by this article,
48 shall have his or her name placed on the official ballot for the
49 ensuing election, unless there has been filed by or on behalf
50 of such candidate, or by his or her financial agent, if any, the
51 financial statement relating to nominations required by this
52 article. It is unlawful to issue a commission or certificate of
53 election, or to administer the oath of office, to any person
54 elected to any public office who has failed to file a sworn
55 statement as required by this article and no person may enter
56 upon the duties of his or her office until he or she has filed
57 such statement, nor may he or she receive any salary or
58 emolument for any period prior to the filing of such
59 statement.

CHAPTER 95

**(H.B. 3066 - By Delegates Morgan, Stephens, Martin, Talbott,
Butcher, Argento and D. Poling)**

[Passed April 7, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §21-3C-10a of the Code of West Virginia, 1931, as amended, relating to elevator safety; and clarifying the supervision requirements for elevator apprentices.

Be it enacted by the Legislature of West Virginia:

That §21-3C-10a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.

1 (a) On and after January 1, 2010, a person may not
2 engage or offer to engage in the business of erecting,
3 constructing, installing, altering, servicing, repairing or
4 maintaining elevators or related conveyances covered by this
5 article in this state, unless he or she has a license issued by
6 the Commissioner of Labor in accordance with the provisions
7 of this article.

8 (b) A person licensed under this article must:

9 (1) Have in his or her possession a copy of the license
10 issued pursuant to this article on any job on which he or she
11 is performing elevator mechanic work; and

12 (2) Be, or be employed by, a contractor licensed pursuant
13 to the provisions of article eleven, chapter twenty-one of this
14 code.

15 (c) An elevator apprentice who is enrolled in a four year
16 apprenticeship program approved by the Commissioner, and
17 who is in good standing in the program, may work under the
18 supervision of a licensed elevator mechanic, as follows:

19 (1) An apprentice who has not successfully completed the
20 equivalent of at least one year of the program may work only
21 under the direct supervision of a licensed elevator mechanic
22 who is present on the premises and available to the
23 apprentice at all times.

24 (2) An apprentice who has successfully completed the
25 equivalent of at least one year of the program may:

26 (A) Work under the direct supervision of a licensed
27 elevator mechanic as set forth in subdivision (1) of this
28 subsection; and

29 (B) Perform the tasks set forth in this paragraph, only if
30 delegated by and performed under the general supervision of
31 a licensed elevator mechanic, who must, at a minimum, meet
32 the apprentice on the job at the beginning of each day to
33 delegate the specific tasks, and who remains responsible for
34 the delegated tasks:

35 (i) Oiling, cleaning, greasing and painting;

- 36 (ii) Replacing of combplate teeth;
- 37 (iii) Reclamping and fixture maintenance;
- 38 (iv) Inspection, cleaning and lubricating of hoistway
- 39 doors, car tops, bottoms and pits; and
- 40 (v) Observing operation of equipment.



CHAPTER 96

(S.B. 436 - By Senator Kessler)

[Passed April 3, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 11, 2009.]

AN ACT to amend and reenact §22-3-8 of the Code of West Virginia, 1931, as amended, relating to environmental permitting of surface coal mining; and correcting antiquated language with respect to the state agencies charged with cooperating with the Department of Environmental Protection to ensure that permit applicants comply with certain fiscal and reporting requirements imposed by the state's unemployment compensation and workers' compensation laws.

Be it enacted by the Legislature of West Virginia:

That §22-3-8 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.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface mining operations
2 unless he or she has first obtained a permit from the director
3 in accordance with the following:

4 (1) All permits issued pursuant to the requirements of this
5 article shall be issued for a term not to exceed five years:
6 *Provided*, That if the applicant demonstrates that a specified
7 longer term is reasonably needed to allow the applicant to
8 obtain necessary financing for equipment and the opening of
9 the operation, and if the application is full and complete for
10 the specified longer term, the director may extend a permit
11 for a longer term: *Provided, however*, That subject to the
12 prior approval of the director, with the approval being subject
13 to the provisions of subsection (c), section eighteen of this
14 article, a successor in interest to a permittee who applies for
15 a new permit, or transfer of a permit, within thirty days of
16 succeeding to the interest and who is able to obtain the bond
17 coverage of the original permittee, may continue surface
18 mining and reclamation operations according to the approved
19 mining and reclamation plan of the original permittee until
20 the successor's permit application or application for transfer
21 is granted or denied.

22 (2) Proof of insurance is required on an annual basis.

23 (3) A permit terminates if the permittee has not
24 commenced the surface mining operations covered by the
25 permit within three years of the date the permit was issued:
26 *Provided*, That the director may grant reasonable extensions
27 of time upon a timely showing that the extensions are

28 necessary by reason of litigation precluding commencement,
29 or threatening substantial economic loss to the permittee, or
30 by reason of conditions beyond the control and without the
31 fault or negligence of the permittee: *Provided, however,* That
32 with respect to coal to be mined for use in a synthetic fuel
33 facility or specific major electric-generating facility, the
34 permittee shall be considered to have commenced surface
35 mining operations at the time the construction of the
36 synthetic fuel or generating facility is initiated.

37 (4) Each application for a new surface mining permit
38 filed pursuant to this article shall be accompanied by a fee of
39 \$1,000. All permit fees and renewal fees provided for in this
40 section or elsewhere in this article shall be collected by the
41 director and deposited with the Treasurer of the State of West
42 Virginia to the credit of the operating permit fees fund and
43 shall be used, upon requisition of the director, for the
44 administration of this article.

45 (5) Prior to the issuance of any permit, the director shall
46 ascertain from the Commissioner of the Division of Labor
47 whether the applicant is in compliance with section fourteen,
48 article five, chapter twenty-one of this code. Upon issuance
49 of the permit, the director shall forward a copy to the
50 Commissioner of the Division of Labor, who shall assure
51 continued compliance under the permit.

52 (6) (A) Prior to the issuance of any permit the director
53 shall ascertain from the Executive Director of Workforce
54 West Virginia and the Insurance Commissioner whether the
55 applicant is in compliance with the provisions of section
56 six-c, article two, chapter twenty-one-a of this code and
57 section five, article two, chapter twenty-three of this code
58 with regard to any required subscription to the
59 Unemployment Compensation Fund or to the Workers'
60 Compensation Fund, the payment of premiums and other
61 charges to the fund, the timely filing of payroll reports and
62 the maintenance of adequate deposits. If the applicant is

63 delinquent or defaulted, or has been terminated by the
64 executive director or the Insurance Commissioner, the permit
65 may not be issued until the applicant returns to compliance
66 or is restored by the executive director or the Insurance
67 Commissioner under a reinstatement agreement: *Provided,*
68 That in all inquiries the Executive Director of Workforce
69 West Virginia and the Insurance Commissioner shall make
70 response to the Department of Environmental Protection
71 within fifteen calendar days; otherwise, failure to respond
72 timely is considered to indicate the applicant is in compliance
73 and the failure will not be used to preclude issuance of the
74 permit.

75 (B) It is a requirement of this article that each operator
76 maintain continued compliance with the provisions of section
77 five, article two, chapter twenty-three of this code and section
78 six-c, article two, chapter twenty-one-a of this code and
79 provide proof of compliance to the director on a quarterly
80 basis.

CHAPTER 97

**(Com. Sub. for H.B. 2860 - By Mr. Speaker, Mr. Thompson,
and Delegate Armstead)
[By Request of the Executive]**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §22-11-4, §22-11-22, §22-11-24 and
§22-11-25 of the Code of West Virginia, 1931, as amended;
and to amend said code by adding thereto a new article,

designated §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all relating to regulating the sequestration and storage of carbon dioxide; providing for powers and duties of the Department of Environmental Protection; providing for civil penalties and injunctive relief; providing for criminal penalties; providing for civil liability; setting forth legislative findings; defining terms; specifying powers and duties; specifying carbon dioxide permitting requirements; establishing a working group to study and make recommendations regarding carbon dioxide sequestration; and authorizing the promulgation of legislative rules and cooperative agreements.

Be it enacted by the Legislature of West Virginia:

That §22-11-4, §22-11-22, §22-11-24 and §22-11-25 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 §22-11A-1, §22-11A-2, §22-11A-3, §22-11A-4, §22-11A-5, §22-11A-6, §22-11A-7, §22-11A-8 and §22-11A-9, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article

- 11. **Water Pollution Control Act.**
- 11A. **Carbon Dioxide Sequestration.**

ARTICLE 11. WATER POLLUTION CONTROL ACT.

- §22-11-4. General powers and duties of director with respect to pollution.
- §22-11-22. Civil penalties and injunctive relief; administrative penalties.
- §22-11-24. Violations; criminal penalties.
- §22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

§22-11-4. General powers and duties of director with respect to pollution.

- 1 (a) In addition to all other powers and duties the director
- 2 has and may exercise, subject to specific grants of authority

3 to the chief or the board in this article or elsewhere in this
4 code, the director has the following powers and authority and
5 shall perform the following duties:

6 (1) To perform any and all acts necessary to carry out the
7 purposes and requirements of this article and of the "Federal
8 Water Pollution Control Act," 33 U.S.C. §1251, *et seq.*, as
9 amended, relating to this state's participation in the "National
10 Pollutant Discharge Elimination System," 33 U.S.C. §1342,
11 established under that act;

12 (2) To encourage voluntary cooperation by all persons in
13 the conservation, improvement and development of water
14 resources and in controlling and reducing the pollution of the
15 waters of this state, and to advise, consult and cooperate with
16 all persons, all agencies of this state, the federal government
17 or other states, and with interstate agencies in the furtherance
18 of the purposes of this article, and to this end and for the
19 purpose of studies, scientific or other investigations, research,
20 experiments and demonstrations pertaining thereto, the
21 division may receive moneys from such agencies, officers
22 and persons on behalf of the state. The division shall pay all
23 moneys so received into a special fund hereby created in the
24 State Treasury, which fund shall be expended under the
25 direction of the director solely for the purpose or purposes for
26 which the grant, gift or contribution was made;

27 (3) To encourage the formulation and execution of plans
28 by cooperative groups or associations of municipal
29 corporations, industries, industrial users, and other users of
30 waters of the state, who, jointly or severally, are or may be
31 the source of pollution of such waters, for the control and
32 reduction of pollution;

33 (4) To encourage, participate in, or conduct or cause to be
34 conducted studies, scientific or other investigations, research,
35 experiments and demonstrations relating to the water

36 resources of the state and water pollution and its causes,
37 control and reduction, and to collect data with respect thereto,
38 all as may be deemed advisable and necessary to carry out
39 the purposes of this article;

40 (5) To study and investigate all problems concerning
41 water flow, water pollution and the control and reduction of
42 pollution of the waters of the state, and to make reports and
43 recommendations with respect thereto;

44 (6) To collect and disseminate information relating to
45 water pollution and the control and reduction thereof;

46 (7) To develop a public education and promotion
47 program to aid and assist in publicizing the need for, and
48 securing support for, pollution control and abatement;

49 (8) To sample ground and surface water with sufficient
50 frequency to ascertain the standards of purity or quality from
51 time to time of the waters of the state;

52 (9) To develop programs for the control and reduction of
53 the pollution of the waters of the state;

54 (10) To exercise general supervision over the
55 administration and enforcement of the provisions of this
56 article, and all rules, permits and orders issued pursuant to
57 the provisions of this article, article eleven-a of this chapter
58 and article one, chapter twenty-two-b of this code;

59 (11) In cooperation with the college of engineering at
60 West Virginia University and the schools and departments of
61 engineering at other institutions of higher education operated
62 by this state, to conduct studies, scientific or other
63 investigations, research, experiments and demonstrations in
64 an effort to discover economical and practical methods for
65 the elimination, disposal, control and treatment of sewage,

66 industrial wastes, and other wastes, and the control and
67 reduction of water pollution, and to this end, the director may
68 cooperate with any public or private agency and receive
69 therefrom, on behalf of the state, and for deposit in the State
70 Treasury, any moneys which such agency may contribute as
71 its part of the expenses thereof, and all gifts, donations or
72 contributions received as aforesaid shall be expended by the
73 director according to the requirements or directions of the
74 donor or contributor without the necessity of an appropriation
75 therefor, except that an accounting thereof shall be made in
76 the fiscal reports of the division;

77 (12) To require the prior submission of plans,
78 specifications, and other data relative to, and to inspect the
79 construction and operation of, any activity or activities in
80 connection with the issuance and revocation of such permits
81 as are required by this article, article eleven-a of this chapter
82 or the rules promulgated thereunder;

83 (13) To require any and all persons directly or indirectly
84 discharging, depositing or disposing of treated or untreated
85 sewage, industrial wastes or other wastes, or the effluent
86 therefrom, into or near any waters of the state or into any
87 underground strata, and any and all persons operating an
88 establishment which produces or which may produce or from
89 which escapes, releases or emanates or may escape, release
90 or emanate treated or untreated sewage, industrial wastes or
91 other wastes, or the effluent therefrom, into or near any
92 waters of the state or into any underground strata, to file with
93 the division such information as the director may require in
94 a form or manner prescribed for such purpose, including, but
95 not limited to, data as to the kind, characteristics, amount and
96 rate of flow of any such discharge, deposit, escape, release or
97 disposition;

98 (14) To adopt, modify, or repeal procedural rules and
99 interpretive rules in accordance with the provisions of

100 chapter twenty-nine-a of this code administering and
101 implementing the powers, duties and responsibilities vested
102 in the director by the provisions of this article and article
103 eleven-a of this chapter;

104 (15) To cooperate with interstate agencies for the purpose
105 of formulating, for submission to the Legislature, interstate
106 compacts and agreements relating to: (A) The control and
107 reduction of water pollution; and (B) the state's share of
108 waters in watercourses bordering the state;

109 (16) To adopt, modify, repeal and enforce rules, in
110 accordance with the provisions of chapter twenty-nine-a of
111 this code: (A) Implementing and making effective the
112 declaration of policy contained in section one of this article
113 and the powers, duties and responsibilities vested in the
114 director and the chief by the provisions of this article and
115 otherwise by law; (B) preventing, controlling and abating
116 pollution; and (C) facilitating the state's participation in the
117 "National Pollutant Discharge Elimination System" pursuant
118 to the "Federal Water Pollution Control Act," as amended:
119 *Provided*, That no rule adopted by the director shall specify
120 the design of equipment, type of construction or particular
121 method which a person shall use to reduce the discharge of
122 a pollutant; and

123 (17) To advise all users of water resources as to the
124 availability of water resources and the most practicable
125 method of water diversion, use, development and
126 conservation.

127 (b) Whenever required to carry out the objectives of this
128 article or article eleven-a of this chapter the director shall
129 require the owner or operator of any point source or
130 establishment to: (i) Establish and maintain such records; (ii)
131 make such reports; (iii) install, use and maintain such
132 monitoring equipment or methods; (iv) sample such effluents

133 in accordance with such methods, at such locations, at such
134 intervals and in such manner as the director shall prescribe;
135 and (v) provide such other information as the director may
136 reasonably require.

137 (c) The director upon presentation of credentials: (i) Has
138 a right of entry to, upon or through any premises in which an
139 effluent source is located or in which any records required to
140 be maintained under subsection (b) of this section are
141 located; and (ii) may at reasonable times have access to and
142 copy any records, inspect any monitoring equipment or
143 method required under subsection (b) of this section and
144 sample any streams in the area as well as sample any
145 effluents which the owner or operator of such source is
146 required to sample under subsection (b) of this section.
147 Nothing in this subsection eliminates any obligation to follow
148 any process that may be required by law.

149 (d) The director is hereby authorized and empowered to
150 investigate and ascertain the need and factual basis for the
151 establishment of public service districts as a means of
152 controlling and reducing pollution from unincorporated
153 communities and areas of the state, investigate and ascertain,
154 with the assistance of the Public Service Commission, the
155 financial feasibility and projected financial capability of the
156 future operation of any such public service district or
157 districts, and to present reports and recommendations thereon
158 to the county commissions of the areas concerned, together
159 with a request that such county commissions create a public
160 service district or districts, as therein shown to be needed and
161 required and as provided in article thirteen-a, chapter sixteen
162 of this code. In the event a county commission fails to act to
163 establish a county-wide public service district or districts, the
164 director shall act jointly with the Commissioner of the
165 Bureau of Public Health to further investigate and ascertain
166 the financial feasibility and projected financial capability
167 and, subject to the approval of the Public Service

168 Commission, order the county commission to take action to
169 establish such public service district or districts as may be
170 necessary to control, reduce or abate the pollution, and when
171 so ordered the county commission members must act to
172 establish such a county-wide public service district or
173 districts.

174 (e) The director has the authority to enter at all
175 reasonable times upon any private or public property for the
176 purpose of making surveys, examinations, investigations and
177 studies needed in the gathering of facts concerning the water
178 resources of the state and their use, subject to responsibility
179 for any damage to the property entered. Upon entering, and
180 before making any survey, examination, investigation and
181 study, such person shall immediately present himself or
182 herself to the occupant of the property. Upon entering
183 property used in any manufacturing, mining or other
184 commercial enterprise, or by any municipality or
185 governmental agency or subdivision, and before making any
186 survey, examination, investigation and study, such person
187 shall immediately present himself or herself to the person in
188 charge of the operation, and if he or she is not available, to a
189 managerial employee. All persons shall cooperate fully with
190 the person entering such property for such purposes. Upon
191 refusal of the person owning or controlling such property to
192 permit such entrance or the making of such surveys,
193 examinations, investigations and studies, the director may
194 apply to the circuit court of the county in which such
195 property is located, or to the judge thereof in vacation, for an
196 order permitting such entrance or the making of such
197 surveys, examinations, investigations and studies; and
198 jurisdiction is hereby conferred upon such court to enter such
199 order upon a showing that the relief asked is necessary for
200 the proper enforcement of this article: *Provided*, That
201 nothing in this subsection eliminates any obligation to follow
202 any process that may be required by law.

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

1 (a) Any person who violates any provision of any permit
2 issued under or subject to the provisions of this article or
3 article eleven-a of this chapter is subject to a civil penalty not
4 to exceed \$25,000 per day of such violation and any person
5 who violates any provision of this article or of any rule or
6 who violates any standard or order promulgated or made and
7 entered under the provisions of this article, article eleven-a of
8 this chapter or article one, chapter twenty-two-b of this code
9 is subject to a civil penalty not to exceed \$25,000 per day of
10 such violation. Any such civil penalty may be imposed and
11 collected only by a civil action instituted by the director in
12 the circuit court of the county in which the violation occurred
13 or is occurring or of the county in which the waters thereof
14 are polluted as the result of such violation.

15 Upon application by the director, the circuit courts of the
16 state or the judges thereof in vacation may by injunction
17 compel compliance with and enjoin violations of the
18 provisions of this article, article eleven-a of this chapter, the
19 rules of the board or director, effluent limitations, the terms
20 and conditions of any permit granted under the provisions of
21 this article or article eleven-a of this chapter or any order of
22 the director or board, and the venue of any such actions shall
23 be the county in which the violations or noncompliance exists
24 or is taking place or in any county in which the waters
25 thereof are polluted as the result of such violation or
26 noncompliance. The court or the judge thereof in vacation
27 may issue a temporary or preliminary injunction in any case
28 pending a decision on the merits of any injunction application
29 filed. Any other section of this code to the contrary
30 notwithstanding, the state is not required to furnish bond as
31 a prerequisite to obtaining injunctive relief under this article
32 or article eleven-a of this chapter. An application for an
33 injunction under the provisions of this section may be filed

34 and injunctive relief granted notwithstanding that all of the
35 administrative remedies provided for in this article have not
36 been pursued or invoked against the person or persons
37 against whom such relief is sought and notwithstanding that
38 the person or persons against whom such relief is sought
39 have not been prosecuted or convicted under the provisions
40 of this article.

41 The judgment of the circuit court upon any application
42 filed or in any civil action instituted under the provisions of
43 this section is final unless reversed, vacated or modified on
44 appeal to the Supreme Court of Appeals. Any such appeal
45 shall be sought in the manner provided by law for appeals
46 from circuit courts in other civil cases, except that the
47 petition seeking review in any injunctive proceeding must be
48 filed with said Supreme Court of Appeals within ninety days
49 from the date of entry of the judgment of the circuit court.

50 Legal counsel and services for the chief, director or the
51 board in all civil penalty and injunction proceedings in the
52 circuit court and in the Supreme Court of Appeals of this
53 state shall be provided by the Attorney General or his or her
54 assistants and by the prosecuting attorneys of the several
55 counties as well, all without additional compensation, or the
56 chief, director or the board, with the written approval of the
57 Attorney General, may employ counsel to represent him or
58 her or it in a particular proceeding.

59 (b) In addition to the powers and authority granted to the
60 director by this chapter to enter into consent agreements,
61 settlements and otherwise enforce this chapter, the director
62 shall propose, for legislative promulgation, rules in
63 accordance with the provisions of article three, chapter
64 twenty-nine-a of this code to establish a mechanism for the
65 administrative resolution of violations set forth in this section
66 through consent order or agreement as an alternative to
67 instituting a civil action.

§22-11-24. Violations; criminal penalties.

1 (a) Any person who causes pollution or who fails or
2 refuses to discharge any duty imposed upon him or her by
3 this article, by article eleven-a of this chapter or by any rule
4 of the board or director, promulgated pursuant to the
5 provisions and intent of this article or article eleven-a of this
6 chapter, or by an order of the director or board, or who fails
7 or refuses to apply for and obtain a permit as required by the
8 provisions of this article or article eleven-a of this chapter, or
9 who fails or refuses to comply with any term or condition of
10 such permit, is guilty of a misdemeanor and, upon conviction
11 thereof, shall be punished by a fine of not less than \$100 nor
12 more than \$1,000, or by imprisonment in the county jail for
13 a period not exceeding six months, or by both fine and
14 imprisonment.

15 (b) Any person who intentionally misrepresents any
16 material fact in an application, record, report, plan or other
17 document filed or required to be maintained under the
18 provisions of this article, article eleven-a of this chapter or
19 any rules promulgated by the director thereunder is guilty of
20 a misdemeanor and, upon conviction thereof, shall be
21 punished by a fine of not less than \$1,000 nor more than
22 \$10,000 or by imprisonment in jail not exceeding six months
23 or by both fine and imprisonment.

24 (c) Any person who willfully or negligently violates any
25 provision of any permit issued under or subject to the
26 provisions of this article or article eleven-a of this chapter or
27 who willfully or negligently violates any provision of this
28 article or article eleven-a of this chapter, any rule of the
29 board or director, any effluent limitation or any order of the
30 director or board is guilty of a misdemeanor and, upon
31 conviction thereof, shall be punished by a fine of not less
32 than \$2,500 nor more than \$25,000 per day of violation or by

33 imprisonment in jail not exceeding one year or by both fine
34 and imprisonment.

35 (d) Any person convicted of a second or subsequent
36 willful violation of subsections (b) or (c) of this section or
37 knowingly and willfully violates any provision of any permit,
38 rule or order issued under or subject to the provisions of this
39 article or article eleven-a of this chapter, or knowingly and
40 willfully violates any provision of this article or article
41 eleven-a of this chapter, is guilty of a felony and, upon
42 conviction, shall be imprisoned in a correctional facility not
43 less than one nor more than three years, or fined not more
44 than \$50,000 for each day of violation, or both fined and
45 imprisoned.

46 (e) Any person may be prosecuted and convicted under
47 the provisions of this section notwithstanding that none of the
48 administrative remedies provided in this article have been
49 pursued or invoked against said person and notwithstanding
50 that civil action for the imposition and collection of a civil
51 penalty or an application for an injunction under the
52 provisions of this article has not been filed against such
53 person.

54 (f) Where a person holding a permit is carrying out a
55 program of pollution abatement or remedial action in
56 compliance with the conditions and terms of the permit, the
57 person is not subject to criminal prosecution for pollution
58 recognized and authorized by the permit.

**§22-11-25. Civil liability; Natural Resources Game Fish and
Aquatic Life Fund; use of funds.**

1 If any loss of game fish or aquatic life results from a
2 person or persons' failure or refusal to discharge any duty
3 imposed upon such person by this article, section seven,
4 article six of this chapter or article eleven-a of this chapter,

5 either the West Virginia Division of Natural Resources or the
6 Division of Environmental Protection, or both jointly may
7 initiate a civil action on behalf of the State of West Virginia
8 to recover from such person or persons causing such loss a
9 sum equal to the cost of replacing such game fish or aquatic
10 life. Any moneys so collected shall be deposited in a special
11 revenue fund entitled "Natural Resources Game Fish and
12 Aquatic Life Fund" and shall be expended as hereinafter
13 provided. The fund shall be expended to stock waters of this
14 state with game fish and aquatic life. Where feasible, the
15 Director of the Division of Natural Resources shall use any
16 sum collected in accordance with the provisions of this
17 section to stock waters in the area in which the loss resulting
18 in the collection of such sum occurred. Any balance of such
19 sum shall remain in said fund and be expended to stock state-
20 owned and operated fishing lakes and ponds, wherever
21 located in this state, with game fish and aquatic life.

ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION.

§22-11A-1. Legislative findings.

§22-11A-2. Definitions.

§22-11A-3. Prohibition of carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.

§22-11A-5. Permit application requirements and contents; permit application fees.

§22-11A-6. Carbon dioxide sequestration working group.

§22-11A-7. Reporting and accountability.

§22-11A-8. Oil, natural gas and coaled methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

§22-11A-9. Cooperative agreements.

§22-11A-1. Legislative findings.

1 (a) The Legislature finds that:

2 (1) Carbon dioxide is a colorless, odorless gas that can be
3 produced by burning carbon and organic compounds;

4 (2) Carbon dioxide is emitted into the atmosphere from
5 a number of sources including fossil-fueled power plants,
6 automobiles, certain industrial processes and other naturally
7 occurring sources;

8 (3) By far, fossil-fueled power plants are the largest
9 source of carbon dioxide emissions. These power plants emit
10 approximately one-third of carbon dioxide emissions
11 worldwide;

12 (4) On average, the United States generates
13 approximately fifty-one percent of its electricity from coal-
14 burning power plants, which are a prominent source of
15 carbon dioxide emissions;

16 (5) West Virginia's reliance on electricity produced from
17 coal is even more pronounced, as West Virginia generates
18 approximately ninety-eight percent of its electricity from
19 coal-burning power plants;

20 (6) There is increasing pressure, both nationally and
21 worldwide, to produce electrical power with an ever-
22 decreasing amount of carbon dioxide emissions;

23 (7) West Virginia is a state rich in natural resources, and
24 its economy depends largely upon the demand for energy
25 produced from materials found within the state, not the least
26 of which is coal;

27 (8) As demand for energy produced from alternative and
28 renewable resources rises, new technologies are needed to
29 burn coal more cleanly and efficiently if West Virginia is to
30 remain competitive as an energy producing state;

31 (9) Carbon dioxide capture and sequestration is the
32 capture and secure storage of carbon dioxide that would
33 otherwise be emitted to, or remain in, the atmosphere. This

34 technology is currently being used and tested to reduce the
35 carbon footprint of electricity generated by the combustion
36 of coal;

37 (10) The science of carbon dioxide capture and
38 sequestration is advancing rapidly, but the environmental
39 effects of large, long-term carbon dioxide sequestration
40 operations are still being studied and evaluated;

41 (11) Although the state is committed to expanding its
42 portfolio of alternative and renewable energy resources,
43 electricity generated from these resources is insufficient in
44 the near term to meet the rising demand for energy;

45 (12) It is in the public interest to advance the
46 implementation of carbon dioxide capture and sequestration
47 technologies into the state's energy portfolio;

48 (13) The transportation by pipeline and sequestration of
49 carbon dioxide by a public utility engaged in the generation
50 of electricity may be integral to the construction,
51 maintenance and operation of electric light, heat and power
52 plants operating in the state; and

53 (14) Therefore, in order to expand more rapidly the
54 generation of electricity with little or no carbon dioxide
55 emissions, it is critical to encourage the development of
56 carbon dioxide capture and sequestration technologies; to
57 examine factors that may be integral to the construction,
58 maintenance and operation of carbon dioxide sequestration
59 facilities; and to study the economic and environmental
60 feasibility of large, long-term carbon dioxide sequestration
61 operations.

62 (b) It is therefore the purpose of this article to:

63 (1) Establish a legal and regulatory framework for the
64 permitting of carbon dioxide sequestration operations;

65 (2) Designate a state agency responsible for establishing
66 standards and rules for the permitting of carbon dioxide
67 sequestration operations including, but not limited to, rules
68 pertaining to:

69 (A) Environmental surveillance of carbon dioxide
70 sequestration operations;

71 (B) The monitoring of geologic migration of carbon
72 dioxide and the detection of carbon dioxide excursions;

73 (C) Construction standards for carbon dioxide
74 sequestration operations;

75 (D) Bonding or other financial assurances; and

76 (E) The closure of carbon dioxide sequestration
77 operations, including post-closure monitoring, verification
78 and maintenance; and to

79 (3) With the aid of a carbon dioxide sequestration
80 working group, develop a long-term strategy for the
81 regulation of carbon dioxide sequestration.

§22-11A-2. Definitions.

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

3 (a) “Department” means the Department of
4 Environmental Protection;

5 (b) “Carbon dioxide sequestration” means the injection
6 of carbon dioxide and associated constituents into subsurface

7 geologic formations intended to prevent its release into the
8 atmosphere;

9 (c) “Carbon dioxide sequestration facilities” means the
10 surface equipment used for transport, storage and injection of
11 carbon dioxide, excluding pipelines used to transport carbon
12 dioxide from one or more capture facilities to the
13 sequestration injection site or sites.

14 (d) “Carbon dioxide sequestration site” means the
15 underground carbon dioxide formations where the carbon
16 dioxide is stored or is intended to be stored;

17 (e) “Excursion” means the migrating of carbon dioxide at or
18 beyond the boundary of a carbon dioxide sequestration site; and

19 (f) “Secretary” means the Secretary of the Department of
20 Environmental Protection.

**§22-11A-3. Prohibition of carbon dioxide sequestration without
a permit; injection of carbon dioxide for the
purpose of enhancing the recovery of oil or other
minerals not subject to the provisions of this
article.**

1 (a) The provisions of article eleven of this chapter apply
2 to all permits issued pursuant to this article except, where the
3 express provisions of this article conflict with the provisions
4 of article eleven of this chapter, the express provisions of this
5 article control.

6 (b) Except as set forth in subsection (c) of this section, no
7 person shall engage in carbon dioxide sequestration in this
8 state unless authorized by a permit issued by the department
9 in accordance with section eight, article eleven of this
10 chapter.

11 (c) The injection of carbon dioxide for purposes of
12 enhancing the recovery of oil or other minerals pursuant to a
13 project approved by the department shall not be subject to the
14 provisions of this article.

15 (d) If an oil, natural gas or coalbed methane operator
16 converts its operations to carbon dioxide sequestration upon
17 the cessation of oil or other mineral recovery operations, then
18 the carbon dioxide sequestration facility and the carbon
19 dioxide sequestration site shall be regulated pursuant to this
20 article and article eleven of this chapter. If an operator does
21 not convert its operations to carbon dioxide sequestration
22 upon the cessation of oil or other mineral recovery
23 operations, the wells shall be plugged and abandoned in
24 accordance with article six of this chapter.

25 (e) Any entity owning or operating a carbon dioxide
26 sequestration facility which has commenced construction on
27 or before the effective date of this article is hereby authorized
28 to continue operating until such time as the secretary has
29 established operational and procedural requirements
30 applicable to such existing facilities and the entity owning or
31 operating such facility has had a reasonable opportunity to
32 comply with those requirements.

§22-11A-4. General powers and duties of the secretary with respect to carbon dioxide sequestration.

1 (a) The secretary, after receiving public comment and
2 after consultation with the state geologist and the working
3 group established in section six of this article, shall
4 promulgate legislative rules in accordance with the
5 provisions of article three, chapter twenty-nine-a of this code
6 to implement the provisions of this article, including without
7 limitation:

8 (1) The requirements for issuance of permits for carbon
9 dioxide sequestration;

10 (2) The requirements for carbon dioxide sequestration
11 permit applications;

12 (3) The issuance of notice following the approval of a
13 permit application, which shall identify the location at which
14 the public may examine the permit, describe the nature of the
15 public's opportunity to comment, and list any public hearing
16 that may be held in connection with the permit. The
17 secretary shall allow no less than thirty days for public
18 comment on the draft permit and may for good cause extend
19 the comment period up to an additional thirty days. Notice
20 of any public hearing shall be given no less than thirty days
21 prior to its conduct; and

22 (4) The creation of subclasses of wells within the existing
23 Underground Injection Control (UIC) program administered
24 by the United States Environmental Protection Agency
25 pursuant to Part C of the Safe Drinking Water Act, 42 U.S.C.
26 §300h, *et seq.*, to protect human health, safety and the
27 environment and to allow for the permitting of the
28 sequestration of carbon dioxide;

29 (5) The appropriate bonding or other financial assurance
30 procedures necessary to ensure that carbon dioxide
31 sequestration sites and facilities will be constructed, operated
32 and closed in accordance with the purposes and provisions of
33 this article; and

34 (6) The proper duration of the post-closure care period
35 for carbon dioxide sequestration sites.

36 (b) The secretary shall propose amendments to the rules
37 promulgated under this section and take such action as may
38 be required in order to fulfill the state's primary
39 responsibility for assuring compliance with the federal Safe
40 Drinking Water Act, including any amendments thereto.

**§22-11A-5. Permit application requirements and contents;
permit application fees.**

1 (a) A carbon dioxide sequestration permit application
2 shall include:

3 (1) A description of the general geology of the area to be
4 affected by the injection of carbon dioxide, including
5 geochemistry, structure and faulting, fracturing and seals, and
6 stratigraphy and lithology, including petrophysical attributes;

7 (2) A characterization of the injection zone and aquifers
8 above and below the injection zone that may be affected by
9 the injection of carbon dioxide, including applicable pressure
10 and fluid chemistry data to describe the projected effects of
11 injection activities;

12 (3) The identification of all other drill holes and operating
13 wells that exist or have existed within and adjacent to the
14 proposed sequestration site;

15 (4) An assessment of the effect on fluid resources, on
16 subsurface structures and on the surface of lands that may
17 reasonably be expected to be affected by the injection of
18 carbon dioxide, together with the measures required to
19 mitigate those effects;

20 (5) The plans and procedures for environmental
21 surveillance and excursion detection, prevention and control
22 programs;

23 (6) A site and facilities description, including a
24 description of the proposed carbon dioxide sequestration
25 facilities and documentation sufficient to demonstrate that the
26 applicant has, or will have prior to the commencement of the
27 operation, all legal rights, including without limitation the
28 right to surface or pore space use, necessary to sequester

29 carbon dioxide and associated constituents into the proposed
30 carbon dioxide sequestration site;

31 (7) Proof that the proposed injection wells are designed,
32 at minimum, to the construction standards set forth by the
33 department;

34 (8) A plan for periodic mechanical integrity testing of all
35 wells;

36 (9) A monitoring plan to assess the migration of the
37 injected carbon dioxide and to ensure the retention of the
38 carbon dioxide in the sequestration site;

39 (10) Proof of bonding or financial assurance to ensure
40 that carbon dioxide sequestration sites and facilities will be
41 constructed, operated and closed in accordance with the
42 purposes and provisions of this article and the rules
43 promulgated pursuant to this article;

44 (11) A detailed plan for post-closure monitoring,
45 verification, accounting, maintenance and mitigation;

46 (12) Procedures for the operator of the facilities to
47 provide immediate verbal notice to the department of any
48 excursion after the excursion is discovered, followed by
49 written notice to all surface owners, mineral claimants,
50 mineral owners, lessees and other owners of record of
51 subsurface interests within thirty days of discovering the
52 excursion;

53 (13) Procedures for the termination or modification of
54 any applicable Underground Injection Control (UIC) permit
55 issued under Part C of the Safe Drinking Water Act, 42
56 U.S.C. §300h, *et seq.*, if an excursion cannot be controlled or
57 mitigated;

58 (14) A plan to provide proof of notice to surface owners,
59 mineral claimants, mineral owners, lessees and other owners
60 of record of subsurface interests regarding the contents of the
61 application. At a minimum, the notice shall include:

62 (A) The publication of a Class I legal advertisement in a
63 newspaper of general circulation in each county of the
64 proposed operation. The applicant shall publish the notice at
65 the time of filing and shall identify in the notice the location
66 where the public may examine the application;

67 (B) The mailing of a copy of the notice to all surface
68 owners, mineral claimants, mineral owners, lessees and other
69 owners of record of subsurface interests that are located
70 within one mile of the proposed boundary of the carbon
71 dioxide sequestration site; and

72 (15) Any other requirement set forth in legislative rules
73 promulgated under this article.

74 (b) Upon filing an application, an applicant shall pay a
75 reasonable fee, as established by the secretary in legislative
76 rules, to the department for the costs of reviewing, evaluating
77 and processing the permit, serving notice of an application
78 and holding any hearings. The fee shall be credited to a
79 separate account and shall be used by the department as
80 required to complete the tasks necessary to process, publish
81 and reach a decision on the permit application.

§22-11A-6. Carbon dioxide sequestration working group.

1 (a) The secretary shall establish the carbon dioxide
2 sequestration working group.

3 (b) The secretary, in cooperation with the state geologist,
4 shall appoint at least fifteen persons to serve on the working
5 group.

6 (c) In selecting persons to serve on the working group,
7 the secretary and the state geologist shall appoint at least
8 three persons who are experts in carbon dioxide sequestration
9 or related technologies, at least one person who is an expert
10 in environmental science, at least one person who is an expert
11 in geology, at least one person who is an attorney with an
12 expertise in environmental law, at least one person who is an
13 expert in engineering, at least one person who is an expert in
14 the regulation of public utilities in West Virginia, one person
15 who is a representative of a citizen's group advocating
16 environmental protection, a representative of a coal power
17 electric generating utility advocating carbon dioxide
18 sequestration development, at least one person who is an
19 engineer with an expertise in the underground storage of
20 natural gas, the chairman of the National Council of Coal
21 Lessors or his/her designee, a representative of the West
22 Virginia Coal Association, a representative of the West
23 Virginia Land and Mineral Owners Association, and at least
24 one representative advocating the interests of surface owners
25 of real property.

26 (d) The working group shall study issues pertaining to
27 carbon dioxide sequestration including, but not limited to,
28 scientific, technical, legal and regulatory issues, and issues
29 regarding ownership and other rights and interest in
30 subsurface space that can be used as storage space for carbon
31 dioxide and other associated constituents, or other
32 substances, commonly referred to as "pore space," and shall
33 report to the secretary and the Legislature its
34 recommendations with respect to the development, regulation
35 and control of carbon dioxide sequestration and related
36 technologies.

37 (e) In addition, the working group shall develop a long-
38 term strategy for the regulation of carbon dioxide
39 sequestration in West Virginia.

40 (f) The working group may conduct or initiate studies,
41 scientific or other investigations, research, experiments and
42 demonstrations pertaining to carbon dioxide sequestration,
43 and to this end, the working group may cooperate with state
44 institutions of higher education or any public or private
45 agency. The secretary may receive on behalf of the state for
46 deposit in the State Treasury any moneys which such
47 institutions or state agencies may be authorized to transfer to
48 the Secretary, and all gifts, donations or contributions which
49 such private agencies or other may provide, to defray the
50 expenses of the working group. Any amounts so received
51 shall be expended by the secretary solely for the purposes set
52 forth in subsection (d) of this section.

53 (g) The working group shall issue a preliminary report to
54 the secretary and the Legislature by July 1, 2010, containing
55 any preliminary recommendations or findings of the working
56 group.

57 (h) The working group shall issue a final report to the
58 Legislature by July 1, 2011, which report shall, at a
59 minimum:

60 (1) Recommend appropriate methods to encourage the
61 development of carbon dioxide sequestration technologies;

62 (2) Assess the economic and environmental feasibility of
63 large, long-term carbon dioxide sequestration operations;

64 (3) Recommend any legislation the working group may
65 determine to be necessary or desirable to clarify issues
66 regarding the ownership and other rights and interest in pore
67 space;

68 (4) Recommend methods of facilitating the widespread
69 use of carbon dioxide sequestration technology throughout
70 West Virginia;

71 (5) Identify geologic sequestration monitoring sites to
72 assess the short-term and long-term impact of carbon dioxide
73 sequestration;

74 (6) Assess the feasibility of carbon dioxide sequestration
75 in West Virginia and the characteristics of areas within the
76 state where carbon dioxide could be sequestered;

77 (7) Assess the costs, benefits, risks and rewards of large-
78 scale carbon dioxide sequestration projects in West Virginia;

79 (8) Assess the potential carbon dioxide sequestration
80 capacity in this state;

81 (9) Identify areas of research needed to better understand
82 and quantify the processes of carbon dioxide sequestration;
83 and

84 (10) Outline the working group's long-term strategy for
85 the regulation of carbon dioxide sequestration in West
86 Virginia.

87 (i) The working group, along with the state geologist,
88 shall assist the secretary in developing and promulgating
89 legislative rules under this article.

§22-11A-7. Reporting and accountability.

1 The department shall include within the reports to the
2 Legislature required by section six, article twelve of this
3 chapter its observations concerning all aspects of compliance
4 with this article, including without limitation the
5 promulgation of rules, the formation of the carbon dioxide
6 sequestration working group, the permitting process and any
7 pertinent changes to federal rules or regulations.

§22-11A-8. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

1 (a) Nothing in this article shall be deemed to affect the
2 otherwise lawful right of a mineral owner to drill or bore
3 through a carbon dioxide sequestration site, if done in
4 accordance with the rules promulgated under this article for
5 protecting the carbon dioxide sequestration site against the
6 escape of carbon dioxide.

7 (b) Nothing in this article is intended to impede or impair
8 the ability of an oil, natural gas or coalbed methane operator
9 to inject carbon dioxide through an approved enhanced oil,
10 natural gas or coalbed methane recovery project and to
11 establish, verify, register and sell emission reduction credits
12 associated with the project.

13 (c) The Office of Oil and Gas shall have jurisdiction over
14 any subsequent extraction of sequestered carbon dioxide that
15 is intended for commercial or industrial purposes.

§22-11A-9. Cooperative agreements.

1 The secretary is authorized to enter into cooperative
2 agreements with other governments or government entities
3 for the purpose of regulating carbon dioxide storage projects
4 that extend beyond state regulatory authority under this
5 article.



CHAPTER 98

**(Com. Sub. for S.B. 461 - By Senators Caruth, Chafin,
Tomblin, Mr. President, Browning, Edgell, Green, Helmick,
Plymale, Stollings, Jenkins, Laird, Minard, Yost, Barnes,
Hall, Deem, Oliverio, Williams and Fanning)**

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 13, 2009.]

AN ACT to amend and reenact §22-11-6 of the Code of West Virginia, 1931, as amended, relating to extending the time for compliance with selenium effluent limits; requiring a certain comprehensive study; and filing a report with Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §22-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply
3 therewith: *Provided*, That where necessary and proper, the
4 chief may specify a reasonable time for persons not

5 complying with such standards and limitations to comply
6 therewith, and upon the expiration of any such period of
7 time, the chief shall revoke or modify any permit previously
8 issued which authorized the discharge of treated or untreated
9 sewage, industrial wastes or other wastes into the waters of
10 this state which result in reduction of the quality of such
11 waters below the standards and limitations established
12 therefor by rules of the board or director. The Legislature
13 finds that there are concerns within West Virginia regarding
14 the applicability of the research underlying the federal
15 selenium criteria to a state such as West Virginia which has
16 high precipitation rates and free-flowing streams and that the
17 alleged environmental impacts that were documented in
18 applicable federal research have not been observed in West
19 Virginia and, further, that considerable research is required
20 to determine if selenium is having an impact on West
21 Virginia streams, to validate or determine the proper testing
22 methods for selenium and to better understand the chemical
23 reactions related to selenium mobilization in water. For
24 existing NPDES permits, the department may extend the time
25 period for achieving water quality-based effluent limits for
26 selenium discharges into waters supporting aquatic life uses
27 to July 1, 2012, upon compliance with all federally required
28 public notice requirements for such modifications, upon a
29 finding that the permittee cannot comply with its existing
30 compliance schedule and that an extension is not in violation
31 of any state or federal laws, rules or regulations. The West
32 Virginia Department of Environmental Protection is hereby
33 directed to undertake a comprehensive study relating to
34 selenium and prepare a report detailing such findings and
35 submitting the report to the Joint Committee on Government
36 and Finance no later than January 1, 2010. In conducting
37 such study, the West Virginia Department of Environmental
38 Protection shall consult with, among others, West Virginia
39 University and the West Virginia Water Research Institute.



CHAPTER 99

(Com. Sub. for H.B. 3339 - By Delegate Mahan)

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

AN ACT to amend and reenact §22-16-12 of the Code of West Virginia, 1931, as amended, relating to facilitate the complete closure of the Gwinn, or otherwise known as the Midwest Landfill, located in Summers County, by having the Secretary of the Department of Environmental Protection place said closure as a top priority use of Solid Waste Facility Closure Cost Assistance Fund moneys.

Be it enacted by the Legislature of West Virginia:

That §22-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE.

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

1 (a) The "Closure Cost Assistance Fund" is continued as
2 a special revenue account in the State Treasury. The fund
3 shall operate as a special fund whereby all deposits and
4 payments thereto do not expire to the General Revenue Fund,
5 but shall remain in such account and be available for

6 expenditure in the succeeding fiscal year. Separate
7 subaccounts may be established within the special account
8 for the purpose of identification of various revenue resources
9 and payment of specific obligations.

10 (b) Interest earned on any money in the fund shall be
11 deposited to the credit of the fund.

12 (c) The fund consists of the following:

13 (1) Moneys collected and deposited in the State Treasury
14 which are specifically designated by acts of the Legislature
15 for inclusion in the fund, including moneys collected and
16 deposited into the fund pursuant to section four of this article;

17 (2) Contributions, grants and gifts from any source, both
18 public and private, which may be used by the secretary for
19 any project or projects;

20 (3) Amounts repaid by permittees pursuant to section
21 eighteen, article fifteen of this chapter; and

22 (4) All interest earned on investments made by the state
23 from moneys deposited in this fund.

24 (d) The Solid Waste Management Board, upon written
25 approval of the secretary, has the authority to pledge all or
26 such part of the revenues paid into the Closure Cost
27 Assistance Fund as may be needed to meet the requirements
28 of any revenue bond issue or issues of the Solid Waste
29 Management Board authorized by this article, including the
30 payment of principal of, interest and redemption premium, if
31 any, on such revenue bonds and the establishing and
32 maintaining of a reserve fund or funds for the payment of the
33 principal of, interest and redemption premium, if any, on
34 such revenue bond issue or issues when other moneys
35 pledged may be insufficient therefor. Any pledge of moneys
36 in the Closure Cost Assistance Fund for revenue bonds shall
37 be a prior and superior charge on such fund over the use of

38 any of the moneys in such fund to pay for the cost of any
39 project on a cash basis. Expenditures from the fund, other
40 than for the retirement of revenue bonds, may only be made
41 in accordance with this article.

42 (e) The amounts deposited in the fund may be expended
43 only on the cost of projects as provided for in sections three
44 and fifteen of this article, as provided in subsection (f) of this
45 section and for payment of bonds and notes issued pursuant
46 to section five of this article. No more than two percent of
47 the annual deposits to such fund may be used for
48 administrative purposes.

49 (f) Notwithstanding any provision of this article, upon
50 request of the Solid Waste Management Board, and with the
51 approval of the projects by the Secretary of the Department
52 of Environmental Protection, the secretary may pledge and
53 place into escrow accounts up to an aggregate of \$2,000,000
54 of the fund to satisfy two years debt service requirement
55 that permittees of publicly-owned landfills and transfer
56 stations are required to meet in order to obtain loans. Pledges
57 shall be made on a project-by-project basis, may not exceed
58 \$500,000 for a project and shall be made available after loan
59 commitments are received. The secretary may pledge funds
60 for a loan only when the following conditions are met:

61 (1) The proceeds of the loan are used only to perform
62 construction of a transfer station or a composite liner system
63 that is required to meet title forty-seven, series thirty-eight,
64 solid waste management rules;

65 (2) The permittee dedicates all yearly debt service
66 revenue, as determined by the Public Service Commission,
67 to meet the repayment schedule of the loan, before it uses
68 available revenue for any other purpose; and

69 (3) That any funds pledged may only be paid to the
70 lender if the permittee is in default on the loan.

71 (g) Any landfills which were ordered to close by
72 December 31, 1994, and which have been granted a
73 certificate of need pursuant to subsection (b), section one-c,
74 article two, chapter twenty-four of this code or section one-i
75 of said article are hereby granted a closure extension until
76 January 1, 1996. No landfill which closed on or before
77 September 30, 1994, shall be eligible for such an extension.

78 (h) The Department of Environmental Protection is
79 required to file, by January 1 of each ensuing year, an annual
80 report with the Joint Committee on Government and Finance
81 providing details on the manner in which the landfill closure
82 assistance funds were expended for the prior fiscal year.

83 (i) Notwithstanding any other contrary provision of this
84 code, the secretary shall place as a top priority to expend any
85 and all funds derived from the Solid Waste Facility Closure
86 Cost Assistance Fund necessary to facilitate the complete
87 closure forthwith of the now-defunct Gwinn or otherwise
88 known as the Midwest Landfill, located in Summers County.



CHAPTER 100

(Com. Sub. for S.B. 613 - By Senator Kessler)

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

AN ACT to amend and reenact §22-21-6, §22-21-15, §22-21-16 and §22-21-17 of the Code of West Virginia, 1931, as amended, all relating to clarifying notice requirements for a hearing on a permit application related to coalbed methane wells; requiring

a notice of hearing to be published; and making technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §22-21-6, §22-21-15, §22-21-16 and §22-21-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

§22-21-15. Drilling units and pooling of interests.

§22-21-16. Notice to owners.

§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

1 (a) It is unlawful for any person to commence, operate,
2 deepen or stimulate any coalbed methane well, to conduct
3 any horizontal drilling of a well commenced from the surface
4 for the purpose of commercial production of coalbed
5 methane or to convert any existing well, vent hole or other
6 hole to a coalbed methane well, including in any case site
7 preparation work which involves any disturbance of land,
8 without first securing from the chief a permit pursuant to this
9 article.

10 (b) Every permit application filed under this section shall
11 be verified and shall contain the following:

12 (1) The names and addresses of: (i) The well operator;
13 (ii) the agent required to be designated under subsection (e)
14 of this section; and (iii) every person or entity whom the
15 applicant must notify under section nine of this article;

16 (2) The name and address of each coal operator of record
17 and each coal owner of record or providing a record
18 declaration of notice pursuant to section thirty-six, article six
19 of this chapter of any coal seam which is: (i) To be
20 penetrated by a proposed well; (ii) within seven hundred fifty
21 horizontal feet of any portion of the proposed well bore; or
22 (iii) within one hundred vertical feet of the designated coal
23 seams to be stimulated in the proposed well, except that in
24 the case of an application to convert a ventilation hole to a
25 gob well, the name and address only of such owner or
26 operator of the seams to be penetrated by a proposed well
27 shall be necessary;

28 (3) The well name or such other identification as the
29 chief may require;

30 (4) The approximate depth to which the well is to be
31 drilled, deepened or converted, the coal seams (stating the
32 depth and thickness of each seam) in which the well will be
33 completed for production and any other coal seams
34 (including the depth and thickness of each seam) which will
35 be penetrated by the well;

36 (5) A description of any means to be used to stimulate the
37 well;

38 (6) If the proposed well will require casing or tubing to
39 be set, the entire casing program for the well, including the
40 size of each string of pipe, the starting point and depth to
41 which each string is to be set and the extent to which each
42 such string is to be cemented;

43 (7) If the proposed operation is to convert an existing
44 well, as defined in section one, article six of this chapter, or
45 to convert a vertical ventilation hole to a coalbed methane
46 well, all information required by this section, all formations

47 from which production is anticipated and any plans to plug
48 any portion of the well;

49 (8) Except for a gob well or vent hole proposed to be
50 converted to a well, if the proposed coalbed methane well
51 will be completed in some but not all coal seams for
52 production, a plan and design for the well which will protect
53 all workable coal seams which will be penetrated by the well;

54 (9) If the proposed operations will include horizontal
55 drilling of a well commenced on the surface, a description of
56 such operations, including both the vertical and horizontal
57 alignment and extent of the well from the surface to total
58 depth;

59 (10) Any other relevant information which the chief may
60 require by rule.

61 (c) Each application for a coalbed methane well permit
62 shall be accompanied by the following:

63 (1) The applicable bond prescribed by section eight of
64 this article;

65 (2) A permit application fee of \$650;

66 (3) The erosion and sediment control plan required under
67 subsection (d) of this section;

68 (4) The consent and agreement of the coal owner as
69 required by section seven of this article and, if applicable,
70 section twenty of this article;

71 (5) A plat prepared by a licensed land surveyor or
72 registered engineer showing the district and county in which
73 the drill site is located, the name of the surface owner of the
74 drill site tract, the acreage of the same, the names of the

75 surface owners of adjacent tracts, the names of all coal
76 owners underlying the drill site tract, the proposed or actual
77 location of the well determined by a survey, the courses and
78 distances of such location from two permanent points or
79 landmarks on said tract, the location of any other existing or
80 permitted coalbed methane well or any oil or gas well located
81 within two thousand five hundred feet of the drill site, the
82 number to be given the coalbed methane well, the proposed
83 date for completion of drilling, the proposed date for any
84 stimulation of the well and, if horizontal drilling of a well
85 commenced on the surface is proposed, the vertical and
86 horizontal alignment and extent of the well;

87 (6) A certificate by the applicant that the notice
88 requirements of section nine of this article have been satisfied
89 by the applicant. Such certification may be by affidavit of
90 personal service, or the return receipt card, or other postal
91 receipt, for certified mailing.

92 (d) An erosion and sediment control plan shall
93 accompany each application for a permit. Such plan shall
94 contain methods of stabilization and drainage, including a
95 map of the project area indicating the amount of acreage
96 disturbed. The erosion and sediment control plan shall meet
97 the minimum requirements of the West Virginia erosion and
98 sediment control manual as adopted and, from time to time,
99 amended by the Office of Oil and Gas in consultation with
100 the several soil conservation districts pursuant to the control
101 program established in this state through Section 208 of the
102 federal Water Pollution Control Act Amendments of 1972,
103 33 U. S. C. §1288. The erosion and sediment control plan
104 shall become part of the terms and conditions of a permit and
105 the provisions of the plan shall be carried out where
106 applicable in operations under the permit. The erosion and
107 sediment control plan shall set out the proposed method of
108 reclamation which shall comply with the requirements of
109 section thirty, article six of this chapter.

110 (e) The well operator named in such application shall
111 designate the name and address of an agent for such operator
112 who shall be the attorney-in-fact for the operator and who
113 shall be a resident of the State of West Virginia, upon whom
114 notices, orders or other communications issued pursuant to
115 this article may be served, and upon whom process may be
116 served. Every well operator required to designate an agent
117 under this section shall within five days after the termination
118 of such designation notify the office of such termination and
119 designate a new agent.

120 (f) The well owner or operator shall install the permit
121 number as issued by the chief in a legible and permanent
122 manner to the well upon completion of any permitted work.
123 The dimensions, specifications and manner of installation
124 shall be in accordance with the rules of the chief.

125 (g) The chief shall deny the issuance of a permit if he or
126 she determines that the applicant has committed a substantial
127 violation of a previously issued permit, including the erosion
128 and sediment control plan, or a substantial violation of one or
129 more of the rules promulgated hereunder, and has failed to
130 abate or seek review of the violation. In the event that the
131 chief finds that a substantial violation has occurred with
132 respect to existing operations and that the operator has failed
133 to abate or seek review of the violation in the time
134 prescribed, he or she may suspend the permit on which said
135 violation exists, after which suspension the operator shall
136 forthwith cease all work being conducted under the permit
137 until the chief reinstates the permit, at which time the work
138 may be continued. The chief shall make written findings of
139 any such determination made by him or her and may enforce
140 the same in the circuit courts of this state and the operator
141 may appeal such suspension pursuant to section twenty-five
142 of this article. The chief shall make a written finding of any
143 such determination.

144 (h) Any person who violates this section shall be guilty
145 of a misdemeanor and, upon conviction thereof, shall be
146 fined not more than \$5,000 or be confined in jail not more
147 than one year, or both fined and confined.

§22-21-15. Drilling units and pooling of interests.

1 (a) In the absence of a voluntary agreement, an operator,
2 owner or other party claiming an ownership interest in the
3 coalbed methane may file an application with the chief to
4 pool: (i) Separately owned interests in a single tract; (ii)
5 separately owned tracts; (iii) separately owned interests in
6 any tract; and (iv) any combination of (i), (ii) and (iii) to form
7 a drilling unit for the production of coalbed methane from
8 one or more coalbed methane wells.

9 (b) The application for a drilling unit may accompany the
10 application for a permit for a coalbed methane well or be
11 filed as a supplement to the permit application. Such
12 application shall be verified by the applicant and contain the
13 following information for the proposed unit:

14 (1) The identity of each well and operator as set out in the
15 well permit application;

16 (2) Each well number, if one has been assigned;

17 (3) The acreage of the proposed unit, the identity and
18 acreage of each separate tract to be included in the proposed
19 unit and, where parts of tracts are included, the acreage of
20 such parts;

21 (4) The district and county in which the unit is located;

22 (5) The names and addresses of all persons to whom
23 notice must be provided under subsection (a), section sixteen
24 of this article known to the applicant. When any coal seam
25 is separately owned, the list of names shall identify such

26 separate ownership giving the names of the separately owned
27 seams;

28 (6) A statement describing the actions taken by the
29 applicant to obtain a voluntary agreement from each interest
30 owner or claimant named in the application to whom notice
31 must be provided under subsection (a), section sixteen of this
32 article or any other owner or claimant who has notified the
33 applicant of a claim from which agreement has not been
34 obtained;

35 (7) Other pertinent and relevant information as the chief
36 may prescribe by rules.

37 (c) The application for a drilling unit shall be
38 accompanied with the following:

39 (1) A plat prepared by a licensed land surveyor or
40 registered professional engineer showing the location of the
41 coalbed methane well or wells, or proposed well or wells, the
42 boundary and acreage of the proposed drilling unit, the
43 boundary and acreage of each tract contained in the unit and,
44 where parts of tracts are included, the boundary and acreage
45 of such parts, a name identification of each tract and the
46 district and county in which the unit is located. All
47 boundaries must be shown with courses and distances;

48 (2) A permit application fee of \$250;

49 (3) A certificate by the applicant that the notice
50 requirements of section sixteen of this article were satisfied
51 by the applicant. Such certification may be by affidavit of
52 personal service, or the return receipt card, or other postal
53 receipt, for certified mailing;

54 (4) An estimate of the cost, or the actual cost if known,
55 of drilling, completing and equipping, operating, plugging
56 and abandoning any well or wells in the proposed unit.

§22-21-16. Notice to owners.

1 (a) At least thirty days prior to the date set for hearing
2 under section seventeen of this article, the applicant shall
3 deliver by personal service or by certified mail, return receipt
4 requested, notice to the following:

5 (1) Each coal owner of record and coal operator of record
6 of any coal seam underlying any tract or portion thereof
7 which is proposed to be included in the unit;

8 (2) Each owner and lessee of record and each operator of
9 natural gas surrounding the well bore and existing in
10 formations above the top of the uppermost member of the
11 "Onondaga Group" or at a depth less than six thousand feet,
12 whichever is shallower. Notices to gas operators shall be
13 sufficient if served upon the agent of record with the Office
14 of Oil and Gas; and

15 (3) Any coalbed methane owner to the extent not
16 otherwise named which interest arises from a deed, lease,
17 contract, will, inheritance or other instrument of record
18 wherein a person or entity identified in subdivision (1) or (2),
19 subsection (a) of this section or the predecessor in title to
20 such person or entity, expressly granted, leased, reserved or
21 conveyed coalbed methane.

22 (b) At least thirty days prior to the date set for the hearing
23 under section seventeen of this article, the applicant shall
24 publish a notice by a Class II legal advertisement in the
25 county or counties in which the well unit is to be located.
26 The legal advertisement shall contain the information
27 required by subsection (c) and any other information as the
28 chief shall prescribe by rule.

29 (c) The notice required by this section shall specify a
30 time and place for a conference and a hearing on this

31 application, shall advise the persons notified that the
32 applicant has filed an application for a drilling unit for the
33 production of coalbed methane, that they may be present and
34 object or offer comments to the formation of the proposed
35 unit and shall be accompanied with copies of: (i) The permit
36 application for the coalbed methane well; (ii) the permit
37 application for the drilling unit; and (iii) the plat of the
38 drilling unit. However, in the case of the notice required by
39 subsection (b) of this section, only the address of where an
40 interested party can obtain such copies is required to be
41 published.

42 (d) Notice by the applicant to all persons to whom notice
43 must be provided under subsection (a) of this section and
44 notice by publication as provided by subsection (b) of this
45 section shall be deemed to include, and shall be deemed to be
46 sufficient notice to, all potential claimants to ownership of
47 the coalbed methane.

**§22-21-17. Review of application; hearing; pooling order;
spacing; operator; elections; working interests,
royalty interests, carried interests, escrow
account for conflicting claims, division order.**

1 (a) Prior to the time fixed for a hearing under subsection
2 (b) of this section, the board shall also set a time and place
3 for a conference between the proposed applicant to operate
4 a coalbed methane drilling unit and all persons to whom
5 notice has been given under subsection (a), section sixteen of
6 this article who have not entered into a voluntary agreement.
7 At such conference the applicant and such other persons
8 present or represented having an interest in the proposed unit
9 shall be given an opportunity to enter into voluntary
10 agreements for the development of the unit upon reasonable
11 terms and conditions.

12 No order may be issued by the board as to any unit unless
13 the applicant submits at the hearing a verified statement
14 setting forth the results of the conference. If agreement is
15 reached with all parties to the conference, the board shall find
16 the unit is a voluntary unit and issue an order consistent with
17 such finding.

18 (b) The review board shall, upon request of a proposed
19 applicant for a drilling unit or upon request of a coal owner
20 or operator, provide a convenient date and time for a hearing
21 on the application for a drilling unit, which hearing date shall
22 be no sooner than thirty-five days nor more than sixty days
23 of the date the request for hearing is made. The review board
24 shall review the application and on the date specified for a
25 hearing shall conduct a public hearing. The review board
26 shall take evidence, making a record thereof and consider:

27 (1) The area which may be drained efficiently and
28 economically by the proposed coalbed methane well or wells;

29 (2) The plan of development of the coal and the need for
30 proper ventilation of any mines or degasification of any
31 affected coal seams;

32 (3) The nature and character of any coal seam or seams
33 which will be affected by the coalbed methane well or wells;

34 (4) The surface topography and property lines of the
35 lands underlaid by the coal seams to be included in the unit;

36 (5) Evidence relevant to the proper boundary of the
37 drilling unit;

38 (6) The nature and extent of ownership of each coalbed
39 methane owner or claimant and whether conflicting claims
40 exist;

41 (7) Whether the applicant for the drilling unit proposes to
42 be the operator of the coalbed methane well or wells within
43 the unit; and if so, whether such applicant has a lease or other
44 agreement from the owners or claimants of a majority interest
45 in the proposed drilling unit;

46 (8) Whether a disagreement exists among the coalbed
47 methane owners or claimants over the designation of the
48 operator for any coalbed methane wells within the unit and,
49 if so, relevant evidence to determine which operator can
50 properly and efficiently develop the coalbed methane within
51 the unit for the benefit of the majority of the coalbed methane
52 owners;

53 (9) If more than one person is interested in operating a
54 well within the unit, the estimated cost submitted by each
55 such person for drilling, completing, operating and marketing
56 the coalbed methane from any proposed well or wells; and

57 (10) Any other available geological or scientific data
58 pertaining to the pool which is proposed to be developed.

59 (c) The review board shall take into account the evidence
60 introduced, comments received and any objections at the
61 hearing, and if satisfied that a drilling unit should not be
62 established, shall enter an order denying the application. If
63 the review board is satisfied that a drilling unit should be
64 established, it shall enter a pooling order establishing a
65 drilling unit. Such pooling order shall:

66 (1) Establish the boundary of the proposed unit, making
67 such adjustment in the boundary as is just;

68 (2) Authorize the drilling and operation of a coalbed
69 methane well or wells for production of coalbed methane
70 from the pooled acreage;

71 (3) Establish minimum distances for any wells in the unit
72 and for other wells which would drain the pooled acreage;

73 (4) Designate the operator who will be authorized to drill,
74 complete and operate any well or wells in the unit;

75 (5) Establish a reasonable fee for the operator for
76 operating costs, which shall include routine maintenance of
77 the well and all accounting necessary to pay all expenses,
78 royalties and amounts due working interest owners;

79 (6) Such other findings and provisions as are appropriate
80 for each order.

81 (d) The operator designated in such order shall be
82 responsible for drilling, completing, equipping, operating,
83 plugging and abandoning the well, shall market all
84 production therefrom, shall collect all proceeds therefor and
85 shall distribute such proceeds in accordance with the division
86 order issued by the review board.

87 (e) Upon issuance of the pooling order, the coalbed
88 methane owners or any lessee of any such owners or any
89 claimants thereto may make one of the following elections
90 within thirty days after issuance of the order:

91 (1) An election to sell or lease its interest to the operator
92 on such terms as the parties may agree, or if unable to agree,
93 upon such terms as are set forth by the board in its order;

94 (2) An election to become a working interest owner by
95 participating in the risk and cost of the well; or

96 (3) An election to participate in the operation of the well
97 as a carried interest owner.

98 Any entity which does not make an election within said
99 thirty days prescribed herein shall be deemed to have elected
100 to sell or lease under subdivision (1) of this subsection.

101 (f) The working interest in the well shall include: (i) The
102 right to participate in decisions regarding expenditures in
103 excess of operating costs, taxes, any royalties in excess of
104 one-eighth, and other costs and expenses allowed in the
105 pooling order; and (ii) the obligation to pay for all
106 expenditures. The working interest shall exist in: (i) All well
107 operators and owners who participate in the risk and cost of
108 drilling and completing the well; and (ii) carried interest
109 owners after recoupment provided in subsection (h) of this
110 section. The working interest owners' net revenue share shall
111 be seven eighths of the proceeds of sales of coalbed methane
112 at the wellhead after deduction of operating costs, taxes, any
113 royalties in excess of one-eighth and other costs and
114 expenses allowed in a pooling order. Unless the working
115 interest owners otherwise agree, the working interest owners
116 shall share in all costs and decisions in proportion to their
117 ownership interest in the unit. If any working interest owner
118 deposits or contributes amounts in the escrow account which
119 exceed actual costs, such owner shall be entitled to a refund;
120 and if amounts deposited or contributed are less than actual
121 costs, such owner shall make a deposit or contribution for the
122 deficiency.

123 (g) The royalty interest in a well shall include the right to
124 receive one eighth of the gross proceeds resulting from the
125 sale of methane at the wellhead and such interest shall exist
126 in the coalbed methane owners: *Provided*, That any coalbed
127 methane owner who in good faith has entered a lease or other
128 contract prior to receiving notice of an application to form
129 the drilling unit as provided herein shall be entitled to such
130 owner's fractional interest in the royalty calculated at a rate
131 provided for in such contract. Each such owner shall be
132 entitled to share in the royalty in proportion to his or her
133 fractional interest in the unit.

134 (h) Where a coalbed methane owner elects to become a
135 carried interest owner, such owner shall be entitled to his or

136 her proportionate share of the working interest after the other
137 working interest owners have recouped three hundred percent
138 of the reasonable capital costs of the well or wells, including
139 drilling, completing, equipping, plugging and abandoning
140 and any further costs of reworking or other improvements of
141 a capital nature.

142 (i) Each pooling order issued shall provide for the
143 establishment of an escrow account into which the payment
144 of costs and proceeds attributable to any conflicting interests
145 shall be deposited and held for the interest of the claimants as
146 follows:

147 (1) Each participating working interest owner, except for
148 the operator, shall deposit in the escrow account its
149 proportionate share of the costs allocable to the ownership
150 interest claimed by such working interest owner.

151 (2) The operator shall deposit in the escrow account all
152 proceeds attributable to the conflicting interests of any
153 coalbed methane owners who lease, or are deemed to have
154 leased, their interest, plus all proceeds in excess of
155 operational expenses, as allowed in the pooling order,
156 attributable to the conflicting working and carried interest
157 owners.

158 (j) After each coalbed methane owner has made, or has
159 been deemed to have made, an election under subsection (e)
160 of this section, the review board shall enter a division order
161 which shall set out the net revenue interest of each working
162 interest owner, including each carried interest owner and the
163 royalty interest of each coalbed methane owner. Thereafter
164 payments shall be made to working interest owners, carried
165 interest owners and royalty interest owners in accordance
166 with the division order, except that payments attributable to
167 conflicting claims shall be deposited in the escrow account.

168 The fractional interest of each owner shall be expressed as a
169 decimal carried to the sixth place.

170 (k) Upon resolution of conflicting claims either by
171 voluntary agreement of the parties or a final judicial
172 determination, the review board shall enter a revised division
173 order in accordance with such agreement or determination
174 and all amounts in escrow shall be distributed as follows:

175 (1) Each legally entitled working interest owner shall
176 receive its proportionate share of the proceeds attributable to
177 the conflicting ownership interests;

178 (2) Each legally entitled carried interest owner shall
179 receive its proportionate share of the proceeds attributable to
180 the conflicting ownership interests, after recoupment of
181 amounts provided in subsection (h) of this section;

182 (3) Each legally entitled entity leasing, or deemed to have
183 leased, its coalbed methane shall receive a share of the
184 royalty proceeds attributable to the conflicting interests; and

185 (4) The operator shall receive the costs contributed to the
186 escrow account by each legally entitled participating working
187 interest owner.

188 (l) The review board shall enact rules for the
189 administration and protection of funds delivered to escrow
190 accounts.

191 (m) No provision of this section or article shall obviate
192 the requirement that the coal owner's consent and agreement
193 be obtained prior to the issuance of a permit as required
194 under section seven of this article.

CHAPTER 101

**(S.B. 335 - By Senators Bowman, K. Facemyer, Guills,
Prezioso, Unger, Minard, Plymale, Jenkins, Yost and Green)**

[Passed April 10, 2009; in effect July 1, 2009.]
[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §29-1-11 of the Code of West Virginia, 1931, as amended, relating to authorizing distribution of fairs and festivals' funding by the Commissioner of the Division of Culture and History.

Be it enacted by the Legislature of West Virginia:

That §29-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-11. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

- 1 (a) The division may, in the name of the State of West
- 2 Virginia, through the commissioner or its commissions,
- 3 accept and receive grants, appropriations, gifts, bequests and
- 4 funds from any public or private source for the purpose of
- 5 carrying out the duties and purposes of this article.

6 (b) The division may, through the commissioner or its
7 commissions, apply for grants from the federal government,
8 private foundations and any other source for the purposes of
9 this article.

10 (c) All funds received from any source shall be paid
11 into the Treasury of the state and disbursed upon warrant
12 by the State Auditor following requisition by the division.
13 The requisitions shall be signed by the commissioner or by
14 another person as the commissioner may authorize by
15 written document deposited with the Auditor or, in the
16 event of emergency, by the Governor or the Governor's
17 designee.

18 (d) No funds or gifts received from any source shall be
19 expended or used for any purpose other than that intended as
20 evidenced by a positive and affirmative declaration or by a
21 negative restriction or limitation.

22 (e) The division may assist in the promotion and
23 operation of an annual state fair and other regional or local
24 fairs and festivals entitled to aid when funds are available and
25 to expend those funds for the support and development of
26 fairs and festivals.

27 (f) All federal or state funds received to provide
28 grants-in-aid or awards to further the purposes of this article
29 shall be approved and distributed by the appropriate
30 commission established by this article.

CHAPTER 102

(S.B. 610 - By Senators Palumbo, Stollings and Plymale)

[Passed April 10, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2009.]

AN ACT to amend and reenact §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Film Industry Investment Act; providing and eliminating definitions; increasing the amount of credit allowed in certain years; providing requirements to claim credit; providing for use of credit and transfer process; eliminating liability of transferees for credit that is disqualified; authorizing issuance of rules by the Secretary of Commerce for administration of the film credit; and making amendments retroactively applicable to taxable years beginning after December 31, 2007.

Be it enacted by the Legislature of West Virginia:

That §11-13X-3, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-9 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-3. Definitions.

§11-13X-5. Amount of credit allowed; limitation of the credits.

§11-13X-6. Requirements for credit.

§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

§11-13X-9. Legislative rules.

§11-13X-13. Effective date.

§11-13X-3. Definitions.

1 (a) *General.* -- When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 of this section have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required by the
5 context in which the term is used.

6 (b) *Terms defined.* --

7 (1) "Commercial exploitation" means reasonable intent
8 for public viewing for the delivery medium used.

9 (2) "Direct production expenditure" means a transaction
10 that occurs in the State of West Virginia or with a West
11 Virginia vendor and includes:

12 (A) Payment of wages, fees and costs for related fringe
13 benefits provided for talent, management or labor that are
14 subject to West Virginia income tax;

15 (B) Payment to a personal services corporation for the
16 services of a performing artist if:

17 (i) The personal services corporation is subject to West
18 Virginia income tax on those payments; and

19 (ii) The performing artist receiving payments from the
20 personal services corporation is subject to West Virginia
21 income tax; and

22 (C) Any of the following provided by a vendor:

23 (i) The story and scenario to be used by a qualified
24 project;

25 (ii) Set construction and operations, wardrobe,
26 accessories and related services;

27 (iii) Photography, sound synchronization, lighting and
28 related services;

29 (iv) Editing and related services;

30 (v) Rental of facilities and equipment;

31 (vi) Leasing of vehicles;

32 (vii) Food or lodging;

33 (viii) Airfare if purchased through a West Virginia-based
34 travel agency or travel company;

35 (ix) Insurance coverage and bonding if purchased
36 through a West Virginia-based insurance agent; and

37 (x) Other direct costs of producing a qualified project in
38 accordance with generally accepted entertainment industry
39 practices.

40 (3) "Eligible company" means a person or business entity
41 engaged in the business of producing film industry
42 productions.

43 (4) "Feature length" means in excess of forty minutes.

44 (5) "Film industry production" means a qualified project
45 intended for reasonable national or international commercial
46 exploitation.

47 (6) "Film office" means the West Virginia Film Office,
48 which is a division of the West Virginia Department of
49 Commerce.

50 (7) "Postproduction expenditure" means a transaction that
51 occurs in West Virginia or with a West Virginia vendor after

52 the completion of principal photography, including editing
53 and negative cutting, Foley recording and sound effects,
54 automatic dialogue replacement (also known as ADR or
55 dubbing), special effects or visual effects, including
56 computer-generated imagery or other effects, scoring and
57 music editing, sound editing, beginning and end credits,
58 soundtrack production, subtitling or addition of sound or
59 visual effects; but not including an expenditure for
60 advertising, marketing, distribution or expense payments.

61 (8) "Qualified project" means a feature length theatrical
62 or direct-to-video motion picture, a made-for-television
63 motion picture, a commercial, a music video, commercial
64 still photography, a television pilot program, a television
65 series and a television mini-series that incurs a minimum of
66 \$25,000 in direct production expenditures and post-
67 production expenditures, as defined by this subsection, in
68 West Virginia. The term excludes news or current affairs
69 programming, a weather or market program, an interview or
70 talk show, a sporting event or show, an awards show, a gala,
71 a production that solicits funds, a home shopping program, a
72 program that primarily markets a product or service, political
73 advertising or a concert production.

74 A qualified project may be produced on any single media
75 or multimedia program that:

76 (A) Is fixed on film, digital medium, videotape, computer
77 disk, laser disc or other similar delivery medium;

78 (B) Can be viewed or reproduced;

79 (C) Is not intended to and does not violate article eight-c,
80 chapter sixty-one of this code;

81 (D) Does not contain obscene matter or sexually explicit
82 conduct, as defined by article eight-a, chapter sixty-one of
83 this code;

84 (E) Is intended for reasonable commercial exploitation
85 for the delivery medium used; and

86 (F) Does not contain content that portrays the State of
87 West Virginia in a significantly derogatory manner.

88 ((9) "Tax Commissioner" means the West Virginia State
89 Tax Commissioner or his or her designee.

§11-13X-5. Amount of credit allowed; limitation of the credits.

1 (a) *Base allowance.* --

2 The amount of credit allowed to every eligible company,
3 except as provided in subsection (b) of this section, shall be
4 twenty-seven percent.

5 (b) *Extra allowance for hiring of local workers.* -- Any
6 amount allowed in subsection (a) of this section shall be
7 increased by an additional four percent if the eligible
8 company, or its authorized payroll service company, employs
9 ten or more West Virginia residents as part of its full-time
10 employees working in the state or as apprentices working in
11 the state.

12 (c) *Application of the credits.* -- The tax credit allowed
13 under this section shall be applied to the eligible company's
14 state tax liability as provided in section seven of this article.

15 (d) *Limitation of the credits.* -- No more than \$10 million
16 of the tax credits shall be allocated by the film office in any
17 given West Virginia state fiscal year. The film office shall
18 allocate the tax credits in the order the applications therefor
19 are received.

§11-13X-6. Requirements for credit.

1 (a) In order for any eligible company to claim a tax credit
2 under this article, it shall comply with the following
3 requirements:

4 (1) If the qualified project contains production credits, the
5 eligible company shall agree, upon request by the film office,
6 to recognize the State of West Virginia with the following
7 acknowledgment in the end credit roll: "Filmed in West
8 Virginia with assistance of the West Virginia Film Industry
9 Investment Act";

10 (2) Apply to the film office on forms and in the manner
11 the film office may prescribe; and

12 (3) Submit to the film office information required by the
13 film office to demonstrate conformity with the requirements
14 of this section and shall agree in writing:

15 (A) To pay all obligations the eligible company has
16 incurred in West Virginia; and

17 (B) To delay filing of a claim for the tax credit authorized
18 by this article until the film office delivers written
19 notification to the Tax Commissioner that the eligible
20 company has fulfilled all requirements for the credit.

21 The film office shall determine the eligibility of the
22 company and the qualification of each project, and shall
23 report this information to the Tax Commissioner in a manner
24 and at times the film office and the Tax Commissioner shall
25 agree upon.

26 (b) Upon completion of a qualified project:

27 (1) An eligible company shall have filed all required
28 West Virginia tax reports and returns and paid any balance of
29 West Virginia tax due on those returns;

30 (2) All claims for the tax credit shall be filed with an
31 expense verification report prepared by an independent
32 certified public accountant, utilizing "agreed upon
33 procedures" which are prescribed by the film office in
34 accordance with generally accepted auditing standards in the
35 United States. The certified public accountant will render a
36 report as to the qualification of the credits, consistent with
37 guidelines to be determined by the film office and approved
38 by the Tax Commissioner; and

39 (3) An eligible company claiming an extra allowance for
40 employing local workers shall submit to the film office
41 documentation verifying West Virginia residency for all
42 individuals claimed to qualify for the extra allowance. The
43 documentation shall include the name, home address and
44 telephone number for all individuals used to qualify for the
45 extra allowance.

46 (c) If the requirements of this section have been complied
47 with, the film office shall approve the film tax credit and
48 issue a document granting the appropriate tax credit to the
49 eligible company and shall report this information to the Tax
50 Commissioner.

**§11-13X-8. Uses of credit; unused credit; carry forward; carry
back prohibited; expiration and forfeiture of
credit.**

1 (a) No credit is allowed under this section against any
2 employer withholding taxes imposed by article twenty-one of
3 this chapter.

4 (b) If the tax credit allowed under this article in any
5 taxable year exceeds the sum of the taxes enumerated in
6 subsection (b), (c) or (d), section seven of this article for that
7 taxable year, the excess may be applied against those taxes,

8 in the order and manner stated in section seven of this article,
9 for succeeding taxable years until the earlier of the following:

10 (1) The full amount of the excess tax credit is used;

11 (2) The expiration of the second taxable year after the
12 taxable year in which the expenditures occurred. The tax
13 credit remaining thereafter is forfeited; or

14 (3) The excess tax credit is transferred or sold.

15 (c) No carryback is allowed to a prior taxable year that
16 does not have qualified expenditures for the amount of any
17 unused portion of any annual credit allowance.

18 (d) The transfer or sale of this credit does not extend the
19 time in which the credit can be used. The carry forward
20 period for credit that is transferred or sold begins on the date
21 on which the credit was originally issued by the film office.

22 (e) Any tax credit certificate issued in accordance with
23 this article, which has been issued to an eligible company,
24 and to the extent not previously claimed against the tax of the
25 eligible company or the owner of the certificate, may be
26 transferred or sold by such eligible company to another West
27 Virginia taxpayer, subject to the following conditions:

28 (1) A single transfer or sale may involve one or more
29 transferees, assignees or purchasers. A transfer or sale of the
30 credits may involve multiple transfers to one or more
31 transferees, assignees or purchasers;

32 (2) Transferors and sellers shall apply to the film office
33 for approval of any transfer, sale or assignment of the tax
34 credit. Any amount of the tax credit that has been transferred
35 or assigned shall be subject to the same limitations and
36 conditions that apply to the eligible company's or seller's

37 entitlement, use and application of the credit. The
38 application for sale, transfer or assignment of the credit shall
39 include the transferor's tax credit balance prior to transfer, the
40 credit certificate number, the name of the seller, the
41 transferor's remaining tax credit balance after transfer, if any,
42 all tax identification numbers for both transferor and
43 transferee, the date of transfer, the amount transferred, a copy
44 of the credit certificate and any other information required by
45 the film office or the Tax Commissioner.

46 (3) The film office shall not approve the transfer or
47 assignment of a tax credit if the seller or transferor has an
48 outstanding tax obligation with the State of West Virginia for
49 any prior taxable year.

50 (f) The transferee, assignee or purchaser shall apply such
51 credits in the same manner and against the same taxes as
52 specified in this article.

53 (g) For purposes of this chapter, any proceeds received
54 by the eligible company or transferor for its assignment or
55 sale of the tax credits allowed pursuant to this section are
56 exempt from the West Virginia consumers sales and service
57 tax and use tax and from the corporate net income tax and
58 personal income tax.

59 (h) The Tax Commissioner shall not seek recourse
60 against the transferee for any portion of the credit that may be
61 subsequently disqualified.

62 Failure to comply with this section will result in the
63 disallowance of the tax credit until the seller or transferor is
64 in full compliance.

§11-13X-9. Legislative rules.

1 (a) The Tax Commissioner shall propose for
2 promulgation rules pursuant to article three, chapter twenty-

3 nine-a of this code as may be necessary to carry out the
4 purposes of this article.

5 (b) The Secretary of the West Virginia Department of
6 Commerce may propose for promulgation rules pursuant to
7 article three, chapter twenty-nine-a of this code as may be
8 necessary to carry out the purposes of this article.

§11-13X-13. Effective date.

1 (a) The credit allowed by this article shall be allowed
2 upon eligible expenditures occurring after December 31,
3 2007.

4 (b) The amendments to this article enacted in the year
5 2009 shall apply to all taxable years beginning after
6 December 31, 2007, and shall apply with retroactive effect
7 with relation to taxable years beginning prior to the date of
8 passage of such amendments.



CHAPTER 103

**(S.B. 384 - By Senators Unger, Snyder, Stollings,
Green and Barnes)**

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

AN ACT to amend and reenact §29-3A-1 of the Code of West Virginia, 1931, as amended, relating to the control of an emergency scene; providing for transfer of authority to permit safe traffic flow; and providing for the use of property to prevent the spread of a fire.

Be it enacted by the Legislature of West Virginia:

That §29-3A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. AUTHORITY OF LOCAL FIRE DEPARTMENTS.

§29-3A-1. Authority of fire officers in charge of fire, service call or other emergency; definition.

1 (a) While any fire department recognized or approved by
2 the West Virginia State Fire Commission is responding to,
3 operating at or returning from a fire, fire hazard, service call
4 or other emergency, the fire chief, any other elected or
5 appointed fire line officer or any member serving in the
6 capacity of appointed fire line officer in charge, except on
7 industrial property where trained industrial fire-fighting
8 personnel are present, shall have the authority:

9 (1) To control and direct firefighting and fire control
10 activities at such scene;

11 (2) To order any person or persons to leave any building
12 or place in the vicinity of such scene for the purpose of
13 protecting such persons from injury;

14 (3) To blockade any public highway, street or private
15 right-of-way temporarily while at such scene in accordance
16 with the following provisions:

17 (A) If the emergency incident occurs on a public highway
18 and it is reasonably expected that the highway may be closed
19 for a period of at least two hours or upon the request of the
20 incident commander acting in accordance with the provisions
21 of the National Incident Management System in effect as of
22 December 31, 2008, the Secretary of Transportation or his or

23 her designee(s) shall be notified of the incident as soon as
24 possible;

25 (B) The Secretary of Transportation or his or her
26 designee(s) shall respond to the notification of the incident in
27 order to assist with the restoration of traffic flow or with the
28 development and implementation of a traffic diversion plan;

29 (C) All authorized persons who respond to the scene of
30 the emergency incident and all of their available resources
31 will become part of the incident command system;

32 (D) All of those persons are to collaborate and cooperate
33 with the incident commander and appropriate law-
34 enforcement personnel at the emergency incident scene in
35 order to restore traffic flow as soon as possible after the
36 scene is deemed safe by the incident commander; and

37 (E) Once the incident commander has declared the
38 emergency incident scene to be safe, the control of the traffic
39 at the emergency incident scene will be transferred to the
40 Department of Transportation or the appropriate law-
41 enforcement agency;

42 (4) To enter the building, structure, enclosure or other
43 property of any person or persons at any time of the day or
44 night, without liability, while operating at such scene;

45 (5) To enter any building, including private dwellings, or
46 upon any premises where an emergency exists, or where
47 there is reasonable cause to believe an emergency exists, for
48 the purpose of eliminating the emergency;

49 (6) To enter any building, including private dwellings, or
50 premises near the scene of the emergency for the purpose of
51 protecting the building or premises or for the purpose of
52 eliminating the emergency which is in progress in another
53 building or premises;

54 (7) To inspect for preplanning all buildings, structures or
55 other places in their fire district, excepting, however, the
56 interior of a private dwelling, with the consent of the owner
57 or occupant, where any combustible materials, including
58 waste paper, rags, shavings, waste, leather, rubber, crates,
59 boxes, barrels, rubbish or other combustible material that is
60 or may become dangerous as a fire menace to such building
61 or buildings, structure or other places has been allowed to
62 accumulate or where such chief or his or her designated
63 representative has reason to believe that such material of a
64 combustible nature has accumulated or is liable to be
65 accumulated;

66 (8) To direct the removal, use or destruction of any fence,
67 house, motor vehicle or other thing which may reasonably be
68 determined to be necessary to be pulled down, destroyed or
69 removed to prevent the further spread of the fire or hazardous
70 condition;

71 (9) To request and be supplied with additional materials
72 such as sand, treatments, chemicals, etc., and special
73 equipment when dealing with an accident on a public
74 highway or railroad right-of-way when it is deemed a
75 necessity to prevent the further spread of the fire or
76 hazardous condition, the cost of which to be borne by the
77 owner of the instrumentality which caused the fire or
78 hazardous condition; and

79 (10) To order disengagement or discouplement of any
80 convoy, caravan or train of vehicles, craft or railway cars if
81 deemed a necessity in the interest of safety of persons or
82 property.

83 (b) As used in this article, the term "emergency" means
84 a situation in which the fire officer in charge knows or in
85 which a reasonable person would believe that there exists an
86 imminent threat of serious bodily harm or death to a person
87 or significant damage to property.

CHAPTER 104

**(Com. Sub. for H.B. 3082 - By Delegates Moore, Webster,
Shook, Caputo, Barker, Fleischauer, Fragale, Miley,
Marshall and Perry)**

[Passed April 8, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31A-2-4c; to amend said code by adding thereto a new section, designated §38-1-8a; to amend said code by adding thereto a new section, designated §44-13-4a; and to amend and reenact §59-1-10 of said code, all relating to the gathering and reporting of foreclosure data and statistics; providing for the gathering and reporting of information pertaining to sales of residential real estate pursuant to deeds of trust; providing for the compilation and filing of data by trustees with the report of sales filed with the county clerks; providing for the periodic forwarding of gathered information to the Commissioner of Banking; identifying the minimum information to be provided; providing for fees to be paid for receipt and processing of the filed information; providing for the reporting of foreclosure statistics by the Commissioner of Banking; authorizing the Commissioner of Banking to establish appropriate forms and filing requirements and procedures by 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 §31A-2-4c; that said

code be amended by adding thereto a new section, designated §38-1-8a; that said code be amended by adding thereto a new section, designated §44-13-4a; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

Chapter

31A. Banks and Banking.

38. Liens.

44. Administration of Estates and Trusts.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner.

1 (a) In addition to the jurisdiction, powers, and duties set
2 out in section four of this article, the banking commissioner
3 is vested with the jurisdiction, powers and duties to receive
4 and compile the data into an electronic data base and make
5 available the raw data that is required to be reported by
6 trustees to county clerks pursuant to chapter thirty-eight,
7 article one, section eight-a of the Code of West Virginia. The
8 commissioner has the power to promulgate rules in
9 accordance with this section and the provisions of article
10 three, chapter twenty-nine-a of this code in order to carry out
11 the requirements of this section. The commissioner is
12 authorized to expend funds for this purpose.

CHAPTER 38. LIENS.

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.

1 (a) This section applies to deeds of trust if the property
2 conveyed therein includes real property that is occupied, or
3 is intended to be occupied as a residence by the grantor at
4 time the deed of trust is executed and delivered.

5 (b) Beginning July 1, 2009, when a report of the sale of
6 the property sold pursuant to a deed of trust is placed of
7 record by the trustee with the clerk of the county commission
8 as provided in section eight of this article, the trustee shall
9 include the following information on a disclosure form
10 submitted with and made a part of the report of sale:

11 (1) Name or names of the grantor of the deed of trust;

12 (2) Street address, city, state and zip code of real property
13 subject to the trust;

14 (3) Original trustee name;

15 (4) Substitute trustee name, if any, and date of
16 appointment;

17 (5) The address, telephone number and electronic contact
18 information for the trustee making the sale;

19 (6) Date, time and place advertised for sale;

20 (7) Name of original secured lender;

21 (8) Current holder of deed of trust, and the current
22 holder's address;

23 (9) Original principal amount of the secured debt;

24 (10) Original interest rate;

25 (11) Whether the loan was adjustable and if so current
26 rate;

- 27 (12) Total secured indebtedness at time of sale;
- 28 (13) The number of months the loan is delinquent at time
29 of notice of sale; and
- 30 (14) The date, time and place of sale;
- 31 (15) The name of the purchaser;
- 32 (16) The appraised value at the time of loan, if available;
- 33 (17) The net amount applied to the secured loan;
- 34 (18) The date the report of sale is recorded; and
- 35 (19) Any other information the banking commissioner
36 may require by rule.
- 37 (c) The Commissioner of Banking shall publish a form
38 setting out the information required by subsection (b) and
39 instructions as to how this information is to be filed with the
40 report of sale.
- 41 (d) Notwithstanding any other provision of this code,
42 nothing in this section shall be deemed to create a
43 responsibility by the Commissioner of Banking to provide
44 any report other than the compiled raw data submitted from
45 each county clerk or to verify the accuracy of the data
46 submitted.
- 47 (e) Failure to comply with this the provisions of this
48 section shall not affect the validity of the sale or the title to
49 the property sold by the trustee.

**CHAPTER 44. ADMINISTRATION OF ESTATES AND
TRUSTS.**

ARTICLE 13. POWERS AND DUTIES OF CLERKS OF COUNTY COURTS IN COUNTIES HAVING SEPARATE TRIBUNAL FOR POLICE AND FISCAL PURPOSES.

§44-13-4a. Reporting of foreclosure statistics.

1 (a) Beginning with the third quarter of 2009, the clerk of
2 each county commission shall file quarterly with the Division
3 of Banking the disclosure forms of deed of trust foreclosure
4 sales that were recorded in that county for the preceding
5 calendar year quarter. The reports shall be filed within
6 fifteen days of the last day of September, December, March
7 and June of each year. The reports shall be filed in electronic
8 format, where possible.

9 (b) Notwithstanding any other provision of this code,
10 nothing in this section shall be deemed to create a
11 responsibility on the division of banking to provide any
12 report other than the compiled raw data submitted from each
13 county clerk or to verify the accuracy of the data submitted.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

***§59-1-10. Fees to be charged by clerk of county commission.**

1 For the purpose of this section, the word "page" is
2 defined as being a paper or electronic writing of not more
3 than legal size, 8 ½" x 14".

4 The clerk of the county commission shall charge and
5 collect the following fees:

6 (a) When a writing is admitted to record, for receiving
7 proof of acknowledgment thereof, entering an order in

*CLERK'S NOTE: This section was also amended by SB 528 (Chapter 49), which passed subsequent to this act.

8 connection therewith, endorsing clerk's certificate of
9 recordation thereon and indexing in a proper index, where the
10 writing is a:

11 (1) Deed of conveyance (with or without a plat), trust
12 deed, fixture filing or security agreement concerning real
13 estate lease, \$15.

14 (2) Trustee's report of sale for any property for which
15 additional information and filing requirements are required
16 by section eight-a, article one, chapter thirty-eight of this
17 code, \$40, provided that \$20 of each recording fee received
18 pursuant to this subdivision shall be deposited into the
19 county's general revenue fund and \$20 of each of the
20 aforesaid recording fees shall be paid by the county clerk to
21 the State Treasurer quarterly and deposited in the banking
22 commissioner's fund to cover its expenses in aggregating,
23 collecting and publishing the data.

24 (3) Financing, continuation, termination or other
25 statement or writing permitted to be filed under chapter
26 forty-six of this code, \$10.

27 (4) Plat or map (with no deed of conveyance), \$10.

28 (5) Service discharge record, no charge.

29 (6) Any document or writing other than those referenced
30 in subdivisions (1), (2), (3), (4) and (5) of this subsection,
31 \$10.

32 (7) If any document or writing contains more than five
33 pages, for each additional page, \$1.

34 For any of the documents admitted to record pursuant to
35 this subsection, if the clerk of the county commission has the
36 technology available to receive these documents in electronic

37 form or other media, the clerk shall set a reasonable fee to
38 record these writings not to exceed the cost for filing paper
39 documents.

40 (8) Eleven dollars of each recording fee received
41 pursuant to subdivision (1) of this subsection shall be
42 retained by the county clerk for the operation of that office
43 and \$4 of each of the aforesaid recording fees together with
44 \$5 of the recording fee collected pursuant to subdivision (5)
45 of this section, shall be paid by the county clerk into the State
46 Treasurer and deposited in equal amounts for deposit into the
47 Farmland Protection Fund created in article twelve, chapter
48 eight-a of this code for the benefit of the West Virginia
49 Agricultural Land Protection Authority and into the Outdoor
50 Heritage Conservation Fund created in article two-g, chapter
51 five-b of this code: *Provided*, That the funds deposited
52 pursuant to this subdivision may only be used for costs,
53 excluding personnel costs, associated with purpose of land
54 conservation, as defined in subsection (f), section seven,
55 article two-g, chapter five-b of this code.

56 (b) For administering any oath other than oaths by
57 officers and employees of the state, political subdivisions of
58 the state or a public or quasi-public entity of the state or a
59 political subdivision of the state, taken in his or her official
60 capacity, \$5.

61 (c) For issuance of marriage license and other duties
62 pertaining to the marriage license (including preparation of
63 the application, administering the oath, registering and
64 recording the license, mailing acknowledgment of minister's
65 return to one of the licensees and notification to a licensee
66 after sixty days of the nonreceipt of the minister's return),
67 \$35.

68 (1) One dollar of the marriage license fee received
69 pursuant to this subsection shall be paid by the county clerk
70 into the State Treasury as a state registration fee in the same

71 manner that license taxes are paid into the Treasury under
72 article twelve, chapter eleven of this code;

73 (2) Fifteen dollars of the marriage license fee received
74 pursuant to this subsection shall be paid by the county clerk
75 into the State Treasury for the Family Protection Shelter
76 Support act in the same manner that license taxes are paid
77 into the Treasury under article twelve, chapter eleven of this
78 code;

79 (3) Ten dollars of the marriage license fee received
80 pursuant to this subsection shall be deposited in the
81 Courthouse Facilities Improvement Fund created by section
82 six, article twenty-six, chapter twenty-nine of this code.

83 (d)(1) For a copy of any writing or document, if it is not
84 otherwise provided for, one dollar fifty cents.

85 (2) If the copy of the writing or document contains more
86 than two pages, for each additional page, \$1.

87 (3) For annexing the seal of the commission or clerk to
88 any paper, one dollar.

89 (4) For a certified copy of a birth certificate, death
90 certificate or marriage license, \$5.

91 (e) For copies of any record in electronic form or a
92 medium other than paper, a reasonable fee set by the clerk of
93 the county commission not to exceed the costs associated
94 with document search and duplication.

CHAPTER 105

**(Com. Sub. for H.B. 2418 - By Delegates Perry, Boggs,
Morgan and Ellem)**

[Passed April 10, 2009; in effect ninety days from passage.]
[Approved by the Governor on April 24, 2009.]

AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to granting exemptions from disclosure under the Freedom of Information Act for certain information retained by the Division of Corrections and the Regional Jail Authority.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are specifically
2 exempt from disclosure under the provisions of this article:

3 (1) Trade secrets, as used in this section, which may
4 include, but are not limited to, any formula, plan pattern,
5 process, tool, mechanism, compound, procedure, production
6 data or compilation of information which is not patented
7 which is known only to certain individuals within a

8 commercial concern who are using it to fabricate, produce or
9 compound an article or trade or a service or to locate
10 minerals or other substances, having commercial value, and
11 which gives its users an opportunity to obtain business
12 advantage over competitors;

13 (2) Information of a personal nature such as that kept in
14 a personal, medical or similar file, if the public disclosure
15 thereof would constitute an unreasonable invasion of privacy,
16 unless the public interest by clear and convincing evidence
17 requires disclosure in the particular instance: *Provided*, That
18 nothing in this article shall be construed as precluding an
19 individual from inspecting or copying his or her own
20 personal, medical or similar file;

21 (3) Test questions, scoring keys and other examination
22 data used to administer a licensing examination, examination
23 for employment or academic examination;

24 (4) Records of law-enforcement agencies that deal with
25 the detection and investigation of crime and the internal
26 records and notations of such law-enforcement agencies
27 which are maintained for internal use in matters relating to
28 law enforcement;

29 (5) Information specifically exempted from disclosure by
30 statute;

31 (6) Records, archives, documents or manuscripts
32 describing the location of undeveloped historic, prehistoric,
33 archaeological, paleontological and battlefield sites or
34 constituting gifts to any public body upon which the donor
35 has attached restrictions on usage or the handling of which
36 could irreparably damage such record, archive, document or
37 manuscript;

38 (7) Information contained in or related to examination,
39 operating or condition reports prepared by, or on behalf of,

40 or for the use of any agency responsible for the regulation or
41 supervision of financial institutions, except those reports
42 which are by law required to be published in newspapers;

43 (8) Internal memoranda or letters received or prepared by
44 any public body;

45 (9) Records assembled, prepared or maintained to prevent,
46 mitigate or respond to terrorist acts or the threat of terrorist acts,
47 the public disclosure of which threaten the public safety or the
48 public health;

49 (10) Those portions of records containing specific or unique
50 vulnerability assessments or specific or unique response plans,
51 data, databases and inventories of goods or materials collected
52 or assembled to respond to terrorist acts; and communication
53 codes or deployment plans of law enforcement or emergency
54 response personnel;

55 (11) Specific intelligence information and specific
56 investigative records dealing with terrorist acts or the threat
57 of a terrorist act shared by and between federal and
58 international law-enforcement agencies, state and local law
59 enforcement and other agencies within the Department of
60 Military Affairs and Public Safety;

61 (12) National security records classified under federal
62 executive order and not subject to public disclosure under
63 federal law that are shared by federal agencies and other
64 records related to national security briefings to assist state
65 and local government with domestic preparedness for acts of
66 terrorism;

67 (13) Computing, telecommunications and network
68 security records, passwords, security codes or programs used
69 to respond to or plan against acts of terrorism which may be
70 the subject of a terrorist act;

71 (14) Security or disaster recovery plans, risk assessments,
72 tests or the results of those tests;

73 (15) Architectural or infrastructure designs, maps or other
74 records that show the location or layout of the facilities
75 where computing, telecommunications or network
76 infrastructure used to plan against or respond to terrorism are
77 located or planned to be located;

78 (16) Codes for facility security systems; or codes for
79 secure applications for such facilities referred to in
80 subdivision (15) of this subsection;

81 (17) Specific engineering plans and descriptions of
82 existing public utility plants and equipment;

83 (18) Customer proprietary network information of other
84 telecommunications carriers, equipment manufacturers and
85 individual customers, consistent with 47 U.S.C. §222; and

86 (19) Records of the Division of Corrections and the
87 Regional Jail Authority relating to design of corrections and
88 jail facilities owned or operated by the agency, and the policy
89 directives and operational procedures of personnel relating to
90 the safe and secure management of inmates, that if released,
91 could be utilized by an inmate to escape a corrections or jails
92 facility, or to cause injury to another inmate or to facility
93 personnel.

94 (b) As used in subdivisions (9) through (16), inclusive,
95 subsection (a) of this section, the term “terrorist act” means
96 an act that is likely to result in serious bodily injury or
97 damage to property or the environment and is intended to:

98 (1) Intimidate or coerce the civilian population;

99 (2) Influence the policy of a branch or level of
100 government by intimidation or coercion;

101 (3) Affect the conduct of a branch or level of government
102 by intimidation or coercion; or

103 (4) Retaliate against a branch or level of government for
104 a policy or conduct of the government.

105 (c) Nothing in the provisions of subdivisions (9) through
106 (16), inclusive, subsection (a) of this section should be
107 construed to make subject to the provisions of this chapter
108 any evidence of an immediate threat to public health or safety
109 unrelated to a terrorist act or the threat thereof which comes
110 to the attention of a public entity in the course of conducting
111 a vulnerability assessment response or similar activity.

CHAPTER 106

**(Com. Sub. for S.B. 575 - By Senators Guills, Caruth,
Kessler, Bowman and Foster)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-29; to amend and reenact §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-8, §29-25-9, §29-25-11, §29-25-12, §29-25-13, §29-25-16, §29-25-17, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-22, §29-25-23, §29-25-24, §29-25-25 and §29-25-26 of said code; and to amend said code by adding thereto twelve new sections, designated §29-25-22a, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-33, §29-25-34, §29-25-35, §29-25-36, §29-25-37 and §29-25-38,

all relating to gaming at a historic resort hotel and pari-mutuel racetracks generally; designating certain moneys as state moneys and establishing audit provisions; updating and conforming provisions for consistency purposes between hotel and racetracks; legislative findings and intent; authorizing certain West Virginia Lottery games; modifying licensure requirements and fees therefor; renaming State Gaming Fund the Historic Resort Hotel Fund; providing for distribution of the Historic Resort Hotel Fund; creating formula for renewal fee assessments; expanding licensees' authority to set wagers with commission approval; altering maximum bets for video lottery machines; redefining "gross terminal income" to allow and account for promotional play at hotel and racetracks; authorizing hotel to contract for management services with commission approval; authorizing the hotel to lease certain services; creating the Human Resource Benefit Fund; permissible expenditures; establishing Human Resource Benefit Advisory Board and setting criteria for its membership; powers and duties; authorizing certain complimentary services; restricting who may enter the designated gaming area of the hotel to overnight guests, certain participants at hotel-based events and residents; clarifying and specifying forfeiture of property provisions; authorizing commission to operate slot machines and video lottery games; establishing requirements for video lottery terminals; establishing specific duties required of the gaming facility; creating Capital Reinvestment Fund; imposing surcharge against share of gross terminal income to be paid into the Capital Reinvestment Fund; declaring all authorized games to be owned by the state; preempting inconsistent county and municipal ordinances or rules; limiting taxing authority; declaring exemption from federal law to facilitate authorization of legal gaming; establishing rules of play and dispute resolution; authorizing shipment of gambling devices into state; modifying distribution of revenue; license suspension and revocation; revising civil penalties; authorizing emergency rulemaking; and establishing and modifying criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-22-29; that §29-25-1, §29-25-2, §29-25-3, §29-25-5, §29-25-6, §29-25-8, §29-25-9, §29-25-11, §29-25-12, §29-25-13, §29-25-16, §29-25-17, §29-25-18, §29-25-19, §29-25-20, §29-25-21, §29-25-22, §29-25-23, §29-25-24, §29-25-25 and §29-25-26 of said code be amended and reenacted; and that said code be amended by adding thereto twelve new sections, designated §29-25-22a, §29-25-28, §29-25-29, §29-25-30, §29-25-31, §29-25-32, §29-25-33, §29-25-34, §29-25-35, §29-25-36, §29-25-37 and §29-25-38, all to read as follows:

Article

22. State Lottery Act.

25. Authorized Gaming Facility.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-29. Moneys transferred or allocated to nongovernmental entities are state moneys and have been so in the past; right to audit state moneys transferred to nongovernmental entities.

1 (a) Moneys transferred by the commission under provisions
2 of this article and articles twenty-two-a, twenty-two-b,
3 twenty-two-c and twenty-five of this chapter to
4 nongovernmental recipients, are state moneys and have been
5 state moneys in prior fiscal periods.

6 (b) All nongovernmental entities that have received state
7 moneys as described in subsection (a) of this section are
8 subject to audit by the commission. An audit provided for by
9 this section may be conducted by employees or agents of the
10 commission. An audit provided for by this section may also
11 be conducted by the Legislative Auditor.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

- §29-25-1. Authorization of limited gaming facility; findings; intent.
- §29-25-2. Definitions.
- §29-25-3. Commission duties and powers.
- §29-25-5. Rules.
- §29-25-6. Law enforcement.
- §29-25-8. Licenses required.
- §29-25-9. License to operate a gaming facility.
- §29-25-11. License to supply gaming facility.
- §29-25-12. License to be employed by operator of gaming facility.
- §29-25-13. False statements on applications; other license requirements and prohibitions.
- §29-25-16. License denial, revocation and reprimand.
- §29-25-17. Hearing procedures.
- §29-25-18. Inspection and seizure.
- §29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.
- §29-25-20. Accounting and reporting of gross terminal income; distribution.
- §29-25-21. Taxes on games other than video lottery games.
- §29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.
- §29-25-22a. Human Resource Benefit Fund.
- §29-25-23. Prohibition on unauthorized wagering; complimentary service, gift, cash or other item.
- §29-25-24. Individual gaming restrictions.
- §29-25-25. Offenses and penalties.
- §29-25-26. Forfeiture of property.
- §29-25-28. Specific provision for video lottery games.
- §29-25-29. Video lottery terminal requirements; application for approval of video lottery terminals; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.
- §29-25-30. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.
- §29-25-31. The specific video lottery duties required of the gaming facility.
- §29-25-32. Surcharge; Capital Reinvestment Fund.
- §29-25-33. License to be a provider of management services.
- §29-25-34. State ownership of West Virginia Lottery table games.
- §29-25-35. Preemption.
- §29-25-36. Exemption from federal law.
- §29-25-37. Game rules of play; disputes.
- §29-25-38. Shipment of gambling devices.

§29-25-1. Authorization of limited gaming facility; findings; intent.

- 1 (a) *Operation of West Virginia Lottery table games.* --
- 2 Notwithstanding any provision of law to the contrary, the

3 operation of West Virginia Lottery games permitted by this
4 article and the related operation of a gaming facility and
5 ancillary activities is not unlawful when conducted under the
6 terms specified in this article and article twenty-two-c of this
7 chapter.

8 (b) *Legislative findings.* -- The Legislature finds and
9 declares that the tourism industry plays a critical role in the
10 economy of this state and that a substantial state interest
11 exists in protecting that industry. It further finds and declares
12 that the authorization of the operation of a gaming facility at
13 no more than one well-established historic resort hotel in this
14 state as provided in this article will serve to protect and
15 enhance the tourism industry, and indirectly other segments
16 of the economy of this state, by providing a resort hotel
17 amenity which is becoming increasingly important to many
18 actual and potential resort hotel patrons.

19 The Legislature finds and declares that video lottery
20 operations pursuant to section twenty-eight of this article and
21 the operation of the other West Virginia Lottery table games
22 permitted by this article constitute the operation of lotteries
23 within the purview of section thirty-six, article VI of the
24 Constitution of West Virginia.

25 (c) *Legislative intent.* -- It is the intent of the Legislature
26 in the enactment of this article to promote tourism and year-
27 round employment in this state. It is expressly not the intent
28 of the Legislature to promote gaming. As a consequence, it
29 is the intent of the Legislature to allow limited gaming as
30 authorized by this article and article twenty-two-c of this
31 chapter with all moneys gained from the operation of the
32 gaming facility, other than those necessary to reimburse
33 reasonable costs of operation, to inure to the benefit of the
34 state. Further, it is the intent of the Legislature that
35 amendments made to this article during the 2009 regular
36 session will establish appropriate conformity between the

37 operations of video lottery and West Virginia Lottery table
38 games at the licensed gaming facility under this article and
39 the operations of video lottery and table games at the pari-
40 mutuel racetracks licensed under articles twenty-two-a and
41 twenty-two-c of this chapter.

§29-25-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires, the following words and phrases have meanings
3 indicated:

4 (a) “Applicant” means any person or entity applying for
5 a license.

6 (b) “Adjusted gross receipts” means the gross receipts of
7 a gaming facility from West Virginia Lottery table games
8 less winnings paid to wagerers in such games.

9 (c) “Annual average gross receipts of the pari-mutuel
10 racetracks with table games licenses” means the amount
11 obtained by adding the adjusted gross receipts of all West
12 Virginia pari-mutuel racetracks with table games licenses and
13 then dividing that calculation by the number of West Virginia
14 pari-mutuel racetracks with table games licenses.

15 (d) “Background investigation” means a security,
16 criminal and credit investigation of an applicant who has
17 applied for the issuance or renewal of a license pursuant to
18 this article or a licensee who holds a current license.

19 (e) “Controlling interest” means:

20 (1) For a partnership, an interest as a general or limited
21 partner holding more than five percent interest in the entity;

22 (2) For a corporation, an interest of more than five
23 percent of the stock in the corporation; and

24 (3) For any other entity, an ownership interest of more
25 than five percent in the entity.

26 (f) “Controlling person” means, with respect to another
27 person, any person directly or indirectly owning or holding
28 a controlling interest in that other person.

29 (g) “Commission” means the State Lottery Commission
30 created in section four, article twenty-two of this chapter.

31 (h) “Designated gaming area” means one or more
32 specific floor areas of a licensed gaming facility within which
33 the commission has authorized operation of video lottery
34 terminals or West Virginia Lottery table games, or the
35 operation of both video lottery terminals and West Virginia
36 Lottery table games.

37 (i) “Director” means the Director of the State Lottery
38 Commission.

39 (j) “Erasable programmable read-only memory chips” or
40 “EPROM” means the electronic storage medium on which
41 the operation software for all games playable on a video
42 lottery terminal resides and can also be in the form of CD
43 ROM, flash ROM or other new technology medium that the
44 commission may from time to time approve for use in video
45 lottery terminals. All electronic storage media are considered
46 to be property of the State of West Virginia.

47 (k) “Fringe benefits” means sickness and accident
48 benefits and benefits relating to medical and pension
49 coverage.

50 (l) "Gaming devices and supplies" mean gaming tables
51 for all West Virginia Lottery table games, roulette wheels,
52 wheels of fortune, video lottery terminals, cards, dice, chips,
53 tokens, markers or any other mechanical, electronic or other
54 device, mechanism or equipment or related supplies utilized
55 in the operation of a West Virginia Lottery table game.

56 (m) "Gaming facility" means a designated area on the
57 premises of an existing historic resort hotel in which West
58 Virginia Lottery table games are conducted by a gaming
59 licensee.

60 (n) "Gaming licensee" means the licensed operator of a
61 gaming facility.

62 (o) "Gross receipts" means the total amount of money
63 exchanged for the purchase of chips, tokens or electronic
64 cards by patrons of a gaming facility reduced by gross
65 terminal income to the extent gross terminal income is
66 included in the amount of money exchanged.

67 (p) "Gross terminal income", as used in this article and as
68 used in article twenty-two-a of this chapter, means the total
69 amount of cash, vouchers or tokens inserted into the video
70 lottery terminals operated by a licensee, minus promotional
71 credits played, and minus the total value of coins and tokens
72 won by a player and game credits which are cleared from the
73 video lottery terminals in exchange for winning redemption
74 tickets.

75 (q) "Historic resort hotel" means a resort hotel registered
76 with the United States Department of the Interior as a
77 national historic landmark in its National Registry of Historic
78 Places having not fewer than five hundred guest rooms under
79 common ownership and having substantial recreational guest
80 amenities in addition to the gaming facility.

81 (r) "Historic Resort Hotel Fund" means the special fund
82 in the State Treasury created in section twenty-two of this
83 article.

84 (s) "Human Resource Benefit Fund" means the special
85 fund in the State Treasury created in section twenty-two-a of
86 this article.

87 (t) "Human Resource Benefit Advisory Board" or
88 "board" means the advisory board created in section twenty-
89 two-a of this article.

90 (u) "License" means a license issued by the commission,
91 including:

92 (1) A license to operate a gaming facility;

93 (2) A license to supply gaming devices and supplies to a
94 gaming facility;

95 (3) A license to be employed in connection with the
96 operation of a gaming facility; or

97 (4) A license to provide management services under a
98 contract to a gaming facility under this article.

99 (v) "Licensed gaming facility employee" means any
100 individual licensed to be employed by a gaming licensee in
101 connection with the operation of a gaming facility.

102 (w) "Licensed gaming facility supplier" means a person
103 who is licensed by the commission to engage in the business
104 of supplying gaming devices and gaming supplies to a
105 gaming facility.

106 (x) "Licensee" means a gaming licensee, a licensed
107 gaming facility supplier or a licensed gaming facility
108 employee.

109 (y) "Manufacturer" means any person holding a license
110 granted by the commission to engage in the business of
111 designing, building, constructing, assembling or
112 manufacturing video lottery terminals, the electronic
113 computer components of the video lottery terminals, the
114 random number generator of the video lottery terminals, or
115 the cabinet in which it is housed, and whose product is
116 intended for sale, lease or other assignment to a licensed
117 gaming facility in West Virginia and who contracts directly
118 with the licensee for the sale, lease or other assignment to a
119 licensed gaming facility in West Virginia.

120 (z) "Net terminal income" means gross terminal income
121 minus an amount deducted by the commission to reimburse
122 the commission for its actual cost of administering video
123 lottery at the licensed gaming facility. No deduction for any
124 or all costs and expenses of a licensee related to the operation
125 of video lottery games shall be deducted from gross terminal
126 income.

127 (aa) "Person" means any natural person, corporation,
128 association, partnership, limited partnership, limited liability
129 company or other entity, regardless of its form, structure or
130 nature.

131 (bb) "Premises of an existing historic resort hotel" means
132 the historic resort hotel, attachments of the historic resort
133 hotel, and the traditional, immediate grounds of the historic
134 resort hotel.

135 (cc) "Promotional credits" means credits given by the
136 licensed gaming facility or licensed racetrack to players
137 allowing limited free play of video lottery terminals in total
138 amounts and under conditions approved in advance by the
139 commission.

140 (dd) "Video lottery game", as used in this article and as
141 used in article twenty-two-a of this chapter, means a

142 commission-approved, -owned and -controlled electronically
143 simulated game of chance which is displayed on a video
144 lottery terminal and which:

145 (1) Is connected to the commission's central control
146 computer by an online or dial-up communication system;

147 (2) Is initiated by a player's insertion of cash, vouchers
148 or tokens into a video lottery terminal, which causes game
149 play credits to be displayed on the video lottery terminal and,
150 with respect to which, each game play credits entitles a
151 player to choose one or more symbols or numbers or to cause
152 the video lottery terminal to randomly select symbols or
153 numbers;

154 (3) Allows the player to win additional game play credits,
155 coins or tokens based upon game rules which establish the
156 random selection of winning combinations of symbols or
157 numbers or both and the number of free play credits, coins or
158 tokens to be awarded for each winning combination of
159 symbols or numbers or both;

160 (4) Is based upon a computer-generated random selection
161 of winning combinations based totally or predominantly on
162 chance;

163 (5) In the case of a video lottery game which allows the
164 player an option to select replacement symbols or numbers or
165 additional symbols or numbers after the game is initiated and
166 in the course of play, either:

167 (A) Signals the player, prior to any optional selection by
168 the player of randomly generated replacement symbols or
169 numbers, as to which symbols or numbers should be retained
170 by the player to present the best chance, based upon
171 probabilities, that the player may select a winning
172 combination;

173 (B) Signals the player, prior to any optional selection by
174 the player of randomly generated additional symbols or
175 numbers, as to whether such additional selection presents the
176 best chance, based upon probabilities, that the player may
177 select a winning combination; or

178 (C) Randomly generates additional or replacement
179 symbols and numbers for the player after automatically
180 selecting the symbols and numbers which should be retained
181 to present the best chance, based upon probabilities, for a
182 winning combination, so that in any event, the player is not
183 permitted to benefit from any personal skill, based upon a
184 knowledge of probabilities, before deciding which optional
185 numbers or symbols to choose in the course of video lottery
186 game play;

187 (6) Allows a player at any time to simultaneously clear
188 all game play credits and print a redemption ticket entitling
189 the player to receive the cash value of the free plays cleared
190 from the video lottery terminal; and

191 (7) Does not use the following game themes commonly
192 associated with casino gambling: Roulette, dice or baccarat
193 card games: *Provided*, That games having a display with
194 symbols which appear to roll on drums to simulate a classic
195 casino slot machine, game themes of other card games and
196 keno may be used.

197 (ee) “Wager” means a sum of money or thing of value
198 risked on an uncertain occurrence.

199 (ff) “West Virginia Lottery table game” means any game
200 played with cards, dice or any mechanical, electromechanical
201 or electronic device or machine for money, credit or any
202 representative of value, including, but not limited to,
203 baccarat, blackjack, poker, craps, roulette, wheel of fortune
204 or any variation of these games similar in design or operation

205 and expressly authorized by rule of the commission,
206 including multiplayer electronic table games, machines and
207 devices, but excluding video lottery, punchboards, faro,
208 numbers tickets, push cards, jar tickets, pull tabs or similar
209 games.

§29-25-3. Commission duties and powers.

1 (a) *Duties.* -- In addition to the duties set forth elsewhere
2 in this article, the commission shall:

3 (1) Establish minimum standards for gaming devices and
4 supplies, including electronic or mechanical gaming devices;

5 (2) Approve, modify or reject game rules of play for all
6 West Virginia Lottery table games proposed to be operated
7 by a gaming licensee;

8 (3) Approve, modify or reject minimum internal control
9 standards proposed by the licensee gaming facility for a West
10 Virginia Lottery table game, including the maintenance of
11 financial books and records;

12 (4) Provide staff to supervise, inspect and monitor the
13 operation of any gaming facility, including inspection of
14 gaming devices and supplies used in the operation to assure
15 continuous compliance with all rules of the commission and
16 provisions of this article;

17 (5) Establish minimum levels of insurance to be
18 maintained with respect to a gaming facility;

19 (6) Investigate applicants to determine eligibility for any
20 license and, where appropriate, select among competing
21 applicants;

22 (7) Designate appropriate classifications of personnel to
23 be employed in the operation of a gaming facility and
24 establish appropriate licensing standards within the
25 classifications;

26 (8) Issue all licenses;

27 (9) Charge and collect the taxes and fees authorized,
28 required or specified in this article:

29 (i) Receive, accept and pay the specified percentage of
30 taxes collected under sections twenty and twenty-one of this
31 article into the Historic Resort Hotel Fund; and

32 (ii) Receive, accept and pay the specified percentage of
33 taxes collected under sections twenty and twenty-one of this
34 article into the Human Resource Benefit Fund;

35 (10) Maintain a record of all licenses issued;

36 (11) Keep a public record of all commission actions and
37 proceedings; and

38 (12) File a written annual report to the Governor, the
39 President of the Senate and the Speaker of the House of
40 Delegates on or before January 30 of each year and any
41 additional reports as the Governor or Legislature may
42 request.

43 (b) *Powers.* -- In addition to the powers set forth
44 elsewhere in this article, the commission has the following
45 powers:

46 (1) To sue to enforce any provision of this article by
47 injunction;

48 (2) To hold hearings, administer oaths and issue
49 subpoenas for the attendance of a witness to testify and to
50 produce evidence;

51 (3) To enter a gaming facility at any time and without
52 notice to ensure strict compliance with the rules of the
53 commission;

54 (4) To bar, for cause, any person from entering or
55 participating in any capacity in the operation of a gaming
56 facility; and

57 (5) To exercise such other powers as may be necessary to
58 effectuate the provisions of this article.

§29-25-5. Rules.

1 The commission shall propose for promulgation
2 legislative rules in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code as are necessary to
4 provide for implementation and enforcement of the
5 provisions of this article. Any legislative rules proposed by
6 the commission before September 1, 2009, may be by
7 emergency rule.

§29-25-6. Law enforcement.

1 (a) *Generally.* -- Notwithstanding any provision of this
2 code to the contrary, the commission shall, by contract or
3 cooperative agreement with the West Virginia State Police,
4 arrange for those law-enforcement services uniquely related
5 to gaming as such occurs at the gaming facility that are
6 necessary to enforce the provisions of this article.

7 (b) *Costs.* — The actual cost of services provided by the
8 West Virginia State Police pursuant to a contract or
9 cooperative agreement entered into pursuant to the provisions

10 of subsection (a) of this section, including, but not limited to,
11 necessary training costs, shall be paid by the commission as
12 an administrative expense.

13 (c) Notwithstanding any provision of this code to the
14 contrary, the West Virginia State Police shall have exclusive
15 jurisdiction over felony offenses committed on the grounds
16 of the gaming facility.

§29-25-8. Licenses required.

1 (a) No person may engage in any activity in connection
2 with a gaming facility in this state for which a license is
3 required by subsection (b) of this section unless that person
4 has been licensed by the commission in accordance with this
5 article.

6 (b) Licenses are required for the following purposes:

7 (1) For any person engaging in the business of operating
8 a gaming facility in the state;

9 (2) For any person engaging in the business of supplying
10 a gaming facility with gaming devices, gaming supplies or
11 gaming services;

12 (3) For any individual employed by a gaming licensee in
13 connection with the operation of a gaming facility in the
14 state; and

15 (4) For any person providing management services under
16 a contract to a gaming facility.

17 (c) Any license required under this article is in addition
18 to all other licenses or permits otherwise required by law.

§29-25-9. License to operate a gaming facility.

1 (a) *Single license.* -- The commission may issue only one
2 license to operate a gaming facility. If the one license
3 limitation in the preceding sentence is found to be
4 unconstitutional in a final, nonappealable order by a court of
5 competent jurisdiction, the commission shall have no
6 authority to issue any license under this article and, in such
7 event, the provisions of this article shall not be severable and
8 any license issued under the provisions of this article prior
9 thereto shall be void. The Legislature intends that no more
10 than one license to operate one gaming facility in this state
11 shall be authorized in any event.

12 (b) *Applicant qualifications.* -- The applicant shall be the
13 actual operator of the gaming facility to be located on the
14 premises of an existing historic resort hotel. The applicant
15 may be the owner of the existing historic resort hotel or a
16 person that leases well-defined spaces on the premises of the
17 historic resort hotel in order to operate a gaming facility as
18 defined by this article. The resort hotel shall be located
19 within the jurisdiction of a county approving the operation of
20 a gaming facility in accordance with section seven of this
21 article. The applicant shall meet the qualifications and
22 requirements set forth in this article and rules adopted by the
23 commission. In determining whether to grant a license to
24 operate a gaming facility to an applicant, the commission
25 shall consider:

26 (1) The character, reputation, experience and financial
27 integrity of the applicant and any controlling person of the
28 applicant;

29 (2) Whether the applicant has adequate capital to
30 construct and maintain the proposed gaming facility for the
31 duration of a license;

32 (3) The extent to which the applicant meets standards
33 contained in rules adopted by the commission relating to
34 public safety or other standards; and

35 (4) The plan submitted by the applicant regarding
36 employment levels and the extent to which the submitted
37 plan demonstrates an ability on the part of the applicant to
38 create at least one hundred full-time equivalent jobs with a
39 salary and benefit package commensurate with existing
40 employees at the historic resort hotel.

41 (c) *Floor plan submission requirement.* -- Prior to
42 commencing the operation of any West Virginia Lottery table
43 game in a designated gaming area, the gaming facility
44 licensee shall submit to the commission for its approval a
45 detailed floor plan depicting the location of the designated
46 gaming area in which West Virginia Lottery table game
47 gaming equipment will be located and its proposed
48 arrangement of the West Virginia Lottery table game gaming
49 equipment. If the floor plans for the designated gaming area
50 preserve the historic integrity of the historic resort hotel
51 where the licensed gaming facility is located, then any floor
52 plan submission that satisfies the requirements of the rules
53 promulgated by the commission shall be considered
54 approved by the commission unless a gaming facility is
55 notified in writing to the contrary within one month of filing
56 a detailed floor plan.

57 (d) *Management service contracts.* --

58 (1) *Approval.* -- A gaming facility may not enter into any
59 management service contract that would permit any person
60 other than the licensee to act as the commission's agent in
61 operating West Virginia Lottery table game unless the
62 management service contract: (A) Is with a person licensed
63 under this article to provide management services; (B) is in
64 writing; and (C) the contract has been approved by the
65 commission.

66 (2) *Material change.* -- A licensed gaming facility shall
67 submit any material change in a management service contract

68 previously approved by the commission to the commission
69 for its approval or rejection before the material change may
70 take effect.

71 (3) *Prohibition on assignment or transfer.* -- A
72 management services contract may not be assigned or
73 transferred to a third party.

74 (4) *Other commission approvals and licenses.* -- The
75 duties and responsibility of a management services provider
76 under a management services contract may not be assigned,
77 delegated, subcontracted or transferred to a third party to
78 perform without the prior approval of the commission. Third
79 parties shall be licensed under this article before providing
80 service. The commission shall license and require the
81 display of West Virginia Lottery game logos on appropriate
82 game surfaces and other gaming items and locations as the
83 commission considers appropriate.

84 (e) *License application requirements.* -- An applicant for
85 a license to operate a gaming facility shall:

86 (1) Submit an application to the commission on a form
87 prescribed by the commission, which form shall include:

88 (A) Information concerning the applicant and of any
89 controlling person of the applicant sufficient to serve as a
90 basis for a thorough background check;

91 (B) Subject to the provisions of subsection (g) of this
92 section with respect to publicly-traded corporations, the
93 identity of all stockholders or other persons having a
94 financial interest in either the applicant or any controlling
95 person of the applicant and the identity of each director or
96 executive officer of the applicant and of any controlling
97 person of the applicant;

98 (C) The identity of the historic resort hotel at which the
99 gaming facility is to be located, including identification of
100 the county in which the historic resort hotel is located; and

101 (D) Any other information designated by the commission
102 as appropriate to assist it in determining whether a license
103 should be issued;

104 (2) Pay to the commission a nonrefundable application
105 fee for deposit into the Community-Based Service Fund
106 created in section twenty-seven, article twenty-two-c of this
107 chapter in the amount of \$65,000.

108 (f) *Privately held corporations.* -- In the event that an
109 applicant or any controlling person of an applicant is a
110 privately held corporation, then the commission may not
111 grant a license until the commission determines that each
112 person who has control of the applicant also meets all of the
113 qualifications the applicant must meet to hold the license for
114 which application is made. The following persons are
115 considered to have control of an applicant:

116 (1) Each person associated with a corporate applicant,
117 including any corporate holding company, parent company
118 or subsidiary company of the applicant, but not including a
119 bank or other licensed lending institution which holds a
120 mortgage or other lien acquired in the ordinary course of
121 business, who has the ability to control the activities of the
122 corporate applicant or elect a majority of the board of
123 directors of that corporation;

124 (2) Each person associated with a noncorporate applicant
125 who directly or indirectly holds any beneficial or proprietary
126 interest in the applicant or who the commission determines
127 to have the ability to control the applicant; and

128 (3) Key personnel of an applicant, including any
129 executive, employee or agent, having the power to exercise

130 significant influence over decisions concerning any part of
131 the applicant's business operation.

132 (g) *Publicly traded corporations.* -- In the event that an
133 applicant or any controlling person of an applicant is a
134 publicly traded corporation, then information otherwise
135 required to be furnished by an applicant with respect to
136 stockholders, directors and executive officers of the publicly
137 traded corporation shall be limited to information concerning
138 only those executive officers of the publicly traded
139 corporation whose ongoing and regular responsibilities relate
140 or are expected to relate directly to the operation or oversight
141 of the gaming facility. "Publicly traded corporation" as used
142 herein means any corporation or other legal entity, except a
143 natural person, which has one or more classes of securities
144 registered pursuant to Section twelve of the Securities
145 Exchange Act of 1934, as amended (15 U. S. C. §78), or is an
146 issuer subject to Section fifteen-d of said act.

147 (h) *Gaming facility qualifications.* -- An applicant for a
148 license to operate a gaming facility shall demonstrate that the
149 gaming facility will: (1) Be accessible to disabled
150 individuals; (2) not be located at the main entrance to the
151 historic resort hotel; (3) be licensed in accordance with all
152 other applicable federal, state and local laws; and (4) meet
153 any other qualifications specified by rules adopted by the
154 commission.

155 (i) *Surety bond requirement.* -- The licensed gaming
156 facility shall execute a surety bond to be given to the state to
157 guarantee the licensee faithfully makes all payments in
158 accordance with the provisions of this article and rules
159 promulgated by the commission. The surety bond shall be:

160 (1) In an amount determined by the commission to be
161 adequate to protect the state against nonpayment by the
162 licensee of amounts due the state under this article;

163 (2) In a form approved by the commission; and

164 (3) With a surety approved by the commission who is
165 licensed to write surety insurance in this state. The bond
166 shall remain in effect during the term of the license and may
167 not be canceled by a surety on less than thirty days' notice in
168 writing to the commission. The total and aggregate liability
169 of the surety on the bond is limited to the amount specified
170 in the bond.

171 (j) *Authorization of license.* -- A license to operate a
172 gaming facility authorizes the licensee to engage in the
173 business of operating a gaming facility while the license is
174 effective. A license to operate a gaming facility is not
175 transferable or assignable and cannot be sold or pledged as
176 collateral.

177 (k) *Audits.* — A licensed gaming facility operator shall
178 submit to the commission an annual audit, by a certified
179 public accountant who is, or whose firm is, licensed in the
180 State of West Virginia, or by a nationally recognized
181 accounting firm, of the financial transactions and condition
182 of the licensee's total operations. The audit shall be in
183 accordance with generally accepted auditing principles.

184 (l) *Annual license renewal fee.* — For the second year
185 that it is licensed, the licensed gaming facility shall pay to the
186 commission a license renewal fee of \$250,000. For the third
187 year that it is licensed, the licensed gaming facility shall pay
188 to the commission a license renewal fee of \$500,000. For
189 every year after the third year that it is licensed, the licensed
190 gaming facility shall pay to the commission a license renewal
191 fee that is calculated by determining the annual average gross
192 receipts of the West Virginia pari-mutuel racetracks with
193 table games licenses for the last full fiscal year of adjusted
194 gross receipts available, and dividing that number into the
195 licensed gaming facility operator's adjusted gross receipts for

196 the same full fiscal year of adjusted gross receipts to obtain
197 a percentage, and by multiplying the resulting percentage by
198 \$2,500,000: *Provided*, That the amount required to be paid
199 by the licensed gaming facility shall be not less than
200 \$500,000, nor more than \$2,500,000.

201 (m) The licensed gaming facility shall provide to the
202 commission, at no cost to the commission, suitable office
203 space at the gaming facility to perform the duties required of
204 it by the provisions of this article.

§29-25-11. License to supply gaming facility.

1 (a) *Licenses.* -- The commission may issue a license to
2 each applicant for a license to supply a gaming facility with
3 gaming devices, gaming supplies or services who meets the
4 requirements of this section.

5 (b) *License qualifications.* -- To qualify for a license, an
6 applicant shall meet the requirements of this section. Each
7 applicant who is an individual who is a controlling person of
8 an applicant that is not an individual shall be of good moral
9 character and reputation and shall have the necessary
10 experience and financial ability to successfully carry out the
11 functions of a gaming facility supplier. The commission may
12 adopt rules establishing additional requirements for a gaming
13 facility supplier.

14 (c) *Supplier specification.* -- An applicant for a license to
15 supply gaming devices, equipment and supplies to a gaming
16 facility shall demonstrate that the gaming devices, equipment
17 and supplies that the applicant plans to sell or lease to the
18 licensed operator of the gaming facility, conform or will
19 conform to standards established by rules of the commission
20 and applicable state law.

21 (d) *License application requirements.* -- An applicant for
22 a license shall:

23 (1) Submit an application to the commission on the form
24 that the commission requires including adequate information
25 to serve as a basis for a thorough background check;

26 (2) Submit fingerprints for a national criminal records
27 check by the Criminal Identification Bureau of the West
28 Virginia State Police and the Federal Bureau of Investigation.
29 The fingerprints shall be furnished by all persons required to
30 be named in the application and shall be accompanied by a
31 signed authorization for the release of information by the
32 Criminal Investigation Bureau and the Federal Bureau of
33 Investigation. The commission may require any applicant
34 seeking the renewal of a license or permit to furnish
35 fingerprints for a national criminal records check by the
36 Criminal Identification Bureau of the West Virginia State
37 Police and the Federal Bureau of Investigation; and

38 (3) Pay to the commission a nonrefundable application
39 fee in the amount of \$100 to be retained by the commission
40 as reimbursement for the licensing process.

41 (e) *Authorization of licensee.* -- A license to supply a
42 gaming facility authorizes the licensee to engage in the
43 business of selling gaming devices and supplies to a gaming
44 facility while the license is effective.

45 (f) *Inventory.* -- A licensed gaming facility supplier shall
46 submit to the commission a list of all equipment, gaming
47 devices and supplies sold or delivered to a gaming facility in
48 this state when required by the commission.

49 (g) *Annual license renewal fee.*-- A licensed gaming
50 facility supplier shall pay to the commission an annual
51 license renewal fee of \$100.

§29-25-12. License to be employed by operator of gaming facility.

1 (a) *Licenses.* -- The commission shall issue a license to
2 each applicant for a license to be employed in the operation
3 of a gaming facility who meets the requirements of this
4 section.

5 (b) *License qualifications.* -- To qualify for a license to
6 be employed in a gaming facility, the applicant shall be an
7 individual of good moral character and reputation and have
8 been offered employment by the gaming facility contingent
9 upon licensure pursuant to the provisions of this section. The
10 commission, by rule, may specify additional requirements to
11 be met by applicants based on the specific job classification
12 in which the applicant is to be employed.

13 (c) *License application requirements.* -- An applicant for
14 a license to be employed in the operation of a gaming facility
15 shall:

16 (1) Submit an application to the commission on the form
17 that the commission requires, including adequate information
18 to serve as a basis for a thorough background check;

19 (2) Submit fingerprints for a national criminal records
20 check by the Criminal Identification Bureau of the West
21 Virginia State Police and the Federal Bureau of Investigation.
22 The fingerprints shall be furnished by all persons required to
23 be named in the application and shall be accompanied by a
24 signed authorization for the release of information by the
25 Criminal Investigation Bureau and the Federal Bureau of
26 Investigation. The commission may require any applicant
27 seeking the renewal of a license or permit to furnish
28 fingerprints for a national criminal records check by the
29 Criminal Identification Bureau of the West Virginia State
30 Police and the Federal Bureau of Investigation; and

31 (3) Pay to the commission a nonrefundable application
32 fee in the amount of \$100 to be retained by the commission
33 as reimbursement for the licensing process. This fee may be
34 paid on behalf of the applicant by the employer.

35 (d) *Authorization of licensee.* -- A license to be employed
36 by a gaming facility authorizes the licensee to be so
37 employed in the capacity designated by the commission with
38 respect to the license while the license is effective.

39 (e) *Annual license renewal fee.* -- Each licensed
40 employee shall pay to the commission an annual license
41 renewal fee set by the commission, which renewal fee may
42 vary based on the capacity designated with respect to the
43 licensee but in no event to exceed \$100. The fee may be paid
44 on behalf of the licensed employee by the employer.

§29-25-13. False statements on applications; other license requirements and prohibitions.

1 (a) Any person who knowingly makes a false statement
2 on an application is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not more than \$1,000 and
4 confined in jail for not more than six months except that in
5 the case of a person other than a natural person, the amount
6 of the fine imposed may not be more than \$25,000.

7 (b) The commission may not grant a license pursuant to
8 the provisions of this article if there is substantial evidence
9 that the applicant:

10 (1) Has knowingly made a false statement of a material
11 fact to the commission;

12 (2) Has been suspended from operating a gambling game,
13 gaming device or gambling operation in another jurisdiction
14 by a board or other governmental authority of that

15 jurisdiction having responsibility for the regulation of
16 gambling or gaming activities;

17 (3) Has been convicted of a felony, an offense of moral
18 turpitude, a gambling offense, a theft or fraud offense or has
19 otherwise demonstrated, either by a police record or other
20 satisfactory evidence, a lack of respect for law and order;

21 (4) Has failed to meet any monetary obligation in
22 connection with a gaming facility or any other form of
23 gaming; or

24 (5) In the case of an applicant for a license to operate a
25 gaming facility or to supply a gaming facility:

26 (A) Has not demonstrated financial responsibility
27 sufficient to meet adequately the requirements of the
28 enterprise proposed;

29 (B) Is not the true owner of the enterprise or is not the
30 sole owner and has not disclosed the existence or identity of
31 other persons who have an ownership interest in such
32 enterprise; or

33 (C) Is a corporation and five percent or more of the stock
34 of the corporation is subject to a contract or option to
35 purchase at any time during the period for which the license
36 is issued unless the contract or option was disclosed to and
37 approved by the commission.

38 (c) In addition to any other grounds specified in this
39 article, and subject to the hearing provisions of section
40 seventeen of this article, in the case of a license to operate a
41 gaming facility the commission may deny a license to any
42 applicant, reprimand any licensee, or suspend or revoke a
43 license if the applicant or licensee or any controlling person
44 of the applicant or licensee knowingly employs an individual

45 in a senior management position who has been convicted of
46 a felony under the laws of this state, another state, a territory
47 of the United States, or the United States or employs any
48 individual in a senior management position who has had a
49 license relating to the operation of a gaming facility revoked
50 by this state or any other state.

51 (d) Character references may be required of persons
52 licensed, but the character reference may not be obtained
53 from persons in the same or similar occupations or
54 professions in other states.

§29-25-16. License denial, revocation and reprimand.

1 (a) The commission may deny a license to any applicant,
2 reprimand any licensee, or suspend or revoke a license if the
3 applicant or licensee, or any controlling person of the
4 applicant or licensee:

5 (1) Fraudulently or deceptively obtains or attempts to
6 obtain a license for the applicant or licensee or for another;

7 (2) Fraudulently or deceptively uses a license;

8 (3) Is convicted of a felony under the laws of this state,
9 another state, a territory of the United States or the United
10 States;

11 (4) Is convicted of a misdemeanor under the laws of this
12 state, another state, the United States or a territory of the
13 United States for gambling or a gambling-related activity; or

14 (5) Is not complying with this act, the rules or the
15 minimum internal control standards promulgated by the
16 commission or the gaming facility.

17 (b) Instead of or in addition to reprimanding a licensee or
18 suspending or revoking a license, the commission may
19 impose a civil penalty under section twenty-seven of this
20 article.

§29-25-17. Hearing procedures.

1 (a) *Right to a hearing.* -- Except as otherwise provided by
2 law, before the commission takes any action involving a
3 licensee under the provisions of this article, it shall give the
4 persons against whom the action is contemplated an
5 opportunity for a hearing before the commission.

6 (b) *Notice of hearing and right to counsel.* -- The
7 commission shall give notice and hold the hearing in
8 accordance with article five, chapter twenty-nine-a of this
9 code. The notice shall be given to the person by certified
10 mail to the last known address of the person at least thirty
11 days before the hearing. The person may be represented at
12 the hearing by counsel.

13 (c) *Failure to comply with subpoena.* -- If a person fails
14 to comply with a subpoena issued under this section, on
15 petition of the commission, the circuit court may compel
16 obedience to the subpoena. If after due notice the person
17 against whom the action is contemplated fails or refuses to
18 appear, the commission may hear and determine the matter.

19 (d) *Appeal.* -- Any person aggrieved by a final decision
20 of the commission in a contested case may file a petition for
21 appeal in the circuit court of Kanawha County within thirty
22 days after the person received notice of the final order or
23 decision, as provided in section four, article five, chapter
24 twenty-nine-a of this code.

§29-25-18. Inspection and seizure.

1 As a condition of licensure, to inspect or investigate for
2 criminal violations of this article or violations of the rule
3 promulgated by the commission, the commission agents and
4 the West Virginia State Police may each, without notice and
5 without warrant:

6 (1) Inspect and examine all premises of the gaming
7 facility with West Virginia Lottery table games, gaming
8 devices, the premises where gaming equipment is
9 manufactured, sold, distributed or serviced or any premises
10 in which any records of the activities are prepared or
11 maintained;

12 (2) Inspect any gaming equipment in, about, upon or
13 around the premises of a gaming facility with West Virginia
14 Lottery table games;

15 (3) Seize summarily and remove from the premises and
16 impound any gaming equipment for the purposes of
17 examination, inspection or testing;

18 (4) Inspect, examine and audit all books, records and
19 documents pertaining to a gaming facility licensee's
20 operation;

21 (5) Summarily seize, impound or assume physical control
22 of any book, record, ledger, West Virginia Lottery table
23 game, gaming equipment or device, cash box and its
24 contents, counting room or its equipment or West Virginia
25 Lottery table game operations; and

26 (6) Inspect the person, and the person's personal effects
27 present on the grounds of a licensed gaming facility with
28 West Virginia Lottery table games, of any holder of a license
29 issued pursuant to this article while that person is present on
30 the grounds of a licensed gaming facility having West
31 Virginia Lottery table games.

§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

1 (a) *Consent to presence of law-enforcement officers.* --
2 Any individual entering the gaming facility shall be advised
3 by the posting of a notice or other suitable means of the
4 possible presence of state, county or municipal law-
5 enforcement officers and by entering the gaming facility
6 impliedly consents to the presence of the law-enforcement
7 officers.

8 (b) *Commission discretion in gaming operations.* ---
9 Video lottery terminals operated at the gaming facility may
10 not allow more than five dollars to be wagered on a single
11 game.

12 (1) Subject to the approval of the commission, the
13 gaming facility licensee shall, with respect West Virginia
14 Lottery table games, establish the following:

15 (A) Maximum and minimum wagers;

16 (B) Advertising and promotional activities;

17 (C) Hours of operation; and

18 (D) The days during which games may be played; and

19 (2) The commission may consider multiple factors,
20 including, but not limited to, industry standards, outside
21 competition and any other factors as determined by the
22 commission to be relevant in its decision to approve the
23 gaming facility's determination of those items listed in
24 subdivision (1) of this subsection.

25 (c) *Setting of operations.* — Notwithstanding anything to
26 the contrary contained elsewhere in this chapter, the
27 commission may establish the following parameters for
28 commission regulated lottery games of any kind which is
29 played at a licensed gaming facility:

30 (1) Minimum and maximum payout percentages;

31 (2) Any probability limits of obtaining the maximum
32 payout for a particular play; and

33 (3) Limitations on the types and amounts of financial
34 transactions, including extension of credit to a patron, which
35 a gaming facility can enter into with its patrons.

36 (d) *Posting of betting limits.* -- A gaming facility shall
37 conspicuously post a sign at each West Virginia Lottery table
38 game indicating the permissible minimum and maximum
39 wagers pertaining at that table. A gaming facility licensee
40 may not require any wager to be greater than the stated
41 minimum or less than the stated maximum. However, any
42 wager actually made by a patron and not rejected by a
43 gaming facility licensee prior to the commencement of play
44 shall be treated as a valid wager.

**§29-25-20. Accounting and reporting of gross terminal income;
distribution.**

1 The licensed gaming facility shall submit thirty-six
2 percent of the gross terminal income from video lottery
3 games at the licensed gaming facility to the commission
4 through electronic funds transfer to be deposited into the
5 Historic Resort Hotel Fund created in section twenty-two of
6 this article. The licensed gaming facility shall also submit
7 seventeen percent of the gross terminal income from video
8 lottery games at the licensed gaming facility to the
9 commission through electronic funds transfer to be deposited

10 into the Human Resource Benefit Fund created in section
11 twenty-two-a of this article. Each of these submissions shall
12 be made to the commission weekly. The gaming licensee
13 shall furnish to the commission all information and bank
14 authorizations required to facilitate the timely transfer of
15 moneys to the commission. The gaming licensee shall
16 provide the commission thirty days' advance notice of any
17 proposed account changes in order to assure the
18 uninterrupted electronic transfer of funds.

§29-25-21. Taxes on games other than video lottery games.

1 (a) *Imposition and rate of limited gaming profits tax.* --
2 There is hereby levied and shall be collected a privilege tax
3 against a gaming license in an amount to be determined by
4 the application of the rate against adjusted gross receipts of
5 the licensed gaming facility. The rate of tax is thirty-five
6 percent. Of that thirty-five percent, thirty percent shall be
7 directly deposited by the commission into the Historic Resort
8 Hotel Fund created in section twenty-two of this article and
9 the remaining five percent shall be directly deposited by the
10 commission into the Human Resource Benefit Fund created
11 in section twenty-two-a of this article. For purposes of
12 calculating the amount of tax due under this section, the
13 licensee shall use the accrual method of accounting. This tax
14 is in addition to all other taxes and fees imposed: *Provided,*
15 That the consumers sales and service tax imposed pursuant
16 to article fifteen, chapter eleven of this code may not apply to
17 the proceeds from any wagering with respect to a West
18 Virginia Lottery table game pursuant to this article.

19 (b) *Computation and payment of tax.* -- The taxes
20 levied under the provisions of this section are due and
21 payable to the commission in weekly installments on or
22 before the Wednesday of each week. The taxpayer shall, on
23 or before the Wednesday of each week, make out and submit
24 by electronic communication to the commission a return for

25 the preceding week, in the form prescribed by the
26 commission, showing: (1) The total gross receipts from the
27 gaming facility for that month and the adjusted gross
28 receipts; (2) the amount of tax for which the taxpayer is
29 liable; and (3) any further information necessary in the
30 computation and collection of the tax which the Tax
31 Commissioner or the commission may require. Payment of
32 the amount of tax due shall accompany the return. All
33 payments made pursuant to this section shall be deposited in
34 accordance with sections twenty-two and twenty-two-a of
35 this article. Payments due to the commission under this
36 section and payments due to the commission under section
37 twenty of this article shall be sent simultaneously.

38 (c) *Negative adjusted gross receipts.* -- When adjusted
39 gross receipts for a week is a negative number because the
40 winnings paid to patrons wagering on the gaming facility's
41 West Virginia Lottery table games exceeds the gaming
42 facility's gross receipts from the purchase of table game
43 tokens, chips or electronic media by patrons, the commission
44 shall allow the licensee to, pursuant to rules of the
45 commission, carry over the negative amount of adjusted
46 gross receipts to returns filed for subsequent weeks. The
47 negative amount of adjusted gross receipts may not be carried
48 back to an earlier week and the commission is not required to
49 refund any tax received by the commission, except when the
50 licensee surrenders its license to act as agent of the
51 commission in operating West Virginia Lottery table game
52 under this article and the licensee's last return filed under this
53 section shows negative adjusted gross receipts. In that case,
54 the commission shall multiply the amount of negative
55 adjusted gross receipts by the applicable rate of tax and pay
56 the amount to the licensee, in accordance with rules of the
57 commission.

58 (d) *Prohibition on credits.* -- Notwithstanding any other
59 provision of this code to the contrary, no credits may be

60 allowed against any tax imposed on any taxpayer by this
61 code for an investment in gaming devices and supplies, for
62 an investment in real property which would be directly
63 utilized for the operation of a gaming facility or for any jobs
64 created at a gaming facility. Notwithstanding any other
65 provision of this code to the contrary, the tax imposed by this
66 section may not be added to federal taxable income in
67 determining West Virginia taxable income of a taxpayer for
68 purposes of article twenty-four, chapter eleven of this code.

69 (e) *Tax imposed by this section is in lieu of other taxes. --*

70 (1) With the exception of the ad valorem property tax
71 collected under chapter eleven-a of this code, the tax imposed
72 by this section is in lieu of all other state taxes and fees
73 imposed on the operation of, or the proceeds from operation
74 of West Virginia Lottery table games, except as otherwise
75 provided in this section. The consumers sales and service tax
76 imposed pursuant to article fifteen, chapter eleven of this
77 code shall not apply to the licensee's gross receipts from any
78 wagering on a West Virginia Lottery table game pursuant to
79 this article or to the licensee's purchasing of gaming
80 equipment, supplies or services directly used in operation of
81 a West Virginia Lottery table games authorized by this
82 article. These purchases are also exempt from the use tax
83 imposed by article fifteen-a, chapter eleven of this code.

84 (2) With the exception of the ad valorem property tax
85 collected under chapter eleven-a of this code, the tax imposed
86 by this section is in lieu of all local taxes and fees levied on
87 or imposed with respect to the privilege of offering a West
88 Virginia Lottery table game to the public, including, but not
89 limited to, the municipal business and occupation taxes and
90 amusement taxes authorized by article thirteen, chapter eight
91 of this code and the municipal sales and service tax and use
92 tax authorized by article thirteen-c of said chapter.

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.

1 (a) There is hereby created a special fund in the State
2 Treasury which shall be designated and known as the
3 Historic Resort Hotel Fund. Thirty-six percent of the gross
4 terminal income received by the commission under section
5 twenty of this article and thirty percent of the adjusted gross
6 receipts received by the commission under section twenty-
7 one of this article shall be deposited with the State Treasurer
8 and placed in the Historic Resort Hotel Fund. The fund shall
9 be an interest bearing account with interest to be credited to
10 and deposited in the Historic Resort Hotel Fund.

11 (b) All expenses of the commission shall be paid from the
12 Historic Resort Hotel Fund, including reimbursement of the
13 State Police for activities performed at the request of the
14 commission in connection with background investigations or
15 enforcement activities pursuant to this article. At no time
16 may the commission's expenses under this article exceed
17 fifteen percent of the total of the annual revenue received
18 from the licensee under this article, including all license fees,
19 taxes or other amounts required to be deposited in the
20 Historic Resort Hotel Fund.

21 (c) The balance of the Historic Resort Hotel Fund shall
22 become net income and shall be divided as follows:

23 (1) Sixty-four percent of the Historic Resort Hotel Fund
24 net income shall be paid into the General Revenue Fund to be
25 appropriated by the Legislature;

26 (2) Nineteen percent of the Historic Resort Hotel Fund
27 net income shall be paid into the State Debt Reduction Fund
28 established in section twenty-seven, article twenty-two-c of
29 this chapter to be appropriated by the Legislature;

30 (3) The Tourism Promotion Fund established in section
31 twelve, article two, chapter five-b of this code shall receive
32 three percent of the Historic Resort Hotel Fund net income;

33 (4) The county where the gaming facility is located shall
34 receive four percent of the Historic Resort Hotel Fund net
35 income;

36 (5) The municipality where the gaming facility is located
37 or the municipality closest to the gaming facility by paved
38 road access as of the effective date of the reenactment of this
39 section by the 2009 regular session of the Legislature shall
40 receive two and one-half percent of the Historic Resort Hotel
41 Fund net income;

42 (6) The municipalities within the county where the
43 gaming facility is located, except for the municipality
44 receiving funds under subdivision (5) of this subsection, shall
45 receive equal shares of two and one-half percent of the
46 Historic Resort Hotel Fund net income;

47 (7) Each county commission in the state that is not
48 eligible to receive a distribution under subdivision (4) of this
49 subsection shall receive equal shares of two and one-half
50 percent of the Historic Resort Hotel Fund net income:
51 *Provided*, That funds transferred to the county commission
52 under this subdivision shall be used only to pay regional jail
53 expenses and the costs of infrastructure improvements and
54 other capital improvements; and

55 (8) The governing body of each municipality in the state
56 that is not eligible to receive a distribution under subdivisions
57 (5) and (6) of this subsection shall receive equal shares of
58 two and one-half percent of the Historic Resort Hotel Fund
59 net income: *Provided*, That funds transferred to
60 municipalities under this subdivision shall be used only to
61 pay for debt reduction in municipal police and fire pension

62 funds and the costs of infrastructure improvements and other
63 capital improvements.

64 (d) Notwithstanding any provision of this article to the
65 contrary, all limited gaming facility license fees and license
66 renewal fees received by the commission pursuant to section
67 nine of this article shall be deposited into the Community-
68 Based Service Fund created in section twenty-seven, article
69 twenty-two-c of this chapter.

70 (e) With the exception of the license fees and license
71 renewal fees received by the commission pursuant to section
72 nine of this article, all revenues received from licensees and
73 license applicants under this article shall be retained by the
74 commission as reimbursement for the licensing process.

§29-25-22a. Human Resource Benefit Fund.

1 (a) There is hereby created a special fund in the State
2 Treasury which shall be designated and known as the Human
3 Resource Benefit Fund. Seventeen percent of the gross
4 terminal income received by the commission under section
5 twenty of this article and five percent of the adjusted gross
6 receipts received by the commission under section twenty-
7 one of this article shall be deposited with the State Treasurer
8 and placed in the Human Resource Benefit Fund. The fund
9 shall be an interest-bearing account with interest to be
10 credited to and deposited in the Human Resource Benefit
11 Fund.

12 (b) For each dollar expended by the historic resort hotel
13 for fringe benefits for the employees of the historic resort
14 hotel, the commission shall transfer to the historic resort
15 hotel one dollar of recoupment from the Human Resource
16 Benefit Fund: *Provided*, That the historic resort hotel is not
17 entitled to recoupment for money spent on fringe benefits
18 beyond the amount of money available to be expended from

19 the Human Resource Benefit Fund at the time the request for
20 recoupment is made by the historic resort hotel.

21 (c) The commission shall have full rights and powers to
22 audit the spending of money from the Human Resource
23 Benefit Fund to ensure that the money is being used in the
24 manner prescribed under this section. The commission shall
25 have the power and authority to audit as frequently as it sees
26 fit, so long as it conducts at least two audits each fiscal year.

27 (d) There is hereby created the Human Resource Benefit
28 Advisory Board, which shall meet every six months to verify
29 the commission's audit.

30 (1) The board shall consist of five members, all residents
31 and citizens of the State of West Virginia:

32 (A) One member shall be a representative of the
33 collective bargaining unit that represents a majority of the
34 employees of the historic resort hotel;

35 (B) One member shall be a representative of the historic
36 resort hotel; and

37 (C) Three members shall be employees of the
38 commission.

39 (2) The members shall be appointed or elected by the
40 entity or persons that they represent. Establishment of terms
41 for members shall be determined by the entity or persons that
42 they represent, if the entity or persons choose to set terms.

43 (3) A majority of members constitutes a quorum for the
44 transaction of business.

45 (4) The board shall meet every six months at the
46 headquarters of the commission. Upon its own motion or

47 upon the request of the commission, it may hold meetings in
48 addition to the required meetings. The commission shall pay
49 the travel expenses of members of the board who are not
50 employed by the commission.

51 (5) All meetings of the board shall be open to the public.

52 (6) The board shall operate in an advisory capacity. Its
53 functions shall include, but are not limited to, reviewing and
54 verifying financial audits of the Human Resource Benefit
55 Fund conducted by the commission and its employees and
56 reviewing source documents associated with disbursements
57 from the Human Resource Benefit Fund.

58 (7) Within thirty days of any board meeting, the board
59 shall report to the commission its findings and any
60 recommendations it may have. The report to the commission
61 shall be made at a commission meeting that is open to the
62 public.

63 (e) In the event that an audit conducted by the commission,
64 or suggested changes to the audit submitted by the board and
65 adopted by the commission, reveals that the historic resort hotel
66 has acted improperly or negligently in its claim for money from
67 the Human Resource Benefit Fund, the commission may impose
68 a civil penalty against the historic resort hotel of up to one
69 hundred percent of the improperly claimed amount. Any civil
70 penalty imposed on the historic resort hotel by the commission
71 under this subsection shall be deposited by the commission into
72 the Historic Resort Hotel Fund.

**§29-25-23. Prohibition on unauthorized wagering;
complimentary service, gift, cash or other item.**

1 (a) A gaming licensee may not permit any form of
2 wagering except as authorized under this article or article
3 twenty-two, twenty-two-a or twenty-two-c of this chapter.

4 (b) A gaming licensee may receive wagers only from an
5 individual present in a licensed gaming facility.

6 (c) All gaming facility operations shall utilize a cashless
7 wagering system whereby all players' money is converted to
8 tokens, paper vouchers, electronic cards or chips at the
9 request of the wagerer which can only be used for wagering
10 in a licensed gaming facility and wagering may not be
11 conducted with money or other negotiable currency:

12 (1) Wagering on West Virginia Lottery table games may
13 not be conducted with money or other negotiable currency or
14 with tokens, electronic cards or other electronic media or
15 chips not issued by the gaming facility where the West
16 Virginia Lottery table game will be played.

17 (2) At the request of the player, the licensee shall convert
18 a player's tokens, electronic cards or other electronic media
19 or chips back to money.

20 (3) The licensee may not charge a fee for converting a
21 player's money to an acceptable media for playing a West
22 Virginia Lottery table game or charge a fee for converting the
23 acceptable media for wagering a West Virginia Lottery table
24 game back to money.

25 (d) The gaming licensee is prohibited from offering any
26 complimentary service, gift, cash or other item of value to
27 any person unless:

28 (1) The complimentary consists of room, food, beverage
29 or entertainment expenses provided directly to the patron and
30 his or her guests by the gaming facility licensee or indirectly
31 to the patron and his or her guests on behalf of the licensee
32 by a third party;

33 (2) The complimentary consists of documented
34 transportation expenses provided directly to the patron and

35 his or her guests on behalf of a gaming facility licensee by a
36 third party: *Provided*, That the licensee complies with the
37 rules promulgated by the commission to ensure that a
38 patron's and his or her guests' documented transportation
39 expenses are paid for or reimbursed only once; or

40 (3) The complimentary consists of coins, tokens, cash or
41 other complimentary items or services provided through any
42 complimentary distribution program, the terms of which shall
43 be filed with the commission upon implementation of the
44 program or maintained pursuant to commission rule. Any
45 change in the terms of a complimentary program shall be
46 filed with the commission upon implementation of the
47 change.

48 (e) Notwithstanding any provision of subsection (d) of
49 this section to the contrary, a gaming facility licensee may
50 offer and provide complimentary cash or noncash gifts that
51 are not otherwise included in that subsection to any person:
52 *Provided*, That any complimentary cash or noncash gifts in
53 excess of an amount per trip to be set by interpretive rule of
54 the commission are supported by documentation regarding
55 the reason the gift was provided to the patron and his or her
56 guests, including, where applicable, a patron's player rating.
57 The documentation shall be maintained by a gaming facility
58 licensee in accordance with commission rules. For purposes
59 of this subsection, all gifts presented to a patron and a
60 patron's guests directly by the gaming facility licensee or
61 indirectly on behalf of the licensee by a third party within any
62 five-day period shall be considered to have been made during
63 a single trip.

§29-25-24. Individual gaming restrictions.

1 (a) An individual may enter a designated gaming area or
2 remain in a designated gaming area only if the individual:

3 (1) Is either;

4 (A) A registered overnight guest at the historic resort
5 hotel on whose premises the gaming facility is located;

6 (B) A person who is a not a registered overnight guest,
7 but is a registered participant at a convention or event being
8 held at the historic resort hotel: *Provided*, That this paragraph
9 does not apply on any calendar day when less than four
10 hundred guest rooms are occupied at the historic resort hotel;
11 or

12 (C) A member of a homeowner or facility association that
13 entitles members to substantial privileges at the historic
14 resort hotel on whose premises the gaming facility is located
15 or an overnight guest of such a member: *Provided*, That the
16 association was in existence as of April 1, 2009;

17 (2) Is at least twenty-one years of age;

18 (3) Is not visibly intoxicated;

19 (4) Has not been determined by the gaming facility
20 operator or the commission to be unruly, disruptive or
21 otherwise interfering with operation of the gaming facility; or
22 to be likely to commit, or to attempt to commit, a violation of
23 this article; and

24 (5) Has not been barred by the commission from entering
25 a gaming facility.

26 (b) Notwithstanding any provisions of this code to the
27 contrary, no employee of the commission or employee of the
28 historic resort hotel or any member of his or her immediate
29 household may wager at the gaming facility.

§29-25-25. Offenses and penalties.

1 (a) A gaming licensee is guilty of unlawful operation of
2 a West Virginia Lottery table game when:

3 (1) The licensee operates a West Virginia Lottery table
4 game or places a video lottery game or video lottery terminal
5 in any location that is not a designated gaming area approved
6 by the commission;

7 (2) The licensee acts or employs another person to act as
8 if he or she is not an agent or employee of the licensee in
9 order to encourage participation in a West Virginia Lottery
10 table game in a gaming facility;

11 (3) The licensee knowingly permits an individual under
12 the age of twenty-one years of age to enter or remain in a
13 designated gaming area or to play video lottery terminals or
14 West Virginia Lottery table game at a licensed gaming
15 facility;

16 (4) The licensee exchanges tokens, chips or other forms
17 of credit to be used for wagering in a gaming facility for
18 anything of value except in exchange for money or credits to
19 a player's account;

20 (5) The licensee operates a West Virginia Lottery table
21 game or places a video lottery game or video lottery terminal
22 into play without authority of the commission to do so;

23 (6) The licensee knowingly conducts, carries on, operates
24 or exposes for play or allows to be conducted, carried on,
25 operated or exposed for play any West Virginia Lottery table
26 game, video lottery game, video lottery terminal or other
27 device, equipment or material that has in any manner been
28 tampered with or placed in a condition or operated in a
29 manner, the result of which is designed to deceive the public;
30 or

31 (7) The licensee employs an individual in a position or to
32 perform duties, for which a license is required by this article
33 or rules of the commission and the employee does not have
34 a license issued under the provisions of this article or the
35 licensee continues to employ the individual in a position or
36 to perform duties, for which a license is required by this
37 article or rules of the commission, after the employee's
38 license expired, was revoked by the commission or not
39 renewed by the commission.

40 (b) A person is guilty of a misdemeanor when:

41 (1) The person operates, carries on or exposes for play a
42 West Virginia Lottery table game prior to obtaining a license
43 or after the person's license has expired and prior to actual
44 renewal of the license or before the West Virginia Lottery
45 table game and the licensee's rules for play for the game are
46 approved or modified and approved by the commission;

47 (2) The person works or is employed in a position
48 requiring a license under the provisions of this article without
49 having the license required by this article;

50 (3) A licensee who possesses any video lottery terminal
51 or other device, equipment or material which the person
52 knows has been manufactured, distributed, sold, tampered
53 with or serviced in violation of the provisions of this article;
54 or

55 (4) A licensee who knowingly conducts, carries on,
56 operates or exposes for play, or allows to be conducted,
57 carried on, operated or exposed for play any video lottery
58 game, video lottery terminal, or other device, equipment or
59 material which has in any manner been tampered with, or
60 placed in a condition, or operated in a manner, the result of
61 which tends to deceive the public or tends to alter the normal
62 random selection of characteristics or the normal random

63 selection of characteristics or the normal chance of the video
64 lottery game.

65 (c) A person is guilty of a felony when:

66 (1) The person offers, promises or gives anything of
67 value or benefit to a person who has an ownership or
68 financial interest in, is employed by or has a service contract
69 with a gaming facility or to that person's spouse or any
70 dependent child or dependent parent, pursuant to an
71 agreement or arrangement, in fact or implied from the
72 circumstances, with intent that the promise or thing of value
73 or benefit will influence the actions of the person in order to
74 affect or attempt to affect the outcome of a West Virginia
75 Lottery table game or to influence official action of the
76 commission. For the purposes of this subdivision and
77 subdivision (2) of this subsection, the term "person who is
78 connected with a gaming facility" includes, but is not limited
79 to, a person licensed under this article as well as an officer or
80 employee of a licensee;

81 (2) The person solicits or knowingly accepts or receives
82 a promise of anything of value or benefit while the person is
83 connected with a gaming facility, pursuant to an
84 understanding or arrangement or with the intent that the
85 promise or thing of value or benefit will influence the actions
86 of the person to affect or attempt to affect the outcome of a
87 West Virginia Lottery table game or to influence official
88 action of the commission;

89 (3) The person uses or possesses on property owned by
90 the licensed gaming facility or on property contiguous to the
91 gaming facility, with the intent to use, an electronic, electrical
92 or mechanical device that is designed, constructed or
93 programmed to assist the user or another person:

94 (A) In projecting the outcome of a West Virginia Lottery
95 table game;

- 96 (B) In keeping track of cards dealt or in play;
- 97 (C) In analyzing the probability of the occurrence of an
98 event relating to a West Virginia Lottery table game;
- 99 (D) In analyzing the strategy for playing or betting to be
100 used in a West Virginia Lottery table game, except as
101 permitted in writing by the commission; or
- 102 (E) In obtaining an advantage at playing any West
103 Virginia Lottery table game at a licensed gaming facility
104 authorized under this article to operate a West Virginia
105 Lottery table game;
- 106 (4) The person cheats at a West Virginia Lottery table
107 game in a gaming facility;
- 108 (5) The person manufactures, sells, or distributed any
109 cards, chips, dice, game or device which is intended to be
110 used to violate any provision of this article or the table
111 gaming laws of any other state;
- 112 (6) The person instructs a person in cheating or in the use
113 of a device for that purpose with the knowledge or intent that
114 the information or use conveyed may be employed to violate
115 any provision of the article;
- 116 (7) The person places a bet after acquiring knowledge,
117 not available to all players, of the outcome of the West
118 Virginia Lottery table game which is the subject of the bet or
119 aids a person in acquiring the knowledge for the purpose of
120 placing a bet contingent on that outcome;
- 121 (8) The person claims, collects, takes or attempts to
122 claim, collect or take money or anything of value into or
123 from a gaming facility, with intent to defraud, without having
124 made a wager contingent on winning a West Virginia Lottery

125 table game, or claims, collects or takes an amount of money
126 or thing of value or greater value than the amount won;

127 (9) The person knowingly uses chips, electronic media or
128 tokens that are counterfeit to place a wager in a gaming
129 facility;

130 (10) The person knowingly uses any medium other than
131 chips, tokens or other methods of credit approved by the
132 commission to place a wager in a gaming facility;

133 (11) The person, not a gaming licensee or employee or
134 agent of a gaming facility licensed under this article acting in
135 furtherance of the gaming licensee's interests, has in his or
136 her possession on grounds owned by the gaming facility
137 licensed under this article or on grounds contiguous to the
138 gaming facility, any device, by whatever name called,
139 intended to be used to violate a provision of this article or a
140 rule of the commission implementing or explaining a
141 provision of this article; or

142 (12) The person, not a gaming licensee or agent of a
143 gaming licensee acting in furtherance of the gaming
144 licensee's interests, has in his or her possession any key or
145 device designed for the purpose of opening, entering or
146 affecting the operation of a West Virginia Lottery table
147 game, drop box or an electronic or mechanical device
148 connected with or used in connection with a West Virginia
149 Lottery table game in a gaming facility or for removing
150 coins, tokens, chips or other contents therefrom.

151 (d) Any person who violates the provisions of subsection
152 (a) or (b) of this section is guilty of a misdemeanor and, upon
153 conviction thereof, shall be fined not more than \$1,000 and
154 confined in jail for not more than six months, except that in
155 the case of a person other than a natural person, the amount
156 of the fine imposed may not be more than \$25,000.

157 (e) Any person who violates the provisions of subsection
158 (c) of this section is guilty of a felony and, upon conviction
159 thereof, shall be fined not less than \$5,000 nor more than
160 \$10,000 and committed to a state correctional facility for a
161 term of imprisonment of not less than one year nor more than
162 five years.

163 (f) With regard to subdivision (3), subsection (c) of this
164 section, the gaming facility licensee shall post notice of this
165 prohibition and the penalties of this section in a manner
166 determined by the commission.

§29-25-26. Forfeiture of property.

1 (a) Anything of value, including all traceable proceeds
2 including, but not limited to, real and personal property,
3 moneys, negotiable instruments, securities and conveyances,
4 is subject to forfeiture to the State of West Virginia if the
5 item was used for any of the following:

6 (1) As a bribe intended to affect the outcome of a West
7 Virginia Lottery table game in a gaming facility; or

8 (2) In exchange for or to facilitate a violation of this
9 article.

10 (b) The Legislature finds and declares that the seizure and
11 sale of items under the provisions of this section is not
12 contemplated to be a forfeiture as that term is used in section
13 five, article XII of the Constitution of West Virginia and, to
14 the extent that a seizure and sale may be found to be a
15 forfeiture, the Legislature hereby finds and declares that the
16 proceeds from a seizure and sale under this article are not
17 part of net proceeds as it is contemplated by section five,
18 article XII of the Constitution of West Virginia.

19 (c) Subsection (a) of this section does not apply if the act
20 or omission which would give rise to the forfeiture was

21 committed or omitted without knowledge or consent of the
22 owner of the property to be forfeited.

§29-25-28. Specific provision for video lottery games.

1 The commission is authorized to implement and operate
2 video lottery games at one gaming facility in this state in
3 accordance with the provisions of this article and the
4 applicable provisions of article twenty-two-a of this chapter.
5 The provisions of said article apply to this article, except in
6 the event of conflict or inconsistency between any of the
7 provisions of this article and the provisions of article twenty-
8 two-a of this chapter. In that event, the provisions of this
9 article shall supersede any conflicting or inconsistent
10 provisions contained in article twenty-two-a of this chapter.

§29-25-29. Video lottery terminal requirements; application for approval of video lottery terminals; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

1 (a) Video lottery terminals registered with and approved
2 by the commission for use at the gaming facility may offer
3 video lottery games regulated, controlled, owned and
4 operated by the commission in accordance with the
5 provisions of this section and utilizing specific game rules.

6 (b) A manufacturer may not sell or lease a video lottery
7 terminal for placement at the gaming facility unless the
8 terminal has been approved by the commission. Only
9 manufacturers with licenses may apply for approval of a
10 video lottery terminal or associated equipment. The
11 manufacturer shall submit two copies of terminal
12 illustrations, schematics, block diagrams, circuit analysis,
13 technical and operation manuals and any other information

14 requested by the commission for the purpose of analyzing
15 and testing the video lottery terminal or associated
16 equipment.

17 (c) The commission may require that two working
18 models of a video lottery terminal be transported to the
19 location designated by the commission for testing,
20 examination and analysis.

21 (1) The manufacturer shall pay all costs of testing,
22 examination, analysis and transportation of such video lottery
23 terminal models. The testing, examination and analysis of
24 any video lottery terminal model may require dismantling of
25 the terminal and some tests may result in damage or
26 destruction to one or more electronic components of such
27 terminal model. The commission may require that the
28 manufacturer provide specialized equipment or pay for the
29 services of an independent technical expert to test the
30 terminal.

31 (2) The manufacturer shall pay the cost of transportation
32 of two video lottery terminals to lottery headquarters. The
33 commission shall conduct an acceptance test to determine
34 terminal functions and central system compatibility. If the
35 video lottery terminal fails the acceptance test conducted by
36 the commission, the manufacturer shall make all
37 modifications required by the commission.

38 (d) After each test has been completed, the commission
39 shall provide the terminal manufacturer with a report
40 containing findings, conclusions and pass/fail results. The
41 report may contain recommendations for video lottery
42 terminal modification to bring the terminal into compliance
43 with the provisions of this article. Prior to approving a
44 particular terminal model, the commission may require a trial
45 period not to exceed sixty days for a licensed gaming facility
46 to test the terminal. During the trial period, the manufacturer

47 may not make any modifications to the terminal model unless
48 modifications are approved by the commission.

49 (e) The video lottery terminal manufacturer and licensed
50 gaming facility are jointly responsible for the assembly and
51 installation of all video lottery terminals and associated
52 equipment. The manufacturer and licensed gaming facility
53 shall not change the assembly or operational functions of a
54 terminal licensed for placement in West Virginia unless a
55 request for modification of an existing video terminal
56 prototype is approved by the commission. The request shall
57 contain a detailed description of the type of change, the
58 reasons for the change and technical documentation of the
59 change.

60 (f) Each video lottery terminal approved for placement at
61 the gaming facility shall conform to the exact specifications
62 of the video lottery terminal prototype tested and approved
63 by the commission. If any video lottery terminal or any
64 video lottery terminal modification, which has not been
65 approved by the commission, is supplied by a manufacturer
66 and operated by the gaming facility, the commission shall
67 seize and destroy all of that licensed gaming facility's and
68 manufacturer's noncomplying video lottery terminals and
69 shall suspend the license and permit of the licensed gaming
70 facility and manufacturer.

§29-25-30. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

1 (a) The commission may approve video lottery terminals
2 and in doing so shall take into account advancements in

3 computer technology, competition from nearby states and the
4 preservation of jobs at the historic resort hotel. In approving
5 video lottery terminals licensed for placement in this state the
6 commission shall insure that the terminals meet the following
7 hardware specifications:

8 (1) Electrical and mechanical parts and design principles
9 may not subject a player to physical hazards or injury.

10 (2) A surge protector shall be installed on the electrical
11 power supply line to each video lottery terminal. A battery
12 or equivalent power back-up for the electronic meters shall
13 be capable of maintaining accuracy of all accounting records
14 and terminal status reports for a period of one hundred eighty
15 days after power is disconnected from the terminal. The
16 power back-up device shall be located within the locked logic
17 board compartment of the video lottery terminal.

18 (3) An on/off switch which controls the electrical current
19 used in the operation of the terminal shall be located in an
20 accessible place within the interior of the video lottery
21 terminal.

22 (4) The operation of each video lottery terminal may not
23 be adversely affected by any static discharge or other
24 electromagnetic interference.

25 (5) A bill or voucher acceptor or other means accurately
26 and efficiently to establish credits shall be installed on each
27 video lottery terminal. All acceptors shall be approved by the
28 commission prior to use on any video lottery terminal in this
29 state.

30 (6) Access to the interior of video lottery terminal shall
31 be controlled through a series of locks and seals.

32 (7) The main logic boards and all erasable programmable
33 read-only memory chips ("EPROMS") are considered to be

34 owned by the commission and shall be located in a separate
35 locked and sealed area within the video lottery terminal.

36 (8) The cash compartment shall be located in a separate
37 locked area within or attached to the video lottery terminal.

38 (9) No hardware switches, jumpers, wire posts or any
39 other means of manipulation may be installed which alter the
40 pay tables or payout percentages in the operation of a game.
41 Hardware switches on a video lottery terminal to control the
42 terminal's graphic routines, speed of play, sound and other
43 purely cosmetic features may be approved by the
44 commission.

45 (10) Each video lottery terminal shall contain a single
46 printing mechanism capable of printing an original ticket and
47 capturing and retaining an electronic copy of the ticket data
48 as approved by the commission: *Provided*, That the printing
49 mechanism is optional on any video lottery terminal which is
50 designed and equipped exclusively for coin or token payouts.
51 The following information shall be recorded on the ticket
52 when credits accrued on a video lottery terminal are
53 redeemed for cash:

54 (i) The number of credits accrued;

55 (ii) Value of the credits in dollars and cents displayed in
56 both numeric and written form;

57 (iii) Time of day and date;

58 (iv) Validation number; and

59 (v) Any other information required by the commission.

60 (11) A permanently installed and affixed identification
61 plate shall appear on the exterior of each video lottery
62 terminal and the following information shall be on the plate:

63 (i) Manufacturer of the video lottery terminal;

64 (ii) Serial number of the terminal; and

65 (iii) Model number of the terminal.

66 (12) The rules of play for each game shall be displayed
67 on the video lottery terminal face or screen. The commission
68 may reject any rules of play which are incomplete, confusing,
69 misleading or inconsistent with game rules approved by the
70 commission. For each video lottery game, there shall be a
71 display detailing the credits awarded for the occurrence of
72 each possible winning combination of numbers or symbols.
73 All information required by this subdivision shall be
74 displayed under glass or another transparent substance. No
75 stickers or other removable devices may be placed on the
76 video lottery terminal screen or face without the prior
77 approval of the commission.

78 (13) Communication equipment and devices shall be
79 installed to enable each video lottery terminal to
80 communicate with the commission's central computer system
81 by use of a communications protocol provided by the
82 commission to each permitted manufacturer, which protocol
83 shall include information retrieval and terminal activation
84 and disable programs, and the commission may require each
85 licensed racetrack to pay the cost of a central site computer
86 as a part of the licensing requirement.

87 (14) All video lottery terminals shall have a security
88 system which temporarily disables the gaming function of the
89 terminal while opened.

90 (b) Each video lottery terminal shall have a random
91 number generator to determine randomly the occurrence of
92 each specific symbol or number used in video lottery games.
93 A selection process is random if it meets the following
94 statistical criteria:

95 (1) *Chi-square test.* -- Each symbol or number shall
96 satisfy the ninety-nine percent confidence limit using the
97 standard chi-square statistical analysis of the difference
98 between the expected result and the observed result.

99 (2) *Runs test.* -- Each symbol or number may not produce
100 a significant statistic with regard to producing patterns of
101 occurrences. Each symbol or number is random if it meets
102 the ninety-nine percent confidence level with regard to the
103 "runs test" for the existence of recurring patterns within a set
104 of data.

105 (3) *Correlation test.* -- Each pair of symbols or numbers
106 is random if it meets the ninety-nine percent confidence level
107 using standard correlation analysis to determine whether each
108 symbol or number is independently chosen without regard to
109 another symbol or number within a single game play.

110 (4) *Serial correlation test.* -- Each symbol or number is
111 random if it meets the ninety-nine percent confidence level
112 using standard serial correlation analysis to determine
113 whether each symbol or number is independently chosen
114 without reference to the same symbol or number in a
115 previous game.

116 (c) Each video lottery terminal shall pay out no less than
117 eighty percent and no more than ninety-nine percent of the
118 amount wagered. The theoretical payout percentage will be
119 determined using standard methods of probability theory.

120 (d) Each video lottery terminal shall be capable of
121 continuing the current game with all current game features
122 after a video lottery terminal malfunction is cleared. If a
123 video lottery terminal is rendered totally inoperable during
124 game play, the current wager and all credits appearing on the
125 video lottery terminal screen prior to the malfunction shall be
126 returned to the player.

127 (e) Each video lottery terminal shall at all times maintain
128 electronic accounting regardless of whether the terminal is
129 being supplied with electrical power. Each meter shall be
130 capable of maintaining a total of no less than eight digits in
131 length for each type of data required. The electronic meters
132 shall record the following information:

133 (1) Number of coins inserted by players or the coin
134 equivalent if a bill acceptor is being used or tokens or
135 vouchers are used;

136 (2) Number of credits wagered;

137 (3) Number of total credits, coins and tokens won;

138 (4) Number of credits paid out by a printed ticket;

139 (5) Number of coins or tokens won, if applicable;

140 (6) Number of times the logic area was accessed;

141 (7) Number of times the cash door was accessed;

142 (8) Number of credits wagered in the current game;

143 (9) Number of credits won in the last complete video
144 lottery game; and

145 (10) Number of cumulative credits representing money
146 inserted by a player and credits for video lottery games won,
147 but not collected.

148 (f) No video lottery terminal may have any mechanism
149 which allows the electronic accounting meters to clear
150 automatically. Electronic accounting meters may not be
151 cleared without the prior approval of the commission. Both
152 before and after any electronic accounting meter is cleared,

153 all meter readings shall be recorded in the presence of a
154 commission employee.

155 (g) The primary responsibility for the control and
156 regulation of any video lottery games and video lottery
157 terminals operated pursuant to this article rests with the
158 commission.

159 (h) The commission shall directly or through a contract
160 with a third party vendor other than the video lottery licensee,
161 maintain a central site system of monitoring the lottery
162 terminals, utilizing an online or dial-up inquiry. The central
163 site system shall be capable of monitoring the operation of
164 each video lottery game or video lottery terminal operating
165 pursuant to this article and, at the direction of the director,
166 immediately disable and cause not to operate any video
167 lottery game and video lottery terminal. As provided in this
168 section, the commission may require the licensed racetrack to
169 pay the cost of a central site computer as part of the licensing
170 requirement.

**§29-25-31. The specific video lottery duties required of the
gaming facility.**

1 The gaming facility licensee shall:

2 (a) Acquire video lottery terminals by purchase, lease or
3 other assignment and provide a secure location for the
4 placement, operation and play of the video lottery terminals;

5 (b) Pay for the installation and operation of commission
6 approved telephone lines to provide direct dial-up or online
7 communication between each video lottery terminal and the
8 commission's central control computer;

9 (c) Permit no person to tamper with or interfere with the
10 operation of any video lottery terminal;

11 (d) Ensure that any telephone lines from the
12 commission's central control computer to the video lottery
13 terminals located at the licensed gaming facility are at all
14 times connected and prevent any person from tampering or
15 interfering with the operation of the telephone lines;

16 (e) Ensure that video lottery terminals are within the sight
17 and control of designated employees of the license gaming
18 facility;

19 (f) Ensure that video lottery terminals are placed and
20 remain placed in the specific locations within the gaming
21 facility that have been approved by the commission. No
22 video lottery terminal or terminals at the gaming facility shall
23 be relocated without the prior approval of the commission;

24 (g) Monitor video lottery terminals to prevent access to
25 or play by persons who are under the age of twenty-one years
26 or who are visibly intoxicated;

27 (h) Maintain at all times sufficient change and cash in the
28 denominations accepted by the video lottery terminals;

29 (i) Provide no access by a player to an automated teller
30 machine (ATM) in the area of the gaming facility where
31 video lottery games are played;

32 (j) Pay for all credits won upon presentment of a valid
33 winning video lottery ticket;

34 (k) Report promptly to the manufacturer and the
35 commission all video lottery terminal malfunctions and
36 notify the commission of the failure of a manufacturer or
37 service technician to provide prompt service and repair of
38 such terminals and associated equipment;

39 (l) Install, post and display prominently at locations
40 within or about the licensed gaming facility signs,

41 redemption information and other promotional material as
42 required by the commission; and

43 (m) Promptly notify the commission in writing of any
44 breaks or tears to any logic unit seals.

§29-25-32. Surcharge; Capital Reinvestment Fund.

1 (a) For all fiscal years beginning on or after July 1, 2009,
2 there shall be imposed a surcharge of ten percent against the
3 share of gross terminal income retained by the gaming
4 facility as provided by section twenty of this article.

5 (b) The Capital Reinvestment Fund is hereby created
6 within the Lottery Fund. The surcharge amount attributable
7 to the historic resort hotel shall be retained by the
8 commission and deposited into a separate capital
9 reinvestment account for the historic resort hotel. For each
10 dollar expended by the historic resort hotel for capital
11 improvements at the historic resort hotel, of any amenity
12 associated with the historic resort hotel's destination resort
13 facility operations, or at adjacent facilities owned by the
14 historic resort hotel having a useful life of seven or more
15 years and placed in service after April 1, 2009, the licensed
16 gaming facility shall receive one dollar in recoupment from
17 its Capital Reinvestment Fund account: If a historic resort
18 hotel's unrecouped capital improvements exceed its Capital
19 Reinvestment Fund account at the end of any fiscal year, the
20 excess improvements may be carried forward to seven
21 subsequent fiscal years.

22 (c) Any moneys remaining in the historic resort hotel's
23 Capital Reinvestment Fund account at the end of any fiscal
24 year shall be deposited in the Historic Resort Hotel Fund.

§29-25-33. License to be a provider of management services.

1 (a) *License*. -- The commission may issue a license to a
2 person providing management services under a management
3 services contract to a gaming facility when the commission
4 determines that the person meets the requirements of this
5 section and any applicable rules of the commission.

6 (b) *License qualifications*. -- Each applicant who is an
7 individual and each individual who controls an applicant, as
8 provided in subsection (f), section two of this article, shall be
9 of good moral character, honesty and integrity and shall have
10 the necessary experience and financial ability to successfully
11 carry out the functions of a management services provider.
12 The commission may adopt rules establishing additional
13 requirements for an authorized management services
14 provider. The commission may accept licensing by another
15 jurisdiction, specifically determined by the commission to
16 have similar licensing requirements, as evidence the applicant
17 meets authorized management services provider licensing
18 requirements.

19 (c) *Management service provider specifications*. -- An
20 applicant for a license to provide management services to a
21 gaming facility licensee shall demonstrate that the
22 management services that the applicant plans to offer to the
23 gaming facility licensee conform or will conform to standards
24 established by rules of the commission and applicable state
25 law.

26 (d) *License application requirements*. -- An applicant for
27 a license to provide management services to a gaming facility
28 licensee shall:

29 (1) Submit an application to the commission in the form
30 required by the commission including adequate information
31 to serve as a basis for a thorough background check;

32 (2) Submit fingerprints for a national criminal records
33 check by the Criminal Identification Bureau of the West

34 Virginia State Police and the Federal Bureau of Investigation.
35 The fingerprints shall be furnished by all persons required to
36 be named in the application and shall be accompanied by a
37 signed authorization for the release of information by the
38 Criminal Investigation Bureau and the Federal Bureau of
39 Investigation. The commission may require any applicant
40 seeking the renewal of a license or permit to furnish
41 fingerprints for a national criminal records check by the
42 Criminal Identification Bureau of the West Virginia State
43 Police and the Federal Bureau of Investigation; and

44 (3) Pay to the commission a nonrefundable application
45 fee for deposit into the Historic Resort Hotel Fund in the
46 amount of \$100.

47 (e) *Authorization.* -- A license to provide management
48 services to a gaming facility licensee authorizes the licensee
49 to provide management service to a gaming facility while the
50 license is active. The commission may by rule establish the
51 conditions which constitute an emergency under which the
52 commission may issue provisional licenses pending
53 completion of final action on an application.

54 (f) *Fees, expiration date and renewal.* -- A licensed
55 provider of management services shall pay to the commission
56 an annual license fee of \$100 for an initial term beginning
57 prior to the date of the provider's first contract with a gaming
58 facility licensee and continuing through the end of the twelfth
59 month thereafter whenever the licensee has paid the renewal
60 fee and has continued to comply with all applicable statutory
61 and rule requirements. The commission shall renew a license
62 to provide management services to a gaming facility annually
63 thereafter. A gaming facility licensee may continue to use
64 the management services provided by the management
65 services provider while that provider was licensed,
66 notwithstanding the expiration of the provider's license,
67 unless the commission finds the services provided are not

68 conforming to standards established by rule of the
69 commission and applicable state law.

§29-25-34. State ownership of West Virginia Lottery table games.

1 All West Virginia Lottery table games authorized by this
2 article shall be West Virginia lottery games owned by the
3 State of West Virginia. A gaming facility license granted to
4 a historic resort hotel by the commission pursuant to this
5 article shall include the transfer by the commission to the
6 historic resort hotel limited license rights in and to the
7 commission's intellectual property ownership of the West
8 Virginia lottery games which includes granting licensees
9 limited lawful authority relating to the conduct of lottery
10 table games for consideration, within the terms and
11 conditions established pursuant to this article and any rules
12 promulgated under this article.

§29-25-35. Preemption.

1 No local law or rule providing any penalty, disability,
2 restriction, regulation or prohibition for operating a historic
3 resort hotel with West Virginia Lottery table games or
4 supplying a licensed gaming facility may be enacted and the
5 provisions of this article preempt all regulations, rules,
6 ordinances and laws of any county or municipality in conflict
7 with this article.

§29-25-36. Exemption from federal law.

1 Pursuant to Section 2, Chapter 1194, 64 Stat. 1134, 15 U.
2 S. C. §1172, approved January 2, 1951, the State of West
3 Virginia, acting by and through duly elected and qualified
4 members of the Legislature, does declare and proclaim that
5 the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.
6 S. C. §1171 to §1178.

§29-25-37. Game rules of play; disputes.

1 (a) As an agent of the commission authorized to operate
2 West Virginia Lottery table games, the gaming facility
3 licensee shall have written rules of play for each West
4 Virginia Lottery table game it operates that are approved by
5 the commission before the West Virginia Lottery table game
6 is offered to the public. Rules of play proposed by the
7 gaming facility may be approved, amended or rejected by the
8 commission.

9 (b) All West Virginia Lottery table games shall be
10 conducted according to the specific rules of play approved by
11 the commission. All wagers and pay-offs of winning wagers
12 shall be made according to those rules of play, which shall
13 establish any limitations necessary to assure the vitality of
14 West Virginia Lottery table game operations.

15 (c) The gaming facility licensee shall make available in
16 printed form to any patron, upon request of the patron, the
17 complete texts of the rules of play of any West Virginia
18 Lottery table games in operation at the gaming facility, pay-
19 offs of winning wagers and any other advice to the player
20 required by the commission.

21 (d) Patrons are considered to have agreed that the
22 determination of whether the patron is a valid winner is
23 subject to the game of play rules and, in the case of any
24 dispute, will be determined by the commission. The
25 determination by the commission shall be final and binding
26 upon all patrons and shall not be subject to further review or
27 appeal.

§29-25-38. Shipment of gambling devices.

1 All shipments of gambling devices, including video
2 lottery machines, to the licensed gaming facility in this state,

3 the registering, recording and labeling of which have been
4 completed by the manufacturer or dealer thereof in
5 accordance with Chapter 1194, 64 Stat. 1134, 15 U. S.
6 C.§1171 to §1178, are legal shipments of gambling devices
7 into the State of West Virginia.

CHAPTER 107

**(H.B. 3170 - By Delegates Webster, Wooton, Shook,
Fleischauer, Miley, Manchin, Ellem, Frazier, Lane and Shott)**

[Amended and again passed May 27, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to amend and reenact §44A-1-7, §44A-1-9, §44A-1-10 and §44A-1-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §44A-2-1, §44A-2-5, §44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, §44A-2-14 and §44A-2-15 of said code; to amend and reenact §44A-3-11 of said code; and to amend and reenact §44A-4-1 and §44A-4-5 of said code, all relating to the West Virginia Guardianship and Conservatorship Act; clarifying the filing and review of the periodic accounting of conservators of incapacitated persons generally; clarifying transfer of venue; clarifying the posting of bond by conservators; authorizing the West Virginia Supreme Court of Appeals to coordinate education program and update materials and forms; expanding temporary protective orders to include freezing accounts and producing records; increasing filing fee for guardianship and conservatorship; transferring certain funds to the Supreme Court of Appeals; using additional fee for review of reports and

accountings by fiduciary commissioner or other person; clarifying who can access case files; clarifying who is responsible for proper service; clarifying duties and fees of appointed counsel; clarifying when limited conservatorship is needed; clarifying orders of the court and time of entry; authorizing appointment of fiduciary commissioner or other person to review reports; creating a notice of appointment to be filed with the clerk of the county commission; increasing temporary guardianships and conservatorships to six months; clarifying procedure for subsequent petitions; clarifying time frame for reports and accountings; increasing penalties for failure to file reports and accountings; reporting elder abuse; clarifying when appointments terminate; clarifying duties of guardian and conservator subsequent to death of protected person; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §44A-1-7, §44A-1-9, §44A-1-10 and §44A-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44A-2-1, §44A-2-5, §44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, §44A-2-14 and §44A-2-15 of said code be amended and reenacted; that §44A-3-11 of said code be amended and reenacted; and that §44A-4-1 and §44A-4-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

Article

- 1. Definitions and General Provisions.**
- 2. Procedure for Appointment.**
- 3. Guardianship and Conservatorship Administration.**
- 4. Termination, Revocation and Modification of Appointments.**

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

- §44A-1-7. Transfer of venue following appointment.
 §44A-1-9. Posting of bonds, actions on bonds.
 §44A-1-10. Mandatory education; written material; and forms.
 §44A-1-14. Temporary protective orders.

§44A-1-7. Transfer of venue following appointment.

1 (a) Following the appointment of a full or limited
2 guardian or conservator or committee, the court with
3 jurisdiction over the proceeding may order the transfer of
4 jurisdiction to another circuit court in this state or to an
5 appropriate tribunal in another state if it appears to the court
6 that the interests of the protected person will be best served
7 by such transfer. Transfer of jurisdiction to another state
8 shall be in accordance with the provisions of chapter forty-
9 four-c of this code.

10 (b) Upon the transfer, the previously appointed guardian
11 or conservator shall report to the county of transfer that is
12 assuming jurisdiction. Any changes to the appointments shall
13 be made by the court assuming jurisdiction.

§44A-1-9. Posting of bonds; actions on bond.

1 (a) The court has the discretion to determine whether the
2 posting of a bond by a guardian, once appointed, is
3 necessary. No bond is required of any sheriff or
4 representative of the Department of Health and Human
5 Resources appointed as conservator or guardian, respectively.

6 (b) The court shall order the posting of a bond by a
7 conservator prior to appointment except where the
8 conservator is excused from posting bond under the
9 provisions of section eighteen, article four, chapter
10 thirty-one-a of this code. In determining the amount or type
11 of a conservator's bond, the court or mental hygiene
12 commissioner shall consider:

13 (1) The value of the personal estate and annual gross
14 income and other receipts within the conservator's control;

15 (2) The extent to which the estate has been deposited
16 under an arrangement requiring an order of court for its
17 removal;

18 (3) Whether an order has been entered waiving the
19 requirement that accountings be filed and presented or
20 permitting accountings to be presented less frequently than
21 annually;

22 (4) The extent to which the income and receipts are
23 payable directly to a facility responsible for or which has
24 assumed responsibility for the care or custody of the
25 protected person;

26 (5) The extent to which the income and receipts are
27 derived from state or federal programs that require periodic
28 accountings;

29 (6) Whether a guardian has been appointed, and if so,
30 whether the guardian has presented reports as required; and

31 (7) Whether the conservator was appointed pursuant to a
32 nomination which requested that bond be waived.

33 (c) Any required bond may be with a surety and in an
34 amount and form as the court may order and the court may
35 order additional bond or reduce the bond whenever the court
36 finds that a modification is in the best interests of the
37 protected person or of the estate. The court may allow a
38 property bond in lieu of a cash bond. Proof of bonding must
39 be submitted to the court within thirty days of entry of the
40 order regarding bond.

41 (d) In case of a breach of any condition placed on the
42 bond of any guardian or conservator, an action may be
43 instituted by any interested person for the use and benefit of

44 the protected person, for the estate of the protected person or
45 for the beneficiaries of the estate.

46 (e) The following requirements and provisions apply to
47 any bond which the court may require under this section:

48 (1) Sureties are jointly and severally liable with the
49 guardian or conservator and with each other;

50 (2) By executing an approved bond of a guardian or
51 conservator, the surety consents to the jurisdiction of the
52 court in any proceeding pertaining to the fiduciary duties of
53 the conservator and naming the surety as a party respondent.
54 Notice of any proceeding must be delivered to the surety or
55 mailed by registered or certified mail to the address of the
56 surety listed with the court in which the bond is filed. If the
57 party initiating a proceeding possesses information regarding
58 the address of a surety which would appear to be more
59 current than the address listed with the court, notice shall also
60 be mailed by registered or certified mail to the last address of
61 the surety known to the party initiating the proceeding;

62 (3) On petition of a successor guardian or conservator or
63 any interested person, a proceeding may be initiated against
64 a surety for breach of the obligation of the bond of the
65 preceding guardian or conservator; and

66 (4) The bond of the guardian or conservator is not void
67 after any recovery but may be proceeded against from time
68 to time until the whole penalty is exhausted.

69 (f) No proceeding may be commenced against the surety
70 on any matter as to which an action or proceeding against the
71 guardian or conservator is barred by adjudication or
72 limitation.

§44A-1-10. Mandatory education; written material; and forms.

1 (a) Any individual appointed to serve as a guardian or
2 conservator must receive educational material or complete
3 mandated educational training, unless the court enters an
4 order stating that the individual does not require the
5 mandated educational training because he or she has
6 completed the mandated educational training within the last
7 three years.

8 (b) Upon a determination that the individual who is the
9 subject of proceedings under this chapter is a protected
10 person, as defined in section four of this article, the required
11 educational training must be completed within thirty days of
12 the court's determination. Upon completion, the appointed
13 guardian or conservator shall provide an affidavit to the
14 court, certifying that the educational training has been
15 completed, and the court shall forthwith issue the order of
16 appointment in accordance with the provisions of section
17 thirteen, article two of this chapter.

18 (c) The West Virginia Supreme Court of Appeals shall
19 coordinate the education program for guardians and
20 conservators, and shall update the program materials and
21 requisite forms as necessary. The educational training may
22 include the following:

23 (1) Written materials;

24 (2) Recorded information, whether audio, visual or both;
25 or

26 (3) A combination of the above.

§44A-1-14. Temporary protective orders.

1 The court or mental hygiene commissioner may, at the
2 request of a petitioner or upon its own motion, issue
3 temporary protective orders freezing bank or investment

- 4 accounts, ordering the production of records and otherwise
- 5 prohibiting or limiting the expenditure, sale or other legal
- 6 transfer of any assets of the alleged protected person until a
- 7 final order is entered revoking the protective orders.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

- §44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established.
- §44A-2-5. Confidentiality.
- §44A-2-6. Notice of hearing.
- §44A-2-7. Appointment of counsel.
- §44A-2-12. Limited conservatorships.
- §44A-2-13. Order of appointment; notice; notice of appointment.
- §44A-2-13a. Time of entry of orders.
- §44A-2-14. Temporary guardians and conservators.
- §44A-2-15. Notice of hearing on petitions subsequent to the appointment of a guardian or conservator.

§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established.

1 (a) A petition for the appointment of a guardian or
2 conservator shall be filed with the clerk of the circuit court in
3 the county in which the alleged protected person resides or,
4 if an alleged protected person has been admitted to a health
5 care or correctional facility, in the county in which that
6 facility is located. A petition for the appointment of a
7 conservator for a missing person shall be filed with the clerk
8 of the circuit court in the county in which the missing person
9 last resided. The circuit clerk is not required to accept for
10 filing a petition that is not administratively complete.

11 (b) The circuit court in which the proceeding is first
12 commenced shall have exclusive jurisdiction unless that court
13 determines that a transfer of venue would be in the best
14 interests of the person alleged to need protection.

15 (c) The fee for filing a petition shall be \$110 payable
16 upon filing to the circuit clerk, \$75 of which shall be retained
17 by the circuit clerk and \$35 of which shall be remitted by the

18 circuit clerk to the special revenue account in the State
19 Treasury created in subsection (e) of this section.

20 (d) The person bringing the petition shall be responsible
21 for fees for filing the petition and other papers, for service of
22 process, and for copies of court documents and transcripts.
23 In the event that a guardian, conservator, or both, is
24 appointed by the court, such fees shall be reimbursed to the
25 individual who filed the petition from the protected person's
26 estate, if funds are available. Any person who is pecuniarily
27 unable to pay the fees and costs as set forth in article one,
28 chapter fifty-nine of this code and article two, chapter
29 fifty-one of this code will not be required to pay the fees and
30 costs.

31 (e) There is hereby created in the State Treasury a special
32 revenue account, which shall be an interest-bearing account,
33 to be known as the Enforcement of Guardianship and
34 Conservatorship Act Fund.

35 (f) The reports of guardians and inventory and
36 accountings of conservators required by this chapter shall be
37 examined semi-annually by the, fiduciary commissioner or
38 other person appointed by the court in accordance with
39 section eleven, article three of this chapter.

40 (g) The special revenue account known as the
41 Enforcement of Guardianship and Conservatorship Act Fund,
42 previously administered by the State Auditor, shall, on and
43 after the amendment and reenactment of this section, be
44 administered by the West Virginia Supreme Court of
45 Appeals. All moneys previously collected for deposit into
46 the fund pursuant to this chapter and not expended in
47 accordance with this chapter shall be transferred to the West
48 Virginia Supreme Court of Appeals. All collections shall be
49 deposited and used for payment of fiduciary commissioner or
50 other person appointed by the court for review of the reports

51 required by section eleven, article three of this chapter and
52 the education program required by section ten, article one of
53 this chapter.

§44A-2-5. Confidentiality.

1 Upon filing of a petition requesting appointment of a
2 guardian or conservator, all pleadings, exhibits and other
3 documents contained in the court file shall be considered
4 confidential and not open for public inspection, either during
5 the pendency of the case or after the case is closed. The
6 protected person, and his or her attorney, may inspect or copy
7 the file. Another party may file a petition stating the reasons
8 for inspecting or copying the file and, upon good cause
9 shown, the court or mental hygiene commissioner may
10 authorize the party, or his or her attorney, to inspect and copy
11 the file.

§44A-2-6. Notice of hearing.

1 (a) Upon the filing of the petition and evaluation report,
2 the court shall promptly issue a notice fixing the date, hour
3 and location for a hearing to take place within sixty days.

4 (b) The alleged protected person shall be personally
5 served with the notice, a copy of the petition and the
6 evaluation report not less than fourteen days before the
7 hearing. The person may not waive notice and a failure to
8 properly notify the person shall be jurisdictional.

9 (c) A copy of the notice, together with a copy of the
10 petition, shall be mailed by certified mail, return receipt
11 requested, by the petitioner, at least fourteen days before the
12 hearing to all individuals seven years of age or older and to
13 all entities whose names and post office addresses appear in
14 the petition. In the case of a missing person, a copy of the
15 petition for the appointment of a conservator shall be mailed

16 by certified mail, return receipt requested, by the petitioner,
17 at least fourteen days before the hearing to the last known
18 address of the missing person. A copy of certified mail
19 return receipts shall be filed in the office of the circuit clerk
20 on or before the date of hearing. It is the responsibility of the
21 petitioner to obtain proper service and file the appropriate
22 documentation with the circuit clerk before the hearing.

23 (d) The notice shall include a brief statement in large
24 print of the purpose of the proceedings and shall inform the
25 alleged protected person of the right to appear at the hearing,
26 the right to an attorney and the right to object to the proposed
27 appointment. Additionally, the notice shall include the
28 following statement in large print:

29 **POSSIBLE CONSEQUENCES OF A COURT**
30 **FINDING THAT YOU ARE INCAPACITATED**

31 At the hearing you may lose many of your rights. A
32 guardian may be appointed to make personal decisions for
33 you. A conservator may be appointed to make decisions
34 concerning your property and finances. The appointment
35 may affect control of how you spend your money, how your
36 property is managed and controlled, who makes your medical
37 decisions, where you live, whether you are allowed to vote
38 and other important rights.

39 (e) No person may be appointed a guardian or
40 conservator without first receiving proper notice and having
41 the opportunity to be present at a hearing.

§44A-2-7. Appointment of counsel.

1 (a) The court shall appoint legal counsel for the alleged
2 protected person to make recommendations to the court that
3 are in the best interests of the alleged protected person. In
4 appointing legal counsel, the court shall consider any known

5 preferences of the alleged protected person, or an alleged
6 protected person may hire and pay for an attorney of his or
7 her choice.

8 (b) Legal counsel shall have the following major areas of
9 concern: (1) Whether or not a guardian or conservator is
10 needed; (2) limitation of the role of the guardian or
11 conservator to the protected person's specific needs -- e.g.,
12 personal supervisor, business affairs, medical consent only;
13 (3) if needed, assure that the person or entity that will act in
14 the best interest of the protected person is appointed; (4) if
15 needed, assure the adequacy of the bond; and (5) if needed,
16 assure consideration of proper placement.

17 (c) In responsibly pursuing the major areas of concern set
18 forth in subsection (b) of this section, counsel may perform
19 any or all of the following: (1) Promptly notify the
20 individual and any caretaker of the appointment of counsel;
21 (2) contact any caretaker, review the file and all other
22 relevant information; (3) maintain contact with the client
23 throughout the case and assure that the client is receiving
24 services as are appropriate to the client's needs; (4) contact
25 persons who have or may have knowledge of the client; (5)
26 interview all possible witnesses; (6) pursue discovery of
27 evidence, formal and informal, including obtaining medical
28 and financial records; (7) file appropriate motions, including
29 temporary protective orders; (8) obtain independent
30 psychological examinations, medical examinations, home
31 studies, as needed; (9) advise the client on the ramifications
32 of the proceeding and inquire into the specific interests and
33 desires of the individual; (10) subpoena witnesses to the
34 hearing; (11) prepare testimony for cross-examination of
35 witnesses to assure relevant material is introduced; (12)
36 review all medical reports; (13) apprise the decision maker of
37 the individual's desires; (14) produce evidence on all relevant
38 issues; (15) interpose objections to inadmissible testimony;
39 (16) raise appropriate questions to all nominations for

40 guardian and conservator and the adequacy of the bond; (17)
41 take all steps to limit the scope of guardianship and
42 conservatorship to the individual's actual needs, and make all
43 arguments to limit the amount of the intervention; (18) ensure
44 that the court considers all issues as to the propriety of the
45 individual's current or intended housing or placement and
46 that the limitations are set forth in the order; (19) inform the
47 client of the right to appeal, and file an appeal to an order
48 when appropriate; (20) file a motion for modification of an
49 order or a petition for a writ of habeas corpus if a change of
50 circumstances occurs which warrants a modification or
51 termination upon counsel being reappointed by the court; and
52 (21) otherwise zealously represent the interests and desires of
53 the client while also reporting to the court what actions are in
54 the best interests of the client.

55 (d) The protected person shall have the right to an
56 independent expert of his or her choice to perform an
57 evaluation and present evidence.

58 (e) A person appointed by the court as counsel for a
59 nonindigent alleged protected person shall inform the court
60 or the mental hygiene commissioner of his or her hourly rate
61 at the onset of the case and seek approval of his or her fee for
62 the case by submitting it to the court or the mental hygiene
63 commissioner for approval using forms provided by the West
64 Virginia Supreme Court of Appeals. The hourly rate and fee
65 for the case must be reasonable in light of the going rate for
66 legal services, the complexity of the matter and the amount
67 of legal work involved. The court may set the fee at the time
68 of appointment.

§44A-2-12. Limited conservatorships.

1 A limited conservator may be appointed for an individual
2 deemed to be a protected person in need of a conservator
3 within the meaning of section four, article one of this chapter,

4 but whose property or financial affairs are so limited that
5 there is only one or more designated contexts for which a
6 limitation of the individual's legal rights is warranted.

§44A-2-13. Order of appointment; notice; notice of appointment.

1 (a) An order appointing a guardian or conservator may
2 only be issued by the court upon the following:

3 (1) The guardian or conservator has subscribed to and
4 filed an oath promising to faithfully perform the duties of the
5 office in accordance with all provisions of this chapter;

6 (2) Posting of any bond, if required; and

7 (3) The completion of mandatory education, as required
8 under the provisions of section ten, article one of this chapter,
9 unless the court enters an order stating that an individual does
10 not require educational training because he or she has
11 completed the mandatory education within the last three
12 years.

13 (b) In addition to the findings of fact and conclusions of
14 law required in section nine of this article, the order shall
15 include the specific areas of protection or assistance granted
16 in the case of a guardian and the specific areas of
17 management and assistance granted in the case of a
18 conservator and address other areas of concern pursuant to
19 the circumstances of the case.

20 (c) Within fourteen days following the entry of an order
21 of appointment, the guardian or conservator shall mail a copy
22 of the order of appointment, together with a brief statement
23 in large print of rights to seek an appeal for modification or
24 termination, to the protected person and to all individuals and
25 entities given notice of the petition.

26 (d) Within ten days following the entry of an order of
27 appointment, the circuit clerk shall mail a notice of
28 appointment for recordation in the office of the clerk of the
29 county commission to be recorded with the records of deeds
30 and records of powers of attorneys, and listed in the
31 appropriate indexes under the name of the protected person
32 stating the case name and number, the name of the protected
33 person, and the names of the guardian and conservator so that
34 persons are put on notice of the existence of a guardianship
35 or conservatorship.

§44A-2-13a. Time of entry of orders.

1 The mental hygiene commissioner or the court shall
2 prepare an order within fourteen days of the hearing directing
3 the appointees to complete the mandatory education and post
4 any required bond within thirty days of the hearing. After the
5 mandatory education is completed and the bond posted, then
6 the court shall enter a final order on the petition within
7 fourteen days.

§44A-2-14. Temporary guardians and conservators.

1 (a) The court may appoint a temporary guardian or
2 temporary conservator, or both, under this section upon a
3 finding that an immediate need exists, that adherence to the
4 procedures otherwise set forth in this chapter for the
5 appointment of a guardian or conservator may result in
6 significant harm to a person or the estate, and that no other
7 individual or entity appears to have authority to act on behalf
8 of the person, or that the individual or entity with authority to
9 act is unwilling, or has ineffectively or improperly exercised
10 the authority.

11 (b) A temporary guardian or temporary conservator shall
12 have only those powers and duties that are specifically set
13 forth in the order of appointment. The appointment of a

14 temporary guardian or temporary conservator shall expire
15 within six months unless it is terminated or extended for up
16 to six months by the court or mental hygiene commissioner
17 for good cause shown following a hearing.

18 (c) An appointment of a temporary guardian or temporary
19 conservator shall be made upon timely and adequate notice
20 to the protected person after appointment or notice of
21 appearance of counsel and after all other protections have
22 been afforded, in accordance with due process of law,
23 including any other conditions as the court may order. The
24 protected person may petition the court for a substitution of
25 a temporary guardian or temporary conservator at any time.

26 (d) Within five days following the entry of an order of
27 appointment, a temporary guardian or temporary conservator
28 shall mail a copy of the order of appointment, together with
29 a brief statement in large print of rights to seek an appeal for
30 modification or termination, to the person for whom the
31 appointment was made and to all individuals and entities that
32 would be entitled to notice of hearing on a petition for
33 appointment as set forth in section six of this article.

**§44A-2-15. Notice of hearing on petitions subsequent to the
appointment of a guardian or conservator.**

1 (a) Except as otherwise provided herein or as ordered by
2 the court for good cause shown, notice of hearing on a
3 petition for an order subsequent to the appointment of a
4 guardian or conservator shall be personally served upon the
5 protected person and mailed to an appointed counsel or
6 attorney of record, to those individuals who would be entitled
7 to notice of the filing of an original petition to appoint, to any
8 facility that is responsible for the care and custody of the
9 protected person, to the guardian or conservator, if the
10 guardian or conservator is not the petitioner, and to other
11 individuals or entities as the court may order.

12 (b) Unless otherwise ordered by the court, the notice shall
13 be personally served upon the protected person and mailed by
14 the petitioner by certified mail return receipt requested to
15 other parties entitled to notice at least fourteen days prior to
16 the hearing and shall be accompanied by a copy of the
17 petition and other relevant documents. A copy of the
18 certified mail return receipts shall be filed in the office of the
19 circuit clerk on or before the date of the hearing.

20 (c) The court or mental hygiene commissioner may
21 conduct hearings on subsequent petitions filed pursuant to
22 this chapter.

**ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP
ADMINISTRATION.**

**§44A-3-11. Filing of reports and accountings; misdemeanor for
failure to file; reporting elder abuse.**

1 (a) Reports of guardians and accountings of conservators,
2 as described in this article shall be filed with the circuit clerk
3 of the county in which appointed and also with the fiduciary
4 commissioner of the county or other person if the court has
5 made a referral in its order:

6 (1) Within six months of being appointed;

7 (2) By December 31 of each year thereafter;

8 (3) When the court orders additional reports or
9 accountings to be filed;

10 (4) When the guardian or conservator resigns or is
11 removed; and

12 (5) When the appointment of the guardian or conservator
13 is terminated, except that in the case of a guardian, the court

14 may determine that there is no need for a report upon the
15 termination; and in the case of a conservator, no accounting
16 is required if all persons entitled to any proceeds of the estate
17 consent thereto.

18 (b) The circuit clerk shall notify the court if the required
19 reports are not filed or are administratively incomplete. The
20 fiduciary commissioner, or other person appointed by the
21 court or mental hygiene commissioner, shall review the
22 reports and accountings semi-annually, and may request
23 additional information from the guardian or conservator. If
24 the reports or accountings are not filed, or if there are any
25 questions or discrepancies in the reports or accountings, the
26 person reviewing the report shall notify the court or mental
27 hygiene commissioner for further investigation or action of
28 the court, including but not limited to, a court order
29 requesting copies of bank or investment records, appointing
30 counsel to investigate the matter or setting a hearing on the
31 matter.

32 (c) If the court has in its order made a referral to the
33 fiduciary commissioner of the county:

34 (1) The accounting shall be governed by and the fiduciary
35 commissioner shall handle the same under the provisions of
36 sections ten, eleven, twelve, thirteen and fourteen, article
37 four, chapter forty-four of this code, except that all
38 compensation and expenses of the conservator shall be
39 allowed and approved only by the circuit court in accordance
40 with the provisions of section thirteen, article one of this
41 chapter.

42 (2) The fiduciary commissioner may not publish any
43 notice concerning the filing of a proposed accounting, but
44 shall serve a copy of the proposed accounting of the
45 conservator together with the notice by United States mail on
46 the protected person, all individuals and entities given notice

47 of the petition and any other person or entity found to be
48 interested in the affairs of the protected person, all of whom
49 have standing to file exceptions to or falsify the accounting
50 before the fiduciary commissioner.

51 (3) In the settlement of the accounting of a conservator,
52 the fiduciary commissioner is entitled to fees as are allowed
53 for fiduciary commissioners in the handling of accountings
54 of a decedent's estate, or as otherwise set by order of the
55 circuit court.

56 (4) If the court or mental hygiene commissioner appoints
57 a person other than the fiduciary commissioner to review the
58 reports, such person shall report to the court as required by
59 this article. The court shall establish a fee for reviewing a
60 report which shall be paid by the Supreme Court of Appeals
61 from the Enforcement of Guardianship and Conservatorship
62 Act Fund.

63 (5) Any party feeling aggrieved of a settlement or
64 decision by the fiduciary commissioner concerning the
65 accounting may on motion filed within four months of the
66 settlement or decision appeal the same to the circuit court.

67 (d) Any guardian or conservator who knowingly violates
68 the provisions of this section is guilty of a misdemeanor and,
69 upon conviction thereof, shall be fined not less than \$100 nor
70 more than \$500.

71 (e) The parties, attorneys or mental hygiene
72 commissioner shall report violations of this section, or any
73 other alleged elder abuse violations, including criminal elder
74 abuse pursuant to section twenty-nine, article two, chapter
75 sixty-one of this code, to the Department of Health and
76 Human Resources or county prosecutor for further
77 investigation and action.

78 (f) The West Virginia Supreme Court of Appeals shall
79 prescribe forms for reports, accountings and inventories
80 required to be filed pursuant to the provisions of this article.

**ARTICLE 4. TERMINATION, REVOCATION AND
MODIFICATION OF APPOINTMENTS.**

§44A-4-1. Termination of appointment of guardian or conservator.

§44A-4-5. Duty of guardian or conservator subsequent to death or protected person.

**§44A-4-1. Termination of appointment of guardian or
conservator.**

1 (a) The appointment of a guardian or conservator shall
2 terminate upon the death, resignation or removal of the
3 guardian or conservator.

4 (b) The appointment further terminates upon the death of
5 the protected person. The guardian or conservator shall file
6 the certified death certificate of the protected person with the
7 circuit clerk with a final report or accounting.

8 (c) A guardianship or conservatorship shall terminate
9 whenever jurisdiction is transferred to another state or if
10 ordered by the court following a hearing on the petition of
11 any interested person.

12 (d) In the case of a missing person, a conservatorship
13 shall terminate when the missing person is located or when
14 the person's death is established by the production of a
15 certified death certificate, or the person is presumed dead
16 pursuant to the provisions of article nine, chapter forty-four
17 of this code.

18 (e) The court or the mental hygiene commissioner shall
19 prepare a termination order dismissing the guardianship or
20 conservatorship case and discharging any bond posted by the
21 guardian or conservator.

22 (f) A termination of an appointment does not affect the
23 liability of a guardian or conservator for prior acts or the
24 responsibility of a conservator to account for the estate of the
25 protected person.

**§44A-4-5. Duty of guardian or conservator subsequent to death
of protected person.**

1 In the absence of an advanced directive, such as a will,
2 living will or power of attorney, or preneed burial or
3 cremation contract, after the death of the protected person, a
4 guardian or a conservator, if there is no guardian, shall
5 continue to have authority to make decisions regarding the
6 body of the deceased protected person for the purposes of
7 authorizing an autopsy and making funeral arrangements.
8 The guardian's or conservator's authority shall continue until
9 an executor or executrix or an administrator or administratrix
10 has been appointed.



CHAPTER 108

**(Com. Sub. for S.B. 414 - By Senators Prezioso, Foster,
Jenkins, Stollings, Caruth, Laird, Unger, Minard and Kessler)**

[Amended and again passed May 28, 2009, as a result of the
objections of the Governor; in effect ninety days from passage.]

[Approved by the Governor on June 5, 2009.]

AN ACT to repeal §5-16-7b of the Code of West Virginia, 1931, as amended; to repeal §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said

code; to amend and reenact §5F-2-2 of said code; to amend and reenact §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code; and to amend said code by adding thereto five new sections, designated §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10, all relating generally to the creation of the Governor's Office of Health Enhancement and Lifestyle Planning; setting forth legislative findings; setting forth the powers and duties of the office; transferring the powers and duties of the Pharmaceutical Cost Management Council to the office; creating the position of director; setting forth the qualifications of the director; setting forth the powers and duties of the director; providing for staff; creating an advisory council; setting forth the membership of the advisory council; setting forth terms of office for the advisory council; setting forth powers and duties of the advisory council; requiring the development of a five-year strategic plan; providing for legislative rule-making authority; providing for coordination with various state agencies, departments, boards, bureaus and commissions; requiring reporting to the Governor and the Legislature; establishing pilot projects for patient-centered medical homes; setting forth legislative findings; defining terms; evaluating existing medical home pilot programs; establishing criteria for pilot projects for patient-centered medical homes; defining four types of pilot projects; setting forth evaluation criteria; granting rule-making authority; and exempting the office from Purchasing Division requirements.

Be it enacted by the Legislature of West Virginia:

That §5-16-7b of the Code of West Virginia, 1931, as amended, be repealed; that §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17 of said code be repealed; that §5F-2-2 of said code be amended and reenacted; that §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5 of said code be amended and reenacted; and that said code be amended by adding thereto five new

sections, designated § 16-29H-6, § 16-29H-7, § 16-29H-8, § 16-29H-9 and § 16-29-10, all to read as follows:

Chapter

5F. Organization of the Executive Branch of State Government.

16. Public Health.

**CHAPTER 5F. ORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, the secretary of each department shall have
3 plenary power and authority within and for the department to:

4 (1) Employ and discharge within the office of the
5 secretary employees as may be necessary to carry out the
6 functions of the secretary, which employees shall serve at the
7 will and pleasure of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically and develop goals,
10 objectives, policies and plans that are necessary or desirable
11 for the effective, efficient and economical operation of the
12 department;

13 (3) Eliminate or consolidate positions, other than
14 positions of administrators or positions of board members
15 and name a person to fill more than one position;

16 (4) Transfer permanent state employees between
17 departments in accordance with the provisions of section
18 seven of this article;

19 (5) Delegate, assign, transfer or combine responsibilities
20 or duties to or among employees, other than administrators or
21 board members;

22 (6) Reorganize internal functions or operations;

23 (7) Formulate comprehensive budgets for consideration
24 by the Governor and transfer within the department funds
25 appropriated to the various agencies of the department which
26 are not expended due to cost savings resulting from the
27 implementation of the provisions of this chapter: *Provided*,
28 That no more than twenty-five percent of the funds
29 appropriated to any one agency or board may be transferred
30 to other agencies or boards within the department: *Provided*,
31 *however*, That no funds may be transferred from a special
32 revenue account, dedicated account, capital expenditure
33 account or any other account or funds specifically exempted
34 by the Legislature from transfer, except that the use of
35 appropriations from the State Road Fund transferred to the
36 office of the Secretary of the Department of Transportation
37 is not a use other than the purpose for which the funds were
38 dedicated and is permitted: *Provided further*, That if the
39 Legislature by subsequent enactment consolidates agencies,
40 boards or functions, the appropriate secretary may transfer
41 the funds formerly appropriated to the agency, board or
42 function in order to implement consolidation. The authority
43 to transfer funds under this section shall expire on June 30,
44 2010;

45 (8) Enter into contracts or agreements requiring the
46 expenditure of public funds and authorize the expenditure or
47 obligation of public funds as authorized by law: *Provided*,
48 That the powers granted to the secretary to enter into
49 contracts or agreements and to make expenditures or
50 obligations of public funds under this provision shall not
51 exceed or be interpreted as authority to exceed the powers
52 granted by the Legislature to the various commissioners,
53 directors or board members of the various departments,
54 agencies or boards that comprise and are incorporated into
55 each secretary's department under this chapter;

56 (9) Acquire by lease or purchase property of whatever
57 kind or character and convey or dispose of any property of
58 whatever kind or character as authorized by law: *Provided*,
59 That the powers granted to the secretary to lease, purchase,
60 convey or dispose of such property shall be exercised in
61 accordance with the provisions of articles three, ten and
62 eleven, chapter five-a of this code: *Provided, however*, That
63 the powers granted to the secretary to lease, purchase, convey
64 or dispose of such property shall not exceed or be interpreted
65 as authority to exceed the powers granted by the Legislature
66 to the various commissioners, directors or board members of
67 the various departments, agencies or boards that comprise
68 and are incorporated into each secretary's department under
69 this chapter;

70 (10) Conduct internal audits;

71 (11) Supervise internal management;

72 (12) Promulgate rules, as defined in section two, article
73 one, chapter twenty-nine-a of this code, to implement and
74 make effective the powers, authority and duties granted and
75 imposed by the provisions of this chapter in accordance with
76 the provisions of chapter twenty-nine-a of this code;

77 (13) Grant or withhold written consent to the proposal of
78 any rule, as defined in section two, article one, chapter
79 twenty-nine-a of this code, by any administrator, agency or
80 board within the department. Without written consent, no
81 proposal for a rule shall have any force or effect;

82 (14) Delegate to administrators the duties of the secretary
83 as the secretary may deem appropriate, from time to time, to
84 facilitate execution of the powers, authority and duties
85 delegated to the secretary; and

86 (15) Take any other action involving or relating to
87 internal management not otherwise prohibited by law.

88 (b) The secretaries of the departments hereby created
89 shall engage in a comprehensive review of the practices,
90 policies and operations of the agencies and boards within
91 their departments to determine the feasibility of cost
92 reductions and increased efficiency which may be achieved
93 therein, including, but not limited to, the following:

94 (1) The elimination, reduction and restriction of the
95 state's vehicle or other transportation fleet;

96 (2) The elimination, reduction and restriction of state
97 government publications, including annual reports,
98 informational materials and promotional materials;

99 (3) The termination or rectification of terms contained in
100 lease agreements between the state and private sector for
101 offices, equipment and services;

102 (4) The adoption of appropriate systems for accounting,
103 including consideration of an accrual basis financial
104 accounting and reporting system;

105 (5) The adoption of revised procurement practices to
106 facilitate cost-effective purchasing procedures, including
107 consideration of means by which domestic businesses may be
108 assisted to compete for state government purchases; and

109 (6) The computerization of the functions of the state
110 agencies and boards.

111 (c) Notwithstanding the provisions of subsections (a) and
112 (b) of this section, none of the powers granted to the
113 secretaries herein shall be exercised by the secretary if to do
114 so would violate or be inconsistent with the provisions of any

115 federal law or regulation, any federal-state program or
116 federally delegated program or jeopardize the approval,
117 existence or funding of any program.

118 (d) The layoff and recall rights of employees within the
119 classified service of the state as provided in subsections (5)
120 and (6), section ten, article six, chapter twenty-nine of this
121 code shall be limited to the organizational unit within the
122 agency or board and within the occupational group
123 established by the classification and compensation plan for
124 the classified service of the agency or board in which the
125 employee was employed prior to the agency or board's
126 transfer or incorporation into the department: *Provided*, That
127 the employee shall possess the qualifications established for
128 the job class. The duration of recall rights provided in this
129 subsection shall be limited to two years or the length of
130 tenure, whichever is less. Except as provided in this
131 subsection, nothing contained in this section shall be
132 construed to abridge the rights of employees within the
133 classified service of the state as provided in sections ten and
134 ten-a, article six, chapter twenty-nine of this code.

135 (e) Notwithstanding any other provision of this code to
136 the contrary, the secretary of each department with authority
137 over programs which have an impact on the delivery of
138 health care services in the state or are payors for health care
139 services or are payors for prescription drugs, including, but
140 not limited to, the Public Employees Insurance Agency, the
141 Department of Health and Human Resources, the Bureau of
142 Senior Services, the Children's Health Insurance Program, the
143 Health Care Authority, the Office of the Insurance
144 Commissioner, the Division of Corrections, the Division of
145 Juvenile Services, the Regional Jail and Correctional Facility
146 Authority, state colleges and universities, public hospitals,
147 state or local institutions including nursing homes and
148 veterans' homes, the Division of Rehabilitation Services,
149 public health departments, the Bureau for Medical Services
150 and other programs, which have an impact on the delivery of

151 health care services or are payors for health care services or
152 are payors for prescription drugs, in West Virginia shall
153 cooperate with the Governor's Office of Health Enhancement
154 and Lifestyle Planning established pursuant to article twenty-
155 nine-h, chapter sixteen of this code for the purpose of
156 improving the health care delivery services in West Virginia
157 for any program over which they have authority.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29H. GOVERNOR'S OFFICE OF HEALTH ENHANCEMENT AND LIFESTYLE PLANNING.

- §16-29H-1. Legislative findings.
- §16-29H-2. Creation of the Governor's Office of Health Enhancement and Lifestyle Planning; duties.
- §16-29H-3. Director of the Governor's Office of Health Enhancement and Lifestyle Planning appointment; qualifications; oath; salary.
- §16-29H-4. Director of the Governor's Office of Health Enhancement and Lifestyle Planning; powers and duties, hiring of staff.
- §16-29H-5. Creation of the Health Enhancement and Lifestyle Planning Advisory Council.
- §16-29H-6. Development of a strategic plan.
- §16-29H-7. Coordination with higher education.
- §16-29H-8. Continuing efforts to reduce prescription drug prices.
- §16-29H-9. Patient-centered medical homes.
- §16-29H-10. Exemption from Purchasing Division requirements.

§16-29H-1. Legislative findings.

1 The Legislature finds:

2 (1) Rising health care costs have a significant impact not
3 only on the citizens of the state, but also the state's ability to
4 develop a competitive advantage in seeking new business.
5 Reducing this level of costs and developing new, more
6 effective options for reducing growth in health care spending
7 is essential to ensuring the health of West Virginia's citizens
8 and to the advancement of a well-developed workforce.

9 (2) West Virginia spends thirteen percent more per
10 person on health care than the national average. Moreover,

11 the growth in spending in the state is higher than the national
12 average. These rising costs have contributed to fewer
13 employers, particularly small employers, offering health
14 insurance as a benefit of employment. This is an occurrence
15 that may further drive up health care costs throughout the
16 state.

17 (3) West Virginia is among the highest in such health
18 care indicators as childhood and adult obesity which provides
19 a direct connection to higher rates of diabetes, hypertension,
20 hyperlipidemia, heart disease, pulmonary disorders and
21 comorbid depression experienced in West Virginia. Nearly
22 one third of the rise in health care costs can be attributed to
23 the rise in obesity throughout the state and the nation.
24 Additionally, high rates of chronic illness represents a
25 substantial reduction in worker productivity.

26 (4) To address the concerns over rising costs, West
27 Virginia must change the way it pays for care, shifting the
28 focus to primary care and prevention. Seventy-five percent
29 of health care spending is associated with treatment of
30 chronic diseases requiring ongoing medical management over
31 time. Patients with chronic diseases, however, only receive
32 fifty-six percent of the clinically recommended preventive
33 services. This lack of preventive services creates a seventy-
34 five percent increase in health care spending.

35 (5) Health care delivery in West Virginia needs to be
36 modernized. This will require substantial changes in how
37 health care is delivered to the chronically ill, an increase in
38 information technology tools used for patient management,
39 a simplification of health care processing and a broad
40 overhaul in our perceptions of wellness and prevention.

41 (6) West Virginians must be challenged to engage in a
42 more healthy lifestyle, they must alter the focus of their
43 perception of health care from one of episodic care to
44 prevention and wellness efforts. Equally as important, is that

45 health care providers must be engaged with their patients and
46 in the process of delivery of health care and strive for
47 continuous improvement of the quality of care they provide.

48 (7) West Virginia must develop a health care system that
49 is sufficient to meet the needs of its citizens; equitable, fair
50 and sustainable, but that is also accountable for quality,
51 access, cost containment and service delivery.

**§16-29H-2. Creation of the Governor's Office of Health
Enhancement and Lifestyle Planning; duties.**

1 (a) There is created the Governor's Office of Health
2 Enhancement and Lifestyle Planning. The purpose of this
3 office is to coordinate all state health care system reform
4 initiatives among executive branch agencies, departments,
5 bureaus and offices. The office shall be under the direct
6 supervision of the director, who is responsible for the
7 exercise of the duties and powers assigned to the office under
8 the provisions of this article.

9 (b) All state agencies that have responsibility for the
10 development, improvement and implementation of any aspect
11 of West Virginia's health care system, including, but not
12 limited to, the Public Employees Insurance Agency, the
13 Bureau of Senior Services, the Children's Health Insurance
14 Program, Office of the Pharmaceutical Advocate, the Health
15 Care Authority, the West Virginia Health Information
16 Network, the Insurance Commission, the Department of
17 Health and Human Resources, state colleges and universities,
18 the Pharmaceutical Advocate, public hospitals, state or local
19 institutions such as nursing homes, veterans' homes, the
20 Division of Rehabilitation Services, public health
21 departments, shall cooperate with the Governor's Office of
22 Health Enhancement and Lifestyle Planning established for
23 the purpose of coordinating the health care delivery system
24 in West Virginia for any program over which they have
25 authority.

§16-29H-3. Director of the Governor's Office of Health Enhancement and Lifestyle Planning appointment; qualifications; oath; salary.

1 (a) The office is under the supervision of the director.
2 The director is the executive and administrative head of the
3 office and shall be appointed by the Governor with advice
4 and consent of the Senate. The director shall be qualified by
5 training and experience to direct the operations of the
6 Governor's Office of Health Enhancement and Lifestyle
7 Planning and serves at the will and pleasure of the Governor.
8 The duties of the director include, but are not limited to, the
9 management and administration of the Governor's Office of
10 Health Enhancement and Lifestyle Planning.

11 (b) The director:

12 (1) Serves on a full-time basis and may not be engaged in
13 any other profession or occupation;

14 (2) May not hold political office in the government of the
15 state either by election or appointment while serving as the
16 director;

17 (3) Shall be a citizen of the United States and West
18 Virginia and become a resident of the state within ninety days
19 of appointment;

20 (4) Is ineligible for civil service coverage as provided in
21 section four, article six, chapter twenty-nine of this code.
22 Any other employee hired by the director is also ineligible for
23 civil service coverage; and

24 (5) Is entitled to receive an annual salary as provided by
25 the Governor.

26 (c) Before entering upon the discharge of the duties as
27 director, the director shall take and subscribe to the oath of
28 office prescribed in section five, article IV of the Constitution

29 of West Virginia. The executed oath shall be filed in the
30 Office of the Secretary of State.

**§16-29H-4. Director of the Governor's Office of Health
Enhancement and Lifestyle Planning; powers
and duties, hiring of staff.**

1 (a) The director has the power and authority to:

2 (1) Purchase or enter into contracts or agreements as
3 necessary to achieve the purposes of this article;

4 (2) File suit;

5 (3) At the request of a state agency that has responsibility
6 for any aspect of West Virginia's health care system, evaluate
7 and advise the agency on ways that can better achieve the
8 purposes of this article. In addition, the director may
9 determine in collaboration with the agencies responsible for
10 health systems in the state to improve efficiencies and reduce
11 costs through interagency agreements to enter into contracts.
12 Contracts may only be renegotiated if there is a demonstrated
13 and measurable cost savings for the state and the agencies are
14 in agreement;

15 (4) Enter into contracts with public or private entities in
16 this state, governments of other states and jurisdictions and
17 their individual departments, agencies, authorities,
18 institutions, programs, quasi-public corporations and political
19 subdivisions in the event that such contracts would be a
20 collaboration between the health system agencies involved
21 and agreed to by all parties.

22 (5) Participate in regional or multistate purchasing
23 alliances or consortia, formed for the purpose of pooling the
24 combined purchasing power of the individual members and
25 increasing purchasing power with agreement of all
26 participating parties and financially advantageous to each
27 party. This power does not affect individual state agencies

28 from participating in any purchasing alliance or consortium
29 as established in their own program. If the director
30 participates in any cooperative purchasing agreement,
31 alliance or consortium which is comprised of at least five
32 million covered lives, the cooperative purchasing agreement,
33 alliance or consortium may employ an agreed-upon pricing
34 schedule that, in the judgment of the director and the other
35 participating entities, will maximize savings to the broadest
36 percentage of the population of this state: *Provided*, That any
37 pharmaceutical manufacturer that deals with such cooperative
38 purchasing agreements, alliances or consortia may request a
39 waiver from such pricing schedule in West Virginia or any
40 other participating state for a particular drug that should be
41 granted if the director finds that the development, production,
42 distribution costs, other reasonable costs and reasonable
43 profits excluding marketing, advertising and promotional
44 costs not essential to bringing the product to market are more
45 than the schedule price of the pharmaceutical or in those
46 cases in which the pharmaceutical in question has a sole
47 source. The director shall determine fees to be paid by the
48 applicant at the time of the waiver application and proof
49 required to be submitted at the time of the waiver request to
50 support the validity of the request.

51 (6) Make recommendations to the Governor and the
52 Legislature regarding strategies that could more effectively
53 make the health care delivery system in West Virginia more
54 timely, more patient centered, provide greater patient access
55 and quality of service and control health care costs;

56 (7) Develop and implement other programs, projects and
57 initiatives to achieve the purposes of this article, including
58 initiating, evaluating and promoting primary-care medical
59 homes pursuant to section six of this article and other
60 strategies that result in greater access to health care, assure
61 greater quality of care and result in reduced costs for health
62 care delivery services to the citizens of West Virginia:

63 *Provided*, That interagency agreements shall be utilized for
64 services that would be duplicative;

65 (8) Work with the Health Care Authority to ensure that
66 the preventive health care pilots are implementing a primary-
67 care medical home model as defined in this article;

68 (9) Develop a five-year strategic plan as set forth in
69 section six of this article for implementation of West
70 Virginia's health care system reform initiatives together with
71 recommendations for administration, policy, legislative rules
72 or legislation. This plan shall be reported to the Joint
73 Committee on Government and Finance, the Legislative
74 Oversight Commission on Health and Human Resources
75 Accountability and the Governor on or before December 31,
76 2009;

77 (10) Provide professional development on emerging
78 health care policies and contracting for health care services;
79 and

80 (11) Evaluate and offer, if resources become available, a
81 grant program for local communities to encourage healthy
82 lifestyles in collaboration with the Healthy Lifestyles
83 Coalition.

84 (b) The director shall employ such professional, clerical,
85 technical and administrative personnel as may be necessary
86 to carry out the provisions of this article and with
87 consideration of the appropriation provided by the
88 Legislature.

89 (c) The director shall prepare and submit to the Governor
90 and the Legislature annual proposed appropriations for the
91 next fiscal year which shall include sums necessary to
92 support the activities of the Governor's Office of Health
93 Enhancement and Lifestyle Planning.

94 (d) The director shall submit an annual report separate
95 from the strategic plan by January 1 of each year to the
96 Governor and the Legislative Oversight Commission on
97 Health and Human Resources Accountability on the
98 condition, operation and functioning of the Governor's Office
99 of Health Enhancement and Lifestyle Planning.

100 (e) The director shall supervise the fiscal management
101 and responsibilities of the Governor's Office of Health
102 Enhancement and Lifestyle Planning.

103 (f) The director shall keep an accurate and complete
104 record of all the Governor's Office of Health Enhancement
105 and Lifestyle Planning proceedings, records and file all bonds
106 and contracts and assume responsibility for the custody and
107 preservation of all papers and records of the office.

108 (g) The director may convene a series of focus groups,
109 polls and any other available research tool to determine
110 issues of importance to all stakeholders after a thorough
111 review of available research currently in existence. The
112 development of these survey tools shall be done in
113 conjunction with employers, health care providers and
114 consumers. Data received from this research should be easily
115 available to the public and utilized in the development and
116 design of health benefit programs. The data should also be
117 accessible to providers to allow them to meet the needs of the
118 health care market.

119 (h) The director may propose rules for legislative
120 approval in accordance with the provisions of article three,
121 chapter twenty-nine-a of this code to accomplish the goals
122 and purposes of this article.

**§16-29H-5. Creation of the Health Enhancement and Lifestyle
Planning Advisory Council.**

1 (a) The Health Enhancement and Lifestyle Planning
2 Advisory Council is hereby created. The advisory council is
3 an independent, self-sustaining council that has the powers
4 and duties specified in this article.

5 (b) The advisory council is a part-time council whose
6 members perform such duties as specified in this article. The
7 ministerial duties of the advisory council shall be
8 administered and carried out by the Governor's Office of
9 Health Enhancement and Lifestyle Planning.

10 (c) Each member of the advisory council shall devote the
11 time necessary to carry out the duties and obligations of the
12 office. Those members appointed by the Governor may
13 pursue and engage in another business or occupation or
14 gainful employment that is not in conflict with the duties of
15 the advisory council.

16 (d) The advisory council is self-sustaining and
17 independent, however it, its members, the director and
18 employees of the Governor's Office of Health Enhancement
19 and Lifestyle Planning are subject to article nine-a, chapter
20 six of this code and chapters six-b, twenty-nine-a and
21 twenty-nine-b of this code.

22 (e) The advisory council is comprised of the following
23 governmental officials: The Secretary of the Department of
24 Health and Human Resources, or his or her designee, the
25 Director of the Public Employees Insurance Agency, or his
26 or her designee, the Commissioner of the Office of the
27 Insurance Commissioner, or his or her designee, the Chair of
28 the West Virginia Health Care Authority, or his or her
29 designee and the director of the West Virginia Children's
30 Health Insurance Program or his or her designee. The
31 council shall also consist of the following public members:
32 One public member shall represent an organization of senior
33 citizens with at least ten thousand members within the state,

34 one public member shall represent the West Virginia
35 Academy of Family Physicians, one public member shall
36 represent the West Virginia Chamber of Commerce, one
37 public member shall represent a federally qualified health
38 center, one public member shall represent the largest labor
39 organization in the state, one public interest organization that
40 represents the interests of consumers, one public member
41 shall represent West Virginia Hospital Association, one
42 public member shall represent the West Virginia Medical
43 Association, one public member shall represent the West
44 Virginia Nurse's Association and two ex-officio nonvoting
45 members shall be the Speaker of the House, or his or her
46 designee, and the President of the Senate, or his or her
47 designee.

48 (f) Public members shall be appointed by the Governor
49 with advice and consent of the Senate. Each public member
50 shall serve for a term of four years. Of the public members
51 of the advisory council first appointed, one shall be appointed
52 for a term ending June 30, 2010, and two each for terms of
53 three and four years. The remainder shall be appointed for
54 the full four-year terms as provided in this section. Each
55 public member serves until his or her successor is appointed
56 and has qualified. The Director of the Governor's Office of
57 Health Enhancement and Lifestyle Planning shall serve as
58 chairperson of the advisory council.

59 (g) Advisory council members may not be compensated
60 in their capacity as members but shall be reimbursed for
61 reasonable expenses incurred in the performance of their
62 duties.

63 (h) The advisory council shall meet within the state at
64 such times as the chair may decide, but at least once
65 annually. The advisory council shall also meet upon a call of
66 seven or more members upon seventy-two hours' written
67 notice to each member.

68 (i) Eight members of the advisory council are a quorum
69 for the transaction of business.

70 (j) A majority vote of the members present is required for
71 any final determination by the advisory council. Voting by
72 proxy is not allowed.

73 (k) The advisory council shall keep a complete and
74 accurate record of all its meetings according to section five,
75 article nine-a, chapter six of this code.

76 (l) Notwithstanding the provisions of section four, article
77 six, chapter six of this code, the Governor may remove any
78 advisory council member for incompetence, misconduct,
79 gross immorality, misfeasance, malfeasance or nonfeasance
80 in office.

81 (m) The advisory council has general responsibility to
82 review and provide advice and comment to the Governor's
83 Office of Health Enhancement and Lifestyle Planning on its
84 policies and procedures relating to the delivery of health care
85 services or the purchase of prescription drugs. The advisory
86 council shall offer advice to the director on matters over
87 which the office has authority and oversight. This includes,
88 but is not limited to:

89 (1) Hiring of professional, clerical, technical and
90 administrative personnel as may be necessary to carry out the
91 provisions of this article;

92 (2) Contracts or agreements;

93 (3) Rule-making authority; and

94 (4) Development of policy necessary to meet the duties
95 and responsibilities of the Governor's Office of Health

96 Enhancement and Lifestyle Planning pursuant to the
97 provisions of this article.

§16-29H-6. Development of a strategic plan.

1 The director shall develop a five-year strategic plan for
2 implementation of any and all health care system reform
3 initiatives. These initiatives shall be included, but are not
4 limited to:

5 (1) Development of pilot projects for patient-centered
6 medical homes as set forth in section nine of this article;

7 (2) Prioritization of chronic conditions to be targeted for
8 purposes of resource allocation and for greater chronic care
9 management. This should include pilot projects for
10 community-based health teams for the development of care
11 plans for healthy children and adults to maintain good health
12 and for at risk populations to prevent development of
13 preventable chronic diseases;

14 (3) Development of standardized prior authorization
15 requirements and processes from insurers;

16 (4) Coordination with the State Board of Education as set
17 forth in article two, chapter eighteen of this code to provide
18 for:

19 (i) The preservation and allocation of recess time away
20 from instruction and separate from physical education classes
21 in the state schools;

22 (ii) Continuing education for school food personnel and
23 a career hierarchy for food personnel that offers rewards for
24 continuing education hours and credits;

25 (iii) School-based physical education coordinators; and

26 (iv) Placement of a dietician in each regional education
27 service area throughout the state;

28 (5) Implementation of school-based initiatives to achieve
29 greater dietary consistency in West Virginia's school system
30 and to gain greater physical fitness from students;

31 (6) Development of community-based projects designed
32 for the construction, development and maintenance of bicycle
33 and pedestrian trails and sidewalks;

34 (7) Development and implementation of universal
35 wellness and health promotion benefits;

36 (8) Continued promotion and support for efforts to
37 decrease the number of West Virginians using tobacco
38 products;

39 (9) Any necessary changes that will increase small
40 businesses who offer available health insurance as a benefit
41 of employment;

42 (10) Development of goals to further improve health care
43 delivery in West Virginia. This should include a means to
44 evaluate progress toward achieving these goals in a simple
45 and timely manner;

46 (11) Measurement of progress of health care providers
47 and physicians to the adoption and use of electronic medical
48 records in their offices;

49 (12) Collaboration on health information technology
50 with the West Virginia Health Information Network, the
51 Bureau for Medical Services and other appropriate entities
52 which shall include:

- 53 (i) Working through the West Virginia Health
54 Information Network, the Bureau for Medical Services and
55 other appropriate entities, to develop a collaborative approach
56 for health information exchange;
- 57 (ii) Facilitating and encouraging of ongoing projects such
58 as electronic medical record resources in community health
59 clinics;
- 60 (iii) Encouragement of continued development of hospital
61 systems and deployment of hospital-supported electronic
62 medical records when available for hospital-based, hospital-
63 employed and nonhospital-employed physicians;
- 64 (iv) Development of strategies to implement tax
65 incentives, vendor discounts, enhanced reimbursement and
66 other means to individual physician offices and clinics to
67 encourage greater adoption and use of electronic medical
68 records;
- 69 (v) Development of recommended electronic medical
70 record best practices utilizing the Certification Commission
71 for Health Care Information Technology as the minimum
72 standard;
- 73 (vi) Development of funding mechanisms that provide
74 initial start up funds and a mechanism for sustainability of
75 electronic medical records; and
- 76 (vii) Exploration of federal funding to ensure the most
77 efficient and cost-effective means of meeting the state's
78 health information technology objectives.

§16-29H-7. Coordination with higher education.

- 1 The director shall consult with all the colleges and
2 universities in the state, both public and private, with the

3 state's three medical schools, with community and technical
4 colleges and with the Higher Education Policy Commission.
5 The purpose of this collaboration would be:

6 (1) The development of curricula focused on a chronic
7 care model to reflect the multidisciplinary team approach to
8 the delivery of health care services in West Virginia as
9 contemplated by the development of a patient-centered
10 medical home as that term is defined in section nine of this
11 article; and

12 (2) The development of technology-centered jobs that
13 would further the state's efforts in moving toward the broader
14 use of electronic health records.

**§16-29H-8. Continuing efforts to reduce prescription drug
prices.**

1 (a) The rule-making authority previously granted to the
2 Pharmaceutical Cost Management Council in article three-c,
3 chapter five-a of this code to require the reporting of
4 pharmaceutical advertising costs is here transferred to the
5 Governor's Office of Health Enhancement and Lifestyle
6 Planning.

7 (b) Advertising costs for prescription drugs, based on
8 aggregate national data, shall be reported to the Governor's
9 Office of Health Enhancement and Lifestyle Planning by all
10 manufacturers and labelers of prescription drugs dispensed in
11 this state that employs, directs or utilizes marketing
12 representatives. The reporting shall assist this state in its role
13 as a purchaser of prescription drugs and an administrator of
14 prescription drug programs, enabling this state to determine
15 the scope of prescription drug advertising costs and their
16 effect on the cost, utilization and delivery of health care
17 services and furthering the role of this state as guardian of the
18 public interest.

19 (c) The Governor's Office of Health Enhancement and
20 Lifestyle Planning shall establish by legislative rule pursuant
21 to the provisions of article three, chapter twenty-nine-a of this
22 code the reporting requirements of information by labelers
23 and manufacturers which shall include all national aggregate
24 expenses associated with advertising and direct promotion of
25 prescription drugs through radio, television, magazines,
26 newspapers, direct mail and telephone communications as
27 they pertain to residents of this state.

28 (d) The following are exempt from disclosure
29 requirements:

30 (1) All free samples of prescription drugs intended to be
31 distributed to patients;

32 (2) All marketing items of a value less than \$100;

33 (3) All payments of reasonable compensation and
34 reimbursement of expenses in connection with a bona fide
35 clinical trial. As used in this subdivision, "clinical trial"
36 means an approved clinical trial conducted in connection
37 with a research study designed to answer specific questions
38 about vaccines, new therapies or new ways of using known
39 treatments;

40 (4) All scholarship or other support for medical students,
41 residents and fellows to attend significant educational,
42 scientific or policy making conference of national, regional
43 or specialty medical or other professional association if the
44 recipient of the scholarship or other support is selected by the
45 association; and

46 (5) Any data that identifies specific prescription drugs or
47 pharmaceuticals by individual name, any group of individuals
48 or specific individual by name and any specific physician or
49 pharmacy or group of physicians or pharmacies by name.

50 (e) The Governor's Office of Health Enhancement and
51 Lifestyle Planning, with advice of the advisory council, is
52 authorized to revise existing legislative rules that establish
53 time lines, the documentation, form and manner of reporting
54 required, and determine necessary changes to existing
55 legislative rules to effectuate the purposes of this article. The
56 director shall include in his or her annual report to the
57 Legislature, in an aggregate form, the information provided
58 in the required reporting.

59 (f) Notwithstanding any provision of law to the contrary,
60 information submitted to the director pursuant to this section
61 is confidential and is not a public record and is not available
62 for release pursuant to the West Virginia Freedom of
63 Information Act codified in chapter twenty-nine-b, article one
64 of this code. Data compiled in aggregate form by the director
65 for the purposes of reporting required by this section is a
66 public record as defined in the West Virginia Freedom of
67 Information Act as long as it does not reveal trade
68 information that is protected by state or federal law or
69 specific prescription drugs or pharmaceuticals by individual
70 name, any group of individuals or specific individual by
71 name and any specific physician or pharmacy or group of
72 physicians or pharmacies by name.

73 (g) The director is authorized to consider strategies by
74 which West Virginia may manage the increasing costs of
75 prescription drugs and increase access to prescription drugs
76 for all of the state's residents, including the authority to:

77 (1) Explore discount prices or rebate programs for seniors
78 and persons without drug coverage;

79 (2) Explore and if in the best interest of the state and
80 financially feasible, a counter-detailing program aimed at
81 education health care practitioners about the relative costs

82 and benefits of various prescription drugs with an emphasis
83 on generic drugs;

84 (3) Explore purchasing agreements with public or private
85 sector entities that could be beneficial in the cost of
86 pharmaceuticals; and

87 (4) Explore other strategies, as permitted under state and
88 federal law, aimed at managing escalating prescription drug
89 cost and increasing access for citizens of the state and
90 develop necessary legislation to implement such strategies.

§16-29H-9. Patient-centered medical homes.

1 (a) *Legislative findings.* --

2 The Legislature finds that:

3 (1) There is a need in the state to transform the health
4 care services delivery model toward primary prevention and
5 more proactive care management through the development of
6 patient-centered medical homes;

7 (2) The concept of a patient-centered medical home
8 would promote a partnership between the individual patient,
9 the patient's various health care providers, the patient's family
10 and, if necessary, the community. It integrates the patient as
11 an active participant in their own health and well-being;

12 (3) The patient-centered medical home provides care
13 through a multidisciplinary health team consisting of
14 physicians, nurse practitioners, nurses, physicians assistants,
15 behavioral health providers, pharmacists, social workers,
16 physical therapists, dental and eye care providers and
17 dieticians to meet the health care needs of a patient in all
18 aspects of preventative, acute, chronic and end-of-life care
19 using evidence-based medicine and technology;

20 (4) In a patient-centered medical home each patient has
21 an ongoing relationship with a personal physician. The
22 physician would lead a team of health care providers who
23 take responsibility for the care of the patient or for arranging
24 care with other qualified professionals;

25 (5) Transitioning health care delivery services to a
26 patient-centered medical home would provide greater quality
27 of care, increase patient safety and ensure greater access to
28 health care;

29 (6) Currently there are medical home pilot projects
30 underway at the Bureau for Medical Services and the Public
31 Employees Insurance Agency that should be reviewed and
32 evaluated for efficiency and a means to expand these to
33 greater segments of the state's population, most importantly
34 the uninsured.

35 (b) The patient-centered medical home is a health care
36 setting that facilitates partnerships between individual
37 patients and their personal physicians and, when appropriate,
38 the patients' families and communities. A patient-centered
39 medical home integrates patients as active participants in
40 their own health and well-being. Patients are cared for by a
41 physician or physician practice that leads a multidisciplinary
42 health team, which may include, but is not limited to, nurse
43 practitioners, nurses, physician's assistants, behavioral health
44 providers, pharmacists, social workers, physical therapists,
45 dental and eye care providers and dieticians to meet the needs
46 of the patient in all aspects of preventive, acute, chronic care
47 and end-of-life care using evidence-based medicine and
48 technology. At the point in time that the Center for Medicare
49 and Medicaid Services includes the nurse practitioner as a
50 leader of the multidisciplinary health team, this state will
51 automatically implement this change.

52 (c) The Governor's Office of Health Enhancement and
53 Lifestyle Planning shall consult with the Bureau for Medical

54 Services and the Public Employees Insurance Agency on
55 current medical home pilot projects which they are operating
56 for their membership population. The director shall evaluate
57 these programs in consultation with the Commissioner of the
58 Bureau for Medical Services and the Director of the Public
59 Employees Insurance Agency for a means to expand these
60 beyond the populations currently being served by these
61 pilots. Once data is available on these pilots that can be
62 reviewed for planning purposes, the director shall utilize this
63 as a means to develop and implement additional
64 patient-centered medical home pilot programs beyond the
65 limited populations served by the Bureau for Medical
66 Services and the Public Employees Insurance Agency. The
67 director shall develop four varying types of patient-centered
68 medical home pilots based upon experience gained from the
69 projects currently in operation at the Bureau for Medical
70 Services and the Public Employees Insurance Agency. These
71 patient-centered medical homes shall be based upon the
72 individual practices of physicians.

73 (d) The four types of pilot programs shall be:

74 (1) *Chronic Care Model Pilots.* -- This model shall focus
75 on smaller physician practices. Primary care providers shall
76 work with payers and providers to identify various disease
77 states. Through the collaborative effort of the primary care
78 provider and the payers and providers, programs shall be
79 developed to improve management of agreed upon conditions
80 of the patient. Through this model, the primary care provider
81 may utilize current practices of multipayer workgroups.
82 These groups shall be comprised of the medical directors of
83 the major health care payers and the state payers along with
84 medical providers and others.

85 (2) *Individual Medical Homes Pilots.* -- These pilots
86 shall focus on larger physician practices. They shall seek
87 certification from the National Committee on Quality
88 Assurance. That initial certification will be Level I

89 certification. This would be granted by virtue of certifying
90 the provider is in the process of attaining certification and
91 currently have met provisional standards as set by the
92 National Committee on Quality Assurance. This provisional
93 certification lasts only one year with no renewal.

94 (3) *Community-Centered Medical Home Pilots.* -- This
95 approach shall link primary care practices with community
96 health teams which would grow out of the current structure
97 in place for federally qualified health centers. The
98 community health teams shall include social and mental
99 health workers, nurse practitioners, care coordinators and
100 community health workers. These personnel largely exist in
101 community hospitals, home health agencies and other
102 settings. These pilots shall identify these resources as a
103 separate team to collaborate with the primary care practices.
104 The teams would focus on primary prevention such as
105 smoking cessation programs and wellness interventions as
106 well as working with the primary care practices to manage
107 patients with multiple chronic conditions. Within this pilot
108 all health care agencies are connected and share resources.
109 Citizens can enter the system of care from any point and
110 receive the most appropriate level of care or be directed to
111 the most appropriate care. Any financial incentives in this
112 model would involve all health care payers and could be used
113 to encourage collaboration between primary care practices
114 and the community health teams.

115 (4) *Medical Homes for the Uninsured Pilots.* -- These
116 pilots shall focus on medical homes to serve the uninsured.
117 They shall include various means of providing care to the
118 uninsured with primary and preventative care. Through this
119 mechanism, a variety of pilots may be developed that shall
120 include screening, treatment of chronic disease and other
121 aspects of primary care and prevention services. The pilots
122 will be chosen based on their design meeting the
123 requirements of this subsection and the resources available to
124 provide these services.

125 (e) The Governor's Office of Health Enhancement and
126 Lifestyle Planning may promulgate emergency rules pursuant
127 to the provisions of section fifteen, article three, chapter
128 twenty-nine-a of this code if they deem them necessary to
129 implement this section.

130 (1) The Governor's Office of Health Enhancement and
131 Lifestyle Planning shall establish by guidelines, criteria to
132 evaluate the pilot program and may require participating
133 providers to submit such data and other information related
134 to the pilot program as may be required by the Governor's
135 Office of Health Enhancement and Lifestyle Planning. For
136 purposes of this article, this information shall be exempt from
137 disclosure under the Freedom of Information Act in article
138 one, chapter twenty-nine-b of this code.

139 (2) No later than December 1, 2009, and annually
140 thereafter during the operation of the pilot program, the
141 Governor's Office of Health Enhancement and Lifestyle
142 Planning must submit a report to the Legislative Oversight
143 Commission on Health and Human Resources Accountability
144 as established in article twenty-nine-e of this chapter on
145 progress made by the pilot project including suggested
146 legislation, necessary changes to the pilot program and
147 suggested expansion of the pilot program.

§16-29H-10. Exemption from Purchasing Division requirements.

1 The provisions of article three, chapter five-a of this code
2 do not apply to the agreements and contracts executed under
3 the provisions of this article, except that the contracts and
4 agreements shall be approved as to form and conformity with
5 applicable law by the Attorney General.

CHAPTER 109

**(Com. Sub. for H.B. 3195 - By Delegates Argento, Boggs,
Craig, Hatfield, Perdue, Pethel and Williams)**

[Passed April 11, 2009; in effect from passage.]

[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to rule-making authority of the Secretary of the Department of Health and Human Resources; authorizing legislative and emergency rules to establish a funding mechanism for state aid for local health departments and to basic public health services funds.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code
3 that are necessary and proper to effectuate the purposes of
4 this chapter. The secretary may appoint or designate
5 advisory councils of professionals in the areas of hospitals,
6 nursing homes, barbers and beauticians, postmortem
7 examinations, mental health and mental retardation centers
8 and any other areas necessary to advise the secretary on rules.

9 The rules may include, but are not limited to, the
10 regulation of:

11 (a) Land usage endangering the public health: *Provided,*
12 That no rules may be promulgated or enforced restricting the
13 subdivision or development of any parcel of land within
14 which the individual tracts, lots or parcels exceed two acres
15 each in total surface area and which individual tracts, lots or
16 parcels have an average frontage of not less than one hundred
17 fifty feet even though the total surface area of the tract, lot or
18 parcel equals or exceeds two acres in total surface area, and
19 which tracts are sold, leased or utilized only as single-family
20 dwelling units. Notwithstanding the provisions of this
21 subsection, nothing in this section may be construed to abate
22 the authority of the department to: (1) Restrict the
23 subdivision or development of a tract for any more intense or
24 higher density occupancy than a single-family dwelling unit;
25 (2) propose or enforce rules applicable to single-family
26 dwelling units for single-family dwelling unit sanitary
27 sewerage disposal systems; or (3) restrict any subdivision or
28 development which might endanger the public health, the
29 sanitary condition of streams or sources of water supply;

30 (b) The sanitary condition of all institutions and schools,
31 whether public or private, public conveyances, dairies,
32 slaughterhouses, workshops, factories, labor camps, all other
33 places open to the general public and inviting public
34 patronage or public assembly, or tendering to the public any
35 item for human consumption and places where trades or
36 industries are conducted;

37 (c) Occupational and industrial health hazards, the
38 sanitary conditions of streams, sources of water supply,
39 sewerage facilities and plumbing systems and the
40 qualifications of personnel connected with any of those
41 facilities, without regard to whether the supplies or systems
42 are publicly or privately owned; and the design of all water

43 systems, plumbing systems, sewerage systems, sewage
44 treatment plants, excreta disposal methods and swimming
45 pools in this state, whether publicly or privately owned;

46 (d) Safe drinking water, including:

47 (1) The maximum contaminant levels to which all public
48 water systems must conform in order to prevent adverse
49 effects on the health of individuals and, if appropriate,
50 treatment techniques that reduce the contaminant or
51 contaminants to a level which will not adversely affect the
52 health of the consumer. The rule shall contain provisions to
53 protect and prevent contamination of wellheads and well
54 fields used by public water supplies so that contaminants do
55 not reach a level that would adversely affect the health of the
56 consumer;

57 (2) The minimum requirements for: Sampling and
58 testing; system operation; public notification by a public
59 water system on being granted a variance or exemption or
60 upon failure to comply with specific requirements of this
61 section and rules promulgated under this section;
62 recordkeeping; laboratory certification; as well as procedures
63 and conditions for granting variances and exemptions to
64 public water systems from state public water systems rules;
65 and

66 (3) The requirements covering the production and
67 distribution of bottled drinking water and may establish
68 requirements governing the taste, odor, appearance and other
69 consumer acceptability parameters of drinking water;

70 (e) Food and drug standards, including cleanliness,
71 proscription of additives, proscription of sale and other
72 requirements in accordance with article seven of this chapter
73 as are necessary to protect the health of the citizens of this
74 state;

75 (f) The training and examination requirements for
76 emergency medical service attendants and emergency
77 medical care technician-paramedics; the designation of the
78 health care facilities, health care services and the industries
79 and occupations in the state that must have emergency
80 medical service attendants and emergency medical care
81 technician-paramedics employed and the availability,
82 communications and equipment requirements with respect to
83 emergency medical service attendants and to emergency
84 medical care technician-paramedics: *Provided*, That any
85 regulation of emergency medical service attendants and
86 emergency medical care technician-paramedics may not
87 exceed the provisions of article four-c of this chapter;

88 (g) The health and sanitary conditions of establishments
89 commonly referred to as bed and breakfast inns. For
90 purposes of this article, “bed and breakfast inn” means an
91 establishment providing sleeping accommodations and, at a
92 minimum, a breakfast for a fee: *Provided*, That the secretary
93 may not require an owner of a bed and breakfast providing
94 sleeping accommodations of six or fewer rooms to install a
95 restaurant-style or commercial food service facility:
96 *Provided, however*, That the secretary may not require an
97 owner of a bed and breakfast providing sleeping
98 accommodations of more than six rooms to install a
99 restaurant-type or commercial food service facility if the
100 entire bed and breakfast inn or those rooms numbering above
101 six are used on an aggregate of two weeks or less per year;

102 (h) Fees for services provided by the Bureau for Public
103 Health including, but not limited to, laboratory service fees,
104 environmental health service fees, health facility fees and
105 permit fees;

106 (i) The collection of data on health status, the health
107 system and the costs of health care;

108 (j) Opioid treatment programs duly licensed and
109 operating under the requirements of chapter twenty-seven of
110 this code. The Health Care Authority shall develop new
111 certificate of need standards, pursuant to the provisions of
112 article two-d of this chapter, that are specific for opioid
113 treatment program facilities. No applications for a certificate
114 of need for opioid treatment programs shall be approved by
115 the Health Care Authority as of the effective date of the 2007
116 amendments to this subsection. The secretary shall
117 promulgate revised emergency rules to govern licensed
118 programs: *Provided*, That there is a moratorium on the
119 licensure of new opioid treatment programs that do not have
120 a certificate of need as of the effective date of the 2007
121 amendments to this subsection, which shall continue until the
122 Legislature determines that there is a necessity for additional
123 opioid treatment facilities in West Virginia. The secretary
124 shall file revised emergency rules with the Secretary of State
125 to regulate opioid programs in compliance with subsections
126 (1) through (9), inclusive, of this section: *Provided, however*,
127 That any opioid treatment program facility that has received
128 a certificate of need pursuant to article two-d, of this chapter
129 by the Health Care Authority shall be permitted to proceed to
130 license and operate the facility. All existing opioid treatment
131 programs shall be in compliance within one hundred eighty
132 days of the effective date of the revised emergency rules as
133 required herein. The revised emergency rules shall provide at
134 a minimum:

135 (1) That the initial assessment prior to admission for entry into
136 the opioid treatment program shall include an initial drug test to
137 determine whether an individual is either opioid addicted or
138 presently receiving methadone for an opioid addiction from
139 another opioid treatment program. The patient may be admitted
140 to the program if there is a positive test for either opioids or
141 methadone or there are objective symptoms of withdrawal, or
142 both, and all other criteria set forth in the rule for admission into
143 an opioid treatment program are met: *Provided*, That admission

144 to the program may be allowed to the following groups with a
145 high risk of relapse without the necessity of a positive test or the
146 presence of objective symptoms: Pregnant women with a history
147 of opioid abuse, prisoners or parolees recently released from
148 correctional facilities, former clinic patients who have
149 successfully completed treatment but who believe themselves to
150 be at risk of imminent relapse and HIV patients with a history of
151 intravenous drug use.

152 (2) That within seven days of the admission of a patient, the
153 opioid treatment program shall complete an initial assessment and
154 an initial plan of care. Subsequently, the opioid treatment
155 program shall develop a treatment plan of care by the thirtieth day
156 after admission and attach to the patient's chart no later than five
157 days after such plan is developed. The treatment plan is to reflect
158 that detoxification is an option for treatment and supported by the
159 program.

160 (3) That each opioid treatment program shall report and
161 provide statistics to the Department of Health and Human
162 Resources at least semiannually which includes the total
163 number of patients; the number of patients who have been
164 continually receiving methadone treatment in excess of two
165 years, including the total number of months of treatment for
166 each such patient; the state residency of each patient; the
167 number of patients discharged from the program, including
168 the total months in the treatment program prior to discharge
169 and whether the discharge was for:

170 (A) Termination or disqualification;

171 (B) Completion of a program of detoxification;

172 (C) Voluntary withdrawal prior to completion of all
173 requirements of detoxification as determined by the opioid
174 treatment program; or

175 (D) An unexplained reason.

176 (4) That random drug testing of patients be conducted
177 during the course of treatment. For purposes of these rules,
178 random drug testing shall mean that each patient of an opioid
179 treatment program facility has a statistically equal chance of
180 being selected for testing at random and at unscheduled
181 times. Any refusal to participate in a random drug test shall
182 be considered a positive test: *Provided*, That nothing
183 contained in this section or the legislative rules promulgated
184 in conformity herewith will preclude any opioid treatment
185 program from administering such additional drug tests as
186 determined necessary by the opioid treatment program.

187 (5) That all random drug tests conducted by an opioid
188 treatment program shall, at a minimum, test for the
189 following:

190 (A) Opiates, including oxycodone at common levels of
191 dosing;

192 (B) Methadone and any other medication used by the
193 program as an intervention;

194 (C) Benzodiazepine including diazepam, lorazepam,
195 clonazepam and alprazolam;

196 (D) Cocaine;

197 (E) Methamphetamine or amphetamine; and

198 (F) Other drugs determined by community standards,
199 regional variation or clinical indication.

200 A positive test is a test that results in the presence of any
201 drug or substance listed in this schedule and any other drug
202 or substance prohibited by the opioid treatment program;

203 (6) That a positive drug test result after the first six
204 months in an opioid treatment program shall result in the
205 following:

206 (A) Upon the first positive drug test result, the opioid
207 treatment program shall:

208 (1) Provide mandatory and documented weekly
209 counseling to the patient, which shall include weekly
210 meetings with a counselor who is licensed, certified or
211 enrolled in the process of obtaining licensure or certification
212 in compliance with the rules and on staff at the opioid
213 treatment program;

214 (2) Immediately revoke the take home methadone
215 privilege for a minimum of thirty days; and

216 (B) Upon a second positive drug test result within six
217 months of a previous positive drug test result, the opioid
218 treatment program shall:

219 (1) Provide mandatory and documented weekly
220 counseling, which shall include weekly meetings with a
221 counselor who is licensed, certified or enrolled in the process
222 of obtaining licensure or certification in compliance with the
223 rules and on staff at the opioid treatment program;

224 (2) Immediately revoke the take-home methadone
225 privilege for a minimum of sixty days; and

226 (3) Provide mandatory documented treatment team
227 meetings with the patient.

228 (C) Upon a third positive drug test result within a period
229 of six months the opioid treatment program shall:

230 (1) Provide mandatory and documented weekly
231 counseling, which shall include weekly meetings with a

232 counselor who is licensed, certified or enrolled in the process
233 of obtaining licensure or certification in compliance with the
234 rules and on staff at the opioid treatment program;

235 (2) Immediately revoke the take-home methadone
236 privilege for a minimum of one hundred twenty days; and

237 (3) Provide mandatory and documented treatment team
238 meetings with the patient which will include, at a minimum:
239 The need for continuing treatment; a discussion of other
240 treatment alternatives; and the execution of a contract with
241 the patient advising the patient of discharge for continued
242 positive drug tests.

243 (D) Upon a fourth positive drug test within a six-month
244 period, the patient shall be immediately discharged from the
245 opioid treatment program or, at the option of the patient, shall
246 immediately be provided the opportunity to participate in a
247 twenty-one day detoxification plan, followed by immediate
248 discharge from the opioid treatment program.

249 (7) That the opioid treatment program must report and
250 provide statistics to the Department of Health and Human
251 Resources demonstrating compliance with the random drug
252 test rules including confirmation that:

253 (A) The random drug tests were truly random in regard
254 to both the patients tested and to the times random drug tests
255 were administered by lottery or some other objective standard
256 so as not to prejudice or protect any particular patient.

257 (B) The total number and the number of positive results;
258 and

259 (C) The number of expulsions from the program.

260 (8) That all opioid treatment facilities be open for
261 business seven days per week: *Provided*, That the opioid

262 treatment center may be closed for eight holidays and two
263 training days per year.

264 (9) That the Office of Health Facility Licensure and
265 Certification develop policies and procedures in conjunction
266 with the Board of Pharmacy that will allow access to the
267 Prescription Drug Registry maintained by the Board of
268 Pharmacy before administration of methadone or other
269 treatment in an opioid treatment program, after any positive
270 drug test, and at each ninety-day treatment review to ensure
271 the patient is not seeking prescription medication from
272 multiple sources.

273 (k) The secretary shall propose a rule for legislative
274 approval in accordance with the provisions of article three,
275 chapter twenty-nine-a or this code for the distribution of state
276 aid to local health departments and basic public health
277 services funds.

278 (1) The rule shall include the following provisions:

279 (A) Base allocation amount for each county;

280 (B) Establishment and administration of an emergency
281 fund of no more than two percent of the total annual funds of
282 which unused amounts are to be distributed back to local
283 boards of health at the end of each fiscal year;

284 (C) A calculation of funds utilized for state support of
285 local health departments;

286 (D) Distribution of remaining funds on a per capita
287 weighted population approach which factors coefficients for
288 poverty, health status, population density and health
289 department interventions for each county and a coefficient
290 which encourages counties to merge in the provision of
291 public health services;

292 (E) A hold-harmless provision to provide that each local
293 health department receives no less in state support for a
294 period of three years beginning in the 2009 budget year.

295 (2) The Legislature finds that an emergency exists and,
296 therefore, the secretary shall file an emergency rule to
297 implement the provisions of this section pursuant to the
298 provisions of section fifteen, article three, chapter twenty-
299 nine-a of this code. The emergency rule is subject to the
300 prior approval of the Legislative Oversight Commission on
301 Health and Human Resources Accountability prior to filing
302 with the Secretary of State.

303 (l) Other health-related matters which the department is
304 authorized to supervise and for which the rule-making
305 authority has not been otherwise assigned.

CHAPTER 110

**(Com. Sub. for H.B. 2885 - By Delegates Perdue, Hatfield,
Marshall, Michael, Moore, Rodighiero and Border)**

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 11, 2009.]

AN ACT to amend and reenact §16-1A-1, §16-1A-3 and §16-1A-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-1A-5, all relating to uniform credentialing for health care providers; defining terms; establishing the composition of the advisory committee; requiring the advisory committee to develop proposed legislation to establish credentialing verification

organization or organizations, and the disposition of existing organizations; describing the duties of CVOs; describing the procedures for completion of verification; establishing time frames for credentialing; requiring all health care practitioners and insurers, hospitals, third party administrators and other health care entities to use the CVO and the credentialing form; developing credentialing requirements; developing privacy considerations; providing penalties; and requiring a report to the Legislature regarding proposed legislation on or before January 1, 2010.

Be it enacted by the Legislature of West Virginia:

That §16-1A-1, §16-1A-3 and §16-1A-4 of the Code of West Virginia, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-1A-5, all to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-1. Legislative findings; purpose.

§16-1A-3. Definitions.

§16-1A-4. Advisory committee.

§16-1A-5. Development of legislation regarding CVO; report required.

§16-1A-1. Legislative findings; purpose.

1 (a) The Legislature finds:

2 (1) Credentialing, required by hospitals, insurance
3 companies, prepaid health plans, third party administrators
4 and other health care entities, is necessary to assess and
5 verify the education, training and experience of health care
6 practitioners to ensure that qualified professionals treat the
7 citizens of this state.

8 (2) Currently, a credentialing application form has been
9 created to reduce duplication and increase efficiency. Each
10 health care entity performs primary source verification for the

11 practitioners who apply to that entity for affiliation. This
12 duplication of primary source verification is time consuming
13 and costly.

14 (3) The Secretary of the Department of Health and
15 Human Resources and the Insurance Commissioner share
16 regulatory authority over the entities requiring credentialing.

17 (b) The purpose of this article is to continue the advisory
18 committee to assist in developing a uniform credentialing
19 process and to develop legislation regarding the use of
20 uniform credentialing through one or more credentialing
21 verification organizations in this state.

§16-1A-3. Definitions.

1 (a) “Commissioner” is the Office of the Insurance
2 Commissioner.

3 (b) “CVO” is a Credentialing Verification Organization
4 which performs primary source verification of all health care
5 practitioners’ training, education and experience.

6 (c) “The department” is the Department of Health and
7 Human Resources;

8 (d) “Health care practitioners” means those established
9 pursuant to section two of this article in legislative rule.

10 (e) “Joint Commission” is an independent not-for-profit
11 organization that evaluates and accredits more than 15,000
12 health care organizations and programs in the United States.

13 (f) “NCQA” means the National Committee for Quality
14 Assurance, which is a private, 501(c)(3) not-for-profit
15 organization dedicated to improving health care quality.

16 (g) "Primary source verification procedure" means the
17 procedure used by a credentialing organization to collect,
18 verify and maintain the accuracy of documents and
19 credentialing information submitted to it by a health care
20 practitioner who is applying for affiliation with a health care
21 entity.

22 (h) "URAC" means the American Accreditation
23 Healthcare Commission.

24 (I) "Payor" means an insurer, prepaid health plan,
25 hospital service corporation, third party administrator as
26 defined in article forty-six, chapter thirty-three of this code,
27 or any other entity that reimburses health care practitioners
28 for medical services.

§16-1A-4. Advisory committee.

1 (a) The Secretary of the Department of Health and
2 Human Resources and the Insurance Commissioner shall
3 jointly establish an advisory committee to assist them in the
4 development and implementation of the uniform
5 credentialing process in this state. The advisory committee
6 shall consist of thirteen appointed members. Six members
7 shall be appointed by the Secretary of the Department of
8 Health and Human Resources: One member shall represent
9 a hospital with one hundred beds or less; one member shall
10 represent a hospital with more than one hundred beds; one
11 member shall represent another type of health care facility
12 requiring credentialing; one member shall be a person
13 currently credentialing on behalf of health care practitioners;
14 and two of the members shall represent the health care
15 practitioners subject to credentialing. Five members shall be
16 representative of the entities regulated by the Insurance
17 Commissioner that require credentialing and shall be
18 appointed by the Insurance Commissioner: One member
19 shall represent an indemnity health care insurer; one member

20 shall represent a preferred provider organization; one
21 member shall represent a third party administrator; one
22 member shall represent a health maintenance organization
23 accredited by URAC; and one member shall represent a
24 health maintenance organization accredited by the national
25 committee on quality assurance. The Secretary of the
26 Department of Health and Human Resources and the
27 Insurance Commissioner, or the designee of either or both,
28 shall be nonvoting ex officio members. Upon the effective
29 date of this legislation, the state hospital association and state
30 medical association shall each designate to the department
31 one person to represent their respective associations and
32 members and those designees shall be appointed to the
33 advisory committee by the secretary of the department.

34 (b) At the expiration of the initial terms, successors will
35 be appointed to terms of three years. Members may serve an
36 unlimited number of terms. When a vacancy occurs as a
37 result of the expiration of a term or otherwise, a successor of
38 like qualifications shall be appointed. Representatives of the
39 hospital and medical associations shall serve for three-year
40 terms.

41 (c) The advisory committee shall meet at least annually
42 to review the status of uniform credentialing in this state, and
43 may make further recommendations to the Secretary of the
44 Department of Health and Human Resources and the
45 Insurance Commissioner as are necessary to carry out the
46 purposes of this article. Any uniform forms and the list of
47 health care practitioners required to use the uniform forms as
48 set forth in legislative rule proposed pursuant to section two
49 of this article may be amended as needed by procedural rule.

§16-1A-5. Development of legislation regarding CVO; report required.

1 (a) On or before January 1, 2010, the advisory committee
2 established pursuant to section four of this article shall
3 develop legislation that considers the following:

4 (1) The establishment of one or more CVOs within the
5 state to provide primary source verification with electronic
6 accessibility on a cost effective and operationally efficient
7 basis;

8 (2) The number of CVOs necessary to provide this access
9 for the state;

10 (3) The treatment of existing CVOs currently doing
11 business within the state;

12 (4) The duties of a CVO and the timelines for completion
13 of its verification duties;

14 (5) The procedures for maintaining healthcare
15 practitioner files;

16 (6) The payment system to cover the costs of the
17 credentialing program;

18 (7) The use and confidentiality of data generated,
19 collected and maintained by a CVO;

20 (8) Compliance by CVOs with certificate requirements
21 including NCQA, URAC, Medicare and Medicaid and other
22 state and federal requirements;

23 (9) The required use by payors and hospitals of a CVO's
24 primary source verification services;

25 (10) Credentialing recredentialing requirements as
26 required by payors, hospitals and state and federal law and
27 regulations;

28 (11) The use of site visits in credentialing;

29 (12) The maintenance, amounts and types of liability
30 insurance to be obtained by a CVO;

31 (13) Consideration of existing statutory protections that
32 should be extended to the CVO;

33 (14) Privacy considerations;

34 (15) If applicable, the terms and conditions of the
35 contract under which a CVO operates in this state and the
36 procedure and criteria upon which a CVO is selected;

37 (16) Penalties, if any, for noncompliance;

38 (17) Timelines for credentialing, recredentialing and
39 other compliance obligation of payors;

40 (18) Reconciliation of the use of forms required by this
41 article with other applicable state and federal laws and
42 regulations.

43 (b) On or before January 1, 2010, the department and the
44 commissioner shall jointly report to the Legislative Oversight
45 Commission on Health and Human Resources Accountability
46 proposed legislation to implement the provisions set forth in
47 this article.

CHAPTER 111

**(Com. Sub. for S.B. 321 - By Senators Prezioso, Foster,
Jenkins, Stollings, Kessler, D. Facemire, Deem,
Bowman and Plymale)**

[Passed April 3, 2009; in effect ninety days from passage.]

[Approved by the Governor on April 13, 2009.]

AN ACT to amend and reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, as amended, all relating generally to the certificate of need process; eliminating certain services of certificate of need review; defining terms; raising the expenditure minimum amount for a capital expenditure and major medical equipment threshold; eliminating archaic language; providing for legislative rule-making authority; setting forth standards for when certain ambulatory health care facilities are not subject to certificate of review; providing that electronic health records are not subject to certificate of review; providing that nonhealth-related projects are subject to certificate of review; and modifying the fee structure for certificate of review by setting forth a capitated amount for certificate of need fees.

Be it enacted by the Legislature of West Virginia:

That §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-3. Certificate of need; new institutional health services defined.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-5. Powers and duties of state agency.

§16-2D-7. Procedures for certificate of need reviews.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f
2 and twenty-nine-b of this chapter are incorporated in this
3 section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the
5 context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area
10 served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care
12 facilities within that geographic area;

13 (5) The health care facilities which provide services
14 similar to the services of the facility under review and which
15 will be significantly affected by the proposed project;

16 (6) The health care facilities which, prior to receipt by the
17 state agency of the proposal being reviewed, have formally
18 indicated an intention to provide similar services in the
19 future;

20 (7) Third-party payors who reimburse health care
21 facilities similar to those proposed for services;

22 (8) Any agency that establishes rates for health care
23 facilities similar to those proposed; or

24 (9) Organizations representing health care providers.

25 (b) "Ambulatory health care facility" means a
26 free-standing facility that provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. For purposes of this definition, a
29 free-standing facility is not located on the campus of an
30 existing health care facility. This definition does not include
31 any facility engaged solely in the provision of lithotripsy
32 services or the private office practice of any one or more
33 health professionals licensed to practice in this state pursuant
34 to the provisions of chapter thirty of this code: *Provided*,
35 That this exemption from review shall not be construed to
36 include practices where major medical equipment otherwise
37 subject to review under the provisions of this article is
38 acquired, offered or developed: *Provided, however*, That this
39 exemption from review shall not be construed to include
40 certain health services otherwise subject to review under the
41 provisions of subdivision (1), subsection (a), section four of
42 this article.

43 (c) "Ambulatory surgical facility" means a free-standing
44 facility that provides surgical treatment to patients not
45 requiring hospitalization. For purposes of this definition, a
46 free-standing facility is not physically attached to a health
47 care facility. This definition does not include the private
48 office practice of any one or more health professionals
49 licensed to practice surgery in this state pursuant to the
50 provisions of chapter thirty of this code: *Provided*, That this
51 exemption from review shall not be construed to include
52 practices where major medical equipment otherwise subject
53 to review under the provisions of this article is acquired,
54 offered or developed: *Provided, however*, That this
55 exemption from review shall not be construed to include

56 health services otherwise subject to review under the
57 provisions of subdivision (1), subsection (a), section four of
58 this article.

59 (d) "Applicant" means: (1) The governing body or the
60 person proposing a new institutional health service who is, or
61 will be, the health care facility licensee wherein the new
62 institutional health service is proposed to be located; and (2)
63 in the case of a proposed new institutional health service not
64 to be located in a licensed health care facility, the governing
65 body or the person proposing to provide the new institutional
66 health service. Incorporators or promoters who will not
67 constitute the governing body or persons responsible for the
68 new institutional health service may not be an applicant.

69 (e) "Bed capacity" means the number of beds licensed to
70 a health care facility or the number of adult and pediatric
71 beds permanently staffed and maintained for immediate use
72 by inpatients in patient rooms or wards in an unlicensed
73 facility.

74 (f) "Campus" means the adjacent grounds and buildings,
75 or grounds and buildings not separated by more than a public
76 right-of-way, of a health care facility.

77 (g) "Capital expenditure" means:

78 (1) An expenditure made by or on behalf of a health care
79 facility, which:

80 (A) (i) Under generally accepted accounting principles is
81 not properly chargeable as an expense of operation and
82 maintenance; or (ii) is made to obtain either by lease or
83 comparable arrangement any facility or part thereof or any
84 equipment for a facility or part; and

85 (B) (i) Exceeds the expenditure minimum; or (ii) is a
86 substantial change to the bed capacity of the facility with
87 respect to which the expenditure is made; or (iii) is a
88 substantial change to the services of such facility;

89 (2) The donation of equipment or facilities to a health
90 care facility, which if acquired directly by that facility would
91 be subject to review;

92 (3) The transfer of equipment or facilities for less than
93 fair market value if the transfer of the equipment or facilities
94 at fair market value would be subject to review; or

95 (4) A series of expenditures, if the sum total exceeds the
96 expenditure minimum and if determined by the state agency
97 to be a single capital expenditure subject to review. In
98 making this determination, the state agency shall consider:
99 Whether the expenditures are for components of a system
100 which is required to accomplish a single purpose; whether the
101 expenditures are to be made over a two-year period and are
102 directed towards the accomplishment of a single goal within
103 the health care facility's long-range plan; or whether the
104 expenditures are to be made within a two-year period within
105 a single department such that they will constitute a significant
106 modernization of the department.

107 (h) "Expenditure minimum" means \$2,700,000 for the
108 calendar year 2009. The state agency shall adjust the
109 expenditure minimum annually and publish an update of the
110 amount on or before December 31 of each year. The
111 expenditure minimum adjustment shall be based on the DRI
112 inflation index published in the *Global Insight DRI/WEFA*
113 *Health Care Cost Review*, or its successor or appropriate
114 replacement index. This amount shall include the cost of any
115 studies, surveys, designs, plans, working drawings,
116 specifications and other activities, including staff effort and
117 consulting and other services essential to the acquisition,

118 improvement, expansion or replacement of any plant or
119 equipment.

120 (i) "Health", used as a term, includes physical and mental
121 health.

122 (j) "Health care facility" means a publicly or privately
123 owned facility, agency or entity that offers or provides health
124 care services, whether a for-profit or nonprofit entity and
125 whether or not licensed, or required to be licensed, in whole
126 or in part, and includes, but is not limited to, hospitals;
127 skilled nursing facilities; kidney disease treatment centers,
128 including free-standing hemodialysis units; intermediate care
129 facilities; ambulatory health care facilities; ambulatory
130 surgical facilities; home health agencies; hospice agencies;
131 rehabilitation facilities; health maintenance organizations;
132 and community mental health and mental retardation
133 facilities. For purposes of this definition, "community mental
134 health and mental retardation facility" means a private
135 facility which provides such comprehensive services and
136 continuity of care as emergency, outpatient, partial
137 hospitalization, inpatient or consultation and education for
138 individuals with mental illness, mental retardation or drug or
139 alcohol addiction.

140 (k) "Health care provider" means a person, partnership,
141 corporation, facility, hospital or institution licensed or
142 certified or authorized by law to provide professional health
143 care service in this state to an individual during that
144 individual's medical, remedial or behavioral health care,
145 treatment or confinement.

146 (l) "Health maintenance organization" means a public or
147 private organization which:

148 (1) Is required to have a certificate of authority to operate
149 in this state pursuant to section three, article twenty-five-a,
150 chapter thirty-three of this code; or

151 (2)(A) Provides or otherwise makes available to enrolled
152 participants health care services, including substantially the
153 following basic health care services: Usual physician
154 services, hospitalization, laboratory, X ray, emergency and
155 preventive services and out-of-area coverage;

156 (B) Is compensated except for copayments for the
157 provision of the basic health care services listed in paragraph
158 (A) of this subdivision to enrolled participants on a
159 predetermined periodic rate basis without regard to the date
160 the health care services are provided and which is fixed
161 without regard to the frequency, extent or kind of health
162 service actually provided; and

163 (C) Provides physicians' services: (i) Directly through
164 physicians who are either employees or partners of the
165 organization; or (ii) through arrangements with individual
166 physicians or one or more groups of physicians organized on
167 a group practice or individual practice basis.

168 (m) "Health services" means clinically related preventive,
169 diagnostic, treatment or rehabilitative services, including
170 alcohol, drug abuse and mental health services.

171 (n) "Home health agency" means an organization
172 primarily engaged in providing professional nursing services
173 either directly or through contract arrangements and at least
174 one of the following services: Home health aide services,
175 other therapeutic services, physical therapy, speech therapy,
176 occupational therapy, nutritional services or medical social
177 services to persons in their place of residence on a part-time
178 or intermittent basis.

179 (o) "Hospice agency" means a private or public agency
180 or organization licensed in West Virginia for the
181 administration or provision of hospice care services to
182 terminally ill persons in the persons' temporary or permanent

183 residences by using an interdisciplinary team, including, at a
184 minimum, persons qualified to perform nursing services;
185 social work services; the general practice of medicine or
186 osteopathy; and pastoral or spiritual counseling.

187 (p) "Hospital" means a facility licensed as such pursuant
188 to the provisions of article five-b of this chapter, and any
189 acute care facility operated by the state government, that
190 primarily provides inpatient diagnostic, treatment or
191 rehabilitative services to injured, disabled or sick persons
192 under the supervision of physicians and includes psychiatric
193 and tuberculosis hospitals.

194 (q) "Intermediate care facility" means an institution that
195 provides health-related services to individuals with mental or
196 physical conditions that require services above the level of
197 room and board, but do not require the degree of services
198 provided in a hospital or skilled-nursing facility.

199 (r) "Long-range plan" means a document formally
200 adopted by the legally constituted governing body of an
201 existing health care facility or by a person proposing a new
202 institutional health service which contains the information
203 required by the state agency in rules adopted pursuant to
204 section eight of this article.

205 (s) "Major medical equipment" means a single unit of
206 medical equipment or a single system of components with
207 related functions which is used for the provision of medical
208 and other health services and costs in excess of \$2,700,000
209 in the calendar year 2009. The state agency shall adjust the
210 dollar amount specified in this subsection annually and
211 publish an update of the amount on or before December 31
212 of each year. The adjustment of the dollar amount shall be
213 based on the DRI inflation index published in the *Global*
214 *Insight DRI/WEFA Health Care Cost Review* or its successor
215 or appropriate replacement index. This term does not include

216 medical equipment acquired by or on behalf of a clinical
217 laboratory to provide clinical laboratory services if the
218 clinical laboratory is independent of a physician's office and
219 a hospital and it has been determined under Title XVIII of the
220 Social Security Act to meet the requirements of paragraphs
221 ten and eleven, Section 1861(s) of such act, Title 42 U. S. C.
222 §1395x. In determining whether medical equipment is major
223 medical equipment, the cost of studies, surveys, designs,
224 plans, working drawings, specifications and other activities
225 essential to the acquisition of such equipment shall be
226 included. If the equipment is acquired for less than fair
227 market value, the term "cost" includes the fair market value.

228 (t) "Medically underserved population" means the
229 population of an area designated by the state agency as
230 having a shortage of personal health services. The state
231 agency may consider unusual local conditions that are a
232 barrier to accessibility or availability of health services. The
233 designation shall be in rules adopted by the state agency
234 pursuant to section eight of this article, and the population so
235 designated may include the state's medically underserved
236 population designated by the federal Secretary of Health and
237 Human Services under Section 330(b)(3) of the Public Health
238 Service Act, as amended, Title 42 U. S. C. §254.

239 (u) "New institutional health service" means any service
240 as described in section three of this article.

241 (v) "Nonhealth-related project" means a capital
242 expenditure for the benefit of patients, visitors, staff or
243 employees of a health care facility and not directly related to
244 preventive, diagnostic, treatment or rehabilitative services
245 offered by the health care facility. This includes, but is not
246 limited to, chapels, gift shops, news stands, computer and
247 information technology systems, educational, conference and
248 meeting facilities, but excluding medical school facilities,
249 student housing, dining areas, administration and volunteer

250 offices, modernization of structural components, boiler repair
251 or replacement, vehicle maintenance and storage facilities,
252 parking facilities, mechanical systems for heating, ventilation
253 systems, air conditioning systems and loading docks.

254 (w) "Offer", when used in connection with health
255 services, means that the health care facility or health
256 maintenance organization holds itself out as capable of
257 providing, or as having the means to provide, specified health
258 services.

259 (x) "Person" means an individual, trust, estate,
260 partnership, committee, corporation, association and other
261 organizations such as joint-stock companies and insurance
262 companies, a state or a political subdivision or
263 instrumentality thereof or any legal entity recognized by the
264 state.

265 (y) "Physician" means a doctor of medicine or osteopathy
266 legally authorized to practice by the state.

267 (z) "Proposed new institutional health service" means any
268 service as described in section three of this article.

269 (aa) "Psychiatric hospital" means an institution that
270 primarily provides to inpatients, by or under the supervision
271 of a physician, specialized services for the diagnosis,
272 treatment and rehabilitation of mentally ill and emotionally
273 disturbed persons.

274 (bb) "Rehabilitation facility" means an inpatient facility
275 operated for the primary purpose of assisting in the
276 rehabilitation of disabled persons through an integrated
277 program of medical and other services which are provided
278 under competent professional supervision.

279 (cc) "Review agency" means an agency of the state,
280 designated by the Governor as the agency for the review of
281 state agency decisions.

282 (dd) "Skilled nursing facility" means an institution, or a
283 distinct part of an institution, that primarily provides inpatient
284 skilled nursing care and related services, or rehabilitation
285 services, to injured, disabled or sick persons.

286 (ee) "State agency" means the Health Care Authority
287 created, established and continued pursuant to article
288 twenty-nine-b of this chapter.

289 (ff) "State health plan" means the document approved by
290 the Governor after preparation by the former statewide health
291 coordinating council or that document as approved by the
292 Governor after amendment by the former health care
293 planning council or the state agency.

294 (gg) "Substantial change to the bed capacity" of a health
295 care facility means any change, associated with a capital
296 expenditure, that increases or decreases the bed capacity or
297 relocates beds from one physical facility or site to another,
298 but does not include a change by which a health care facility
299 reassigns existing beds as swing beds between acute care and
300 long-term care categories: *Provided*, That a decrease in bed
301 capacity in response to federal rural health initiatives is
302 excluded from this definition.

303 (hh) "Substantial change to the health services" of a
304 health care facility means: (1) The addition of a health
305 service offered by or on behalf of the health care facility
306 which was not offered by or on behalf of the facility within
307 the twelve-month period before the month in which the
308 service is first offered; or (2) the termination of a health
309 service offered by or on behalf of the facility: *Provided*, That
310 "substantial change to the health services" does not include

311 the providing of ambulance service, wellness centers or
312 programs, adult day care or respite care by acute care
313 facilities.

314 (ii) "To develop", when used in connection with health
315 services, means to undertake those activities which upon their
316 completion will result in the offer of a new institutional
317 health service or the incurring of a financial obligation in
318 relation to the offering of such a service.

§16-2D-3. Certificate of need; new institutional health services defined.

1 (a) Except as provided in section four of this article, any
2 new institutional health service may not be acquired, offered
3 or developed within this state except upon application for and
4 receipt of a certificate of need as provided by this article.
5 Whenever a new institutional health service for which a
6 certificate of need is required by this article is proposed for
7 a health care facility for which, pursuant to section four of
8 this article, no certificate of need is or was required, a
9 certificate of need shall be issued before the new institutional
10 health service is offered or developed. A person may not
11 knowingly charge or bill for any health services associated
12 with any new institutional health service that is knowingly
13 acquired, offered or developed in violation of this article and
14 any bill made in violation of this section is legally
15 unenforceable.

16 (b) For purposes of this article, a proposed "new
17 institutional health service" includes:

18 (1) The construction, development, acquisition or other
19 establishment of a new health care facility or health
20 maintenance organization;

21 (2) The partial or total closure of a health care facility or
22 health maintenance organization with which a capital
23 expenditure is associated;

24 (3) Any obligation for a capital expenditure incurred by
25 or on behalf of a health care facility, except as exempted in
26 section four of this article, or health maintenance
27 organization in excess of the expenditure minimum or any
28 obligation for a capital expenditure incurred by any person to
29 acquire a health care facility. An obligation for a capital
30 expenditure is considered to be incurred by or on behalf of a
31 health care facility:

32 (A) When a contract, enforceable under state law, is
33 entered into by or on behalf of the health care facility for the
34 construction, acquisition, lease or financing of a capital asset;

35 (B) When the governing board of the health care facility
36 takes formal action to commit its own funds for a
37 construction project undertaken by the health care facility as
38 its own contractor; or

39 (C) In the case of donated property, on the date on which
40 the gift is completed under state law;

41 (4) A substantial change to the bed capacity of a health
42 care facility with which a capital expenditure is associated;

43 (5) The addition of health services as specified by the
44 state agency which are offered by or on behalf of a health
45 care facility or health maintenance organization and which
46 were not offered on a regular basis by or on behalf of the
47 health care facility or health maintenance organization within
48 the twelve-month period prior to the time the services would
49 be offered: *Provided*, That lithotripsy services are not subject
50 to certificate of need review. The state agency shall specify

51 by rule those health services subject to certificate of need
52 review.

53 (6) The addition of ventilator services for any nursing
54 facility bed by any health care facility or health maintenance
55 organization;

56 (7) The deletion of one or more health services
57 previously offered on a regular basis by or on behalf of a
58 health care facility or health maintenance organization which
59 is associated with a capital expenditure;

60 (8) A substantial change to the bed capacity or health
61 services offered by or on behalf of a health care facility,
62 whether or not the change is associated with a proposed
63 capital expenditure, if the change is associated with a
64 previous capital expenditure for which a certificate of need
65 was issued and if the change will occur within two years after
66 the date the activity which was associated with the previously
67 approved capital expenditure was undertaken;

68 (9) The acquisition of major medical equipment;

69 (10) A substantial change in an approved new
70 institutional health service for which a certificate of need is
71 in effect. For purposes of this subsection, "substantial
72 change" shall be defined by the state agency in rules adopted
73 pursuant to section eight of this article; or

74 (11) An expansion of the service area for hospice or
75 home health service, regardless of the time period in which
76 the expansion is contemplated or made.

77 (c) Notwithstanding any other provisions of this article to
78 the contrary, the construction, development, acquisition or
79 other establishment of an institutional health service outside
80 of this state and within a county contiguous to the border of

81 this state by or on behalf of a person that would otherwise be
82 subject to review under the provisions of this section is not
83 subject to certificate of need review. A hospital subject to
84 review of the West Virginia Health Care Authority that
85 constructs, develops or acquires any health care service or
86 facility outside of West Virginia may not use the financial
87 condition or performance of the newly constructed,
88 developed, acquired or established health care service or
89 facility as a basis or justification for obtaining a rate
90 adjustment pursuant to article twenty-nine-b of this chapter.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (9), subsection (b),
2 section three of this article, nothing in this article or the rules
3 adopted pursuant to the provisions of this article may be
4 construed to authorize the licensure, supervision, regulation
5 or control in any manner of the following:

6 (1) Private office practice of any one or more health
7 professionals licensed to practice in this state pursuant to the
8 provisions of chapter thirty of this code: *Provided*, That such
9 exemption from review of private office practice shall not be
10 construed to include such practices where major medical
11 equipment otherwise subject to review under the provisions
12 of this article is acquired, offered or developed: *Provided*,
13 *however*, That such exemption from review of private office
14 practice shall not be construed to include the acquisition,
15 offering or development of one or more health services,
16 including ambulatory surgical facilities or centers, lithotripsy,
17 magnetic resonance imaging and radiation therapy by one or
18 more health professionals. The state agency shall adopt rules
19 pursuant to section eight of this article which specify the
20 health services acquired, offered or developed by health
21 professionals which are subject to certificate of need review;

22 (2) Dispensaries and first-aid stations located within
23 business or industrial establishments maintained solely for
24 the use of employees: *Provided*, That such facility does not
25 contain inpatient or resident beds for patients or employees
26 who generally remain in the facility for more than
27 twenty-four hours;

28 (3) Establishments, such as motels, hotels and
29 boardinghouses, which provide medical, nursing personnel
30 and health-related services;

31 (4) The remedial care or treatment of residents or patients
32 in any home or institution conducted only for those who rely
33 solely upon treatment by prayer or spiritual means in
34 accordance with the creed or tenets of any recognized church
35 or religious denomination;

36 (5) The creation of new primary care services located in
37 communities that are underserved with respect to primary
38 care services: *Provided*, That to qualify for this exemption,
39 an applicant must be a community-based nonprofit
40 organization with a community board that provides or will
41 provide primary care services to people without regard to
42 ability to pay: *Provided, however*, That the exemption from
43 certificate of need review of new primary care services
44 provided by this subdivision shall not include the acquisition,
45 offering or development of major medical equipment
46 otherwise subject to review under the provisions of this
47 article or to include the acquisition, offering or development
48 of ambulatory surgical facilities, lithotripsy, magnetic
49 resonance imaging or radiation therapy. The Office of
50 Community and Rural Health Services shall define which
51 services constitute primary care services for purposes of this
52 subdivision and shall, to prevent duplication of primary care
53 services, determine whether a community is underserved
54 with respect to certain primary care services within the
55 meaning of this subdivision. Any organization planning to

56 qualify for an exemption pursuant to this subdivision shall
57 submit to the state agency a letter of intent describing the
58 proposed new services and area of service; and

59 (6) The creation of birthing centers by nonprofit
60 primary care centers that have a community board and
61 provide primary care services to people in their community
62 without regard to ability to pay or by nonprofit hospitals
63 with less than one hundred licensed acute care beds:
64 *Provided*, That to qualify for this exemption, an applicant
65 shall be located in an area that is underserved with respect
66 to low-risk obstetrical services: *Provided, however*, That if
67 a primary care center attempting to qualify for this
68 exemption is located in the same county as a hospital that is
69 also eligible for this exemption, or if a hospital attempting
70 to qualify for this exemption is located in the same county
71 as a primary care center that is also eligible for this
72 exemption, then at least one primary care center and at least
73 one hospital from said county shall collaborate for the
74 provision of services at a birthing center in order to qualify
75 for this exemption: *Provided further*, That for purposes of
76 this subsection, a "birthing center" is a short-stay
77 ambulatory health care facility designed for low-risk births
78 following normal uncomplicated pregnancy. Any primary
79 care center or hospital planning to qualify for an exemption
80 pursuant to this subdivision shall submit to the state agency
81 a letter of intent describing the proposed birthing center and
82 area of service.

83 (b) (1) A health care facility is not required to obtain a
84 certificate of need for the acquisition of major medical
85 equipment to be used solely for research, the addition of
86 health services to be offered solely for research or the
87 obligation of a capital expenditure to be made solely for
88 research if the health care facility provides the notice
89 required in subdivision (2) of this subsection and the state

90 agency does not find, within sixty days after it receives such
91 notice, that the acquisition, offering or obligation will or will
92 have the effect to:

93 (A) Affect the charges of the facility for the provision of
94 medical or other patient care services other than the services
95 which are included in the research;

96 (B) Result in a substantial change to the bed capacity of
97 the facility; or

98 (C) Result in a substantial change to the health services
99 of the facility.

100 (2) Before a health care facility acquires major medical
101 equipment to be used solely for research, offers a health
102 service solely for research or obligates a capital expenditure
103 solely for research, such health care facility shall notify in
104 writing the state agency of such facility's intent and the use
105 to be made of such medical equipment, health service or
106 capital expenditure.

107 (3) If major medical equipment is acquired, a health
108 service is offered or a capital expenditure is obligated and a
109 certificate of need is not required for such acquisition,
110 offering or obligation as provided in subdivision (1) of this
111 subsection, such equipment or service or equipment or
112 facilities acquired through the obligation of such capital
113 expenditure may not be used in such a manner as to have the
114 effect or to make a change described in paragraphs (A), (B)
115 and (C) of said subdivision unless the state agency issues a
116 certificate of need approving such use.

117 (4) For purposes of this subsection, the term "solely for
118 research" includes patient care provided on an occasional and
119 irregular basis and not as part of a research program.

120 (c) (1) The state agency may adopt rules pursuant to
121 section eight of this article to specify the circumstances under
122 which a certificate of need may not be required for the
123 obligation of a capital expenditure to acquire, either by
124 purchase or under lease or comparable arrangement, an
125 existing health care facility: *Provided*, That a certificate of
126 need is required for the obligation of a capital expenditure to
127 acquire, either by purchase or under lease or comparable
128 arrangement, an existing health care facility if:

129 (A) The notice required by subdivision (2) of this
130 subsection is not filed in accordance with said subdivision
131 with respect to such acquisition; or

132 (B) The state agency finds, within thirty days after the
133 date it receives a notice in accordance with subdivision (2) of
134 this subsection, with respect to such acquisition, that the
135 services or bed capacity of the facility will be changed by
136 reason of said acquisition.

137 (2) Before any person enters into a contractual
138 arrangement to acquire an existing health care facility, such
139 person shall notify the state agency of his or her intent to
140 acquire the facility and of the services to be offered in the
141 facility and its bed capacity. Such notice shall be made in
142 writing and shall be made at least thirty days before
143 contractual arrangements are entered into to acquire the
144 facility with respect to which the notice is given. The notice
145 shall contain all information the state agency requires.

146 (d) The state agency shall adopt rules pursuant to section
147 eight of this article to specify the circumstances under which
148 and the procedures by which a certificate of need may not be
149 required for shared services between two or more acute care
150 facilities providing services made available through existing
151 technology that can reasonably be mobile. The state agency
152 shall specify the types of items in the rules and under what

153 circumstances mobile MRI and mobile lithotripsy may be so
154 exempted from review. In no case, however, will mobile
155 cardiac catheterization be exempted from certificate of need
156 review. In addition, if the shared services mobile unit proves
157 less cost effective than a fixed unit, the acute care facility
158 will not be exempted from certificate of need review.

159 On a yearly basis, the state agency shall review existing
160 technologies to determine if other shared services should be
161 included under this exemption.

162 (e) The state agency shall promulgate rules for legislative
163 approval in accordance with the provisions of article three,
164 chapter twenty-nine-a of this code to specify the
165 circumstances under which, and the procedures by which, a
166 certificate of need may not be required for the construction,
167 development, acquisition or other establishment by a hospital
168 of an ambulatory health care facility. Certificate of need may
169 not be required if:

170 (1) The ambulatory health care facility is located in the
171 same county as the hospital;

172 (2) Employs five or less physicians licensed to practice
173 in this state pursuant to either article three or article fourteen,
174 chapter thirty of this code;

175 (3) The total capital expenditure does not exceed the
176 expenditure minimum set forth in subsection two of this
177 section; and

178 (4) The construction, development, acquisition or other
179 establishment of an ambulatory health care facility is not
180 opposed by an affected person after substantive public notice
181 pursuant to the provisions of article three, chapter fifty-nine
182 of this code has been given by the Health Care Authority.

183 (f) The Health Care Authority shall provide at least thirty
184 days' notice to the public of the intent of a health care facility
185 to construct, acquire or develop an ambulatory health care
186 facility. The Health Care Authority shall cause a Class II
187 legal advertisement to be published in a qualified newspaper
188 of general circulation where the construction, acquisition or
189 development of the ambulatory health care facility is or will
190 be geographically located. The thirty-day notice shall
191 commence with the first date of publication. Additionally, if
192 the county in which the ambulatory health care facility is or
193 will be geographically located contains a daily newspaper, a
194 legal advertisement shall also be placed at least once in the
195 daily newspaper. Any public notice shall include the name
196 of the hospital seeking to develop, acquire or construct an
197 ambulatory health care facility, the kind of practice to be
198 developed, acquired or constructed, the geographic location
199 of the ambulatory health care facility and the address where
200 protests may be submitted or filed.

201 (g) The state agency shall promulgate emergency rules
202 pursuant to the provision of chapter twenty-nine-a of this
203 code by July 1, 2009, to establish an exemption process for
204 such projects.

205 (h) The acquisition, development or establishment of a
206 certified interoperable electronic health record or electronic
207 medical record system is not subject to certificate of need
208 review.

209 (i) A health care facility is not required to obtain a
210 certificate of need for any nonhealth-related project that does
211 not exceed:

212 (1) Five million dollars for a hospital with less than one
213 hundred licensed acute care beds;

214 (2) Ten million dollars for a hospital with one hundred or
215 more licensed acute care beds; or

216 (3) Five million dollars for any other project.

217 (j) A certificate of need is not required for a psychiatric
218 hospital operated by state government for the purpose of
219 constructing forensic beds.

220 (k) Any behavioral health care service selected by the
221 Department of Health and Human Resources in response to
222 its request for application for services intended to return
223 children currently placed in out-of-state facilities to the state
224 or to prevent placement of children in out-of-state facilities
225 is not subject to a certificate of need.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state
5 and for amending and modifying the state health plan which
6 includes the certificate of need standards. The state agency
7 shall review the state health plan, including the certificate of
8 need standards and make any necessary amendments and
9 modifications. The state agency shall also review the cost
10 effectiveness of the certificate of need program. The state
11 agency may form task forces to assist it in addressing these
12 issues. The task forces shall be composed of representatives
13 of consumers, business, providers, payers and state agencies.

14 (c) The state agency may seek advice and assistance of
15 other persons, organizations and other state agencies in the
16 performance of the state agency's responsibilities under this
17 article.

18 (d) For health services for which competition
19 appropriately allocates supply consistent with the state health

20 plan, the state agency shall, in the performance of its
21 functions under this article, give priority, where appropriate
22 to advance the purposes of quality assurance, cost
23 effectiveness and access, to actions which would strengthen
24 the effect of competition on the supply of the services.

25 (e) For health services for which competition does not or
26 will not appropriately allocate supply consistent with the
27 state health plan, the state agency shall, in the exercise of its
28 functions under this article, take actions, where appropriate
29 to advance the purposes of quality assurance, cost
30 effectiveness and access and the other purposes of this
31 article, to allocate the supply of the services.

32 (f) Notwithstanding the provisions of section seven of
33 this article, the state agency may charge a fee for the filing of
34 any application, the filing of any notice in lieu of an
35 application, the filing of any exemption determination
36 request or the filing of any request for a declaratory ruling.
37 The fees charged may vary according to the type of matter
38 involved, the type of health service or facility involved or the
39 amount of capital expenditure involved: *Provided*, That any
40 fee charged pursuant to this subsection may not exceed a
41 dollar amount to be established by procedural rule. The state
42 agency shall evaluate and amend any procedural rule
43 promulgated prior to the amendments to this subsection made
44 during the 2009 regular session of the Legislature. The fees
45 charged shall be deposited into a special fund known as the
46 Certificate of Need Program Fund to be expended for the
47 purposes of this article.

48 (g) A hospital, nursing home or other health care facility
49 may not add any intermediate care or skilled nursing beds to
50 its current licensed bed complement. This prohibition also
51 applies to the conversion of acute care or other types of beds
52 to intermediate care or skilled nursing beds: *Provided*, That
53 hospitals eligible under the provisions of section four-a of

54 this article and subsection (i) of this section may convert
55 acute care beds to skilled nursing beds in accordance with the
56 provisions of these sections, upon approval by the state
57 agency. Furthermore, a certificate of need may not be
58 granted for the construction or addition of any intermediate
59 care or skilled nursing beds except in the case of facilities
60 designed to replace existing beds in unsafe existing facilities.
61 A health care facility in receipt of a certificate of need for the
62 construction or addition of intermediate care or skilled
63 nursing beds which was approved prior to the effective date
64 of this section shall incur an obligation for a capital
65 expenditure within twelve months of the date of issuance of
66 the certificate of need. Extensions may not be granted
67 beyond the twelve-month period. The state agency shall
68 establish a task force or utilize an existing task force to study
69 the need for additional nursing facility beds in this state. The
70 study shall include a review of the current moratorium on the
71 development of nursing facility beds; the exemption for the
72 conversion of acute care beds to skilled nursing facility beds;
73 the development of a methodology to assess the need for
74 additional nursing facility beds; and certification of new beds
75 both by Medicare and Medicaid. The task force shall be
76 composed of representatives of consumers, business,
77 providers, payers and government agencies.

78 (h) An additional intermediate care facility for the
79 mentally retarded (ICF/MR) beds may not be granted a
80 certificate of need, except that prohibition does not apply to
81 ICF/MR beds approved under the Kanawha County Circuit
82 Court order of August 3, 1989, civil action number
83 MISC-81-585 issued in the case of E. H. v. Matin, 168 W.
84 V. 248, 284 S. E. 2d 232 (1981).

85 (i) Notwithstanding the provisions of subsection (g) of
86 this section and further notwithstanding the provisions of
87 subsection (b), section three of this article, an existing acute
88 care hospital may apply to the Health Care Authority for a

89 certificate of need to convert acute care beds to skilled
90 nursing beds: *Provided*, That the proposed skilled nursing
91 beds are Medicare-certified only: *Provided, however*, That
92 any hospital which converts acute care beds to
93 Medicare-certified only skilled nursing beds shall not bill for
94 any Medicaid reimbursement for any converted beds. In
95 converting beds, the hospital shall convert a minimum of one
96 acute care bed into one Medicare-certified only skilled
97 nursing bed. The Health Care Authority may require a
98 hospital to convert up to and including three acute care beds
99 for each Medicare-certified only skilled nursing bed:
100 *Provided further*, That a hospital designated or provisionally
101 designated by the state agency as a rural primary care
102 hospital may convert up to thirty beds to a distinct-part
103 nursing facility, including skilled nursing beds and
104 intermediate care beds, on a one-for-one basis if the rural
105 primary care hospital is located in a county without a
106 certified freestanding nursing facility and the hospital may
107 bill for Medicaid reimbursement for the converted beds: *And*
108 *provided further*, That if the hospital rejects the designation
109 as a rural primary care hospital, then the hospital may not bill
110 for Medicaid reimbursement. The Health Care Authority
111 shall adopt rules to implement this subsection which require
112 that:

113 (1) All acute care beds converted shall be permanently
114 deleted from the hospital's acute care bed complement and
115 the hospital may not thereafter add, by conversion or
116 otherwise, acute care beds to its bed complement without
117 satisfying the requirements of subsection (b), section three of
118 this article for which purposes an addition, whether by
119 conversion or otherwise, shall be considered a substantial
120 change to the bed capacity of the hospital notwithstanding the
121 definition of that term found in subsection (ff), section two of
122 this article.

123 (2) The hospital shall meet all federal and state licensing
124 certification and operational requirements applicable to
125 nursing homes including a requirement that all skilled care
126 beds created under this subsection shall be located in
127 distinct-part, long-term care units.

128 (3) The hospital shall demonstrate a need for the project.

129 (4) The hospital shall use existing space for the
130 Medicare-certified only skilled nursing beds. Under no
131 circumstances shall the hospital construct, lease or acquire
132 additional space for purposes of this section.

133 (5) The hospital shall notify the acute care patient, prior
134 to discharge, of facilities with skilled nursing beds which are
135 located in or near the patient's county of residence. Nothing
136 in this subsection negatively affects the rights of inspection
137 and certification which are otherwise required by federal law
138 or regulations or by this code or duly adopted rules of an
139 authorized state entity.

140 (j) (1) Notwithstanding the provisions of subsection (g)
141 of this section, a retirement life care center with no skilled
142 nursing beds may apply to the Health Care Authority for a
143 certificate of need for up to sixty skilled nursing beds
144 provided the proposed skilled beds are Medicare-certified
145 only. On a statewide basis, a maximum of one hundred
146 eighty skilled beds which are Medicare-certified only may be
147 developed pursuant to this subsection. The state health plan
148 is not applicable to projects submitted under this subsection.
149 The Health Care Authority shall adopt rules to implement
150 this subsection which shall include a requirement that:

151 (A) The one hundred eighty beds are to be distributed on
152 a statewide basis;

153 (B) There be a minimum of twenty beds and a maximum
154 of sixty beds in each approved unit;

155 (C) The unit developed by the retirement life care center
156 meets all federal and state licensing certification and
157 operational requirements applicable to nursing homes;

158 (D) The retirement center demonstrates a need for the
159 project;

160 (E) The retirement center offers personal care, home
161 health services and other lower levels of care to its residents;
162 and

163 (F) The retirement center demonstrates both short- and
164 long-term financial feasibility.

165 (2) Nothing in this subsection negatively affects the
166 rights of inspection and certification which are otherwise
167 required by federal law or regulations or by this code or duly
168 adopted rules of an authorized state entity.

169 (k) The state agency may order a moratorium upon the
170 offering or development of a new institutional health service
171 when criteria and guidelines for evaluating the need for the
172 new institutional health service have not yet been adopted or
173 are obsolete. The state agency may also order a moratorium
174 on the offering or development of a health service,
175 notwithstanding the provisions of subdivision (5), subsection
176 (b), section three of this article, when it determines that the
177 proliferation of the service may cause an adverse impact on
178 the cost of health care or the health status of the public. A
179 moratorium shall be declared by a written order which shall
180 detail the circumstances requiring the moratorium. Upon the
181 adoption of criteria for evaluating the need for the health
182 service affected by the moratorium, or one hundred eighty
183 days from the declaration of a moratorium, whichever is less,
184 the moratorium shall be declared to be over and applications
185 for certificates of need are processed pursuant to section six
186 of this article.

187 (1) (1) The state agency shall coordinate the collection of
188 information needed to allow the state agency to develop
189 recommended modifications to certificate of need standards
190 as required in this article. When the state agency proposes
191 amendments or modifications to the certificate of need
192 standards, it shall file with the Secretary of State, for
193 publication in the State Register, a notice of proposed action,
194 including the text of all proposed amendments and
195 modifications, and a date, time and place for receipt of
196 general public comment. To comply with the public
197 comment requirement of this section, the state agency may
198 hold a public hearing or schedule a public comment period
199 for the receipt of written statements or documents.

200 (2) When amending and modifying the certificate of need
201 standards, the state agency shall identify relevant criteria
202 contained in section six of this article or rules adopted
203 pursuant to section eight of this article and apply those
204 relevant criteria to the proposed new institutional health
205 service in a manner that promotes the public policy goals and
206 legislative findings contained in section one of this article.
207 In doing so, the state agency may consult with or rely upon
208 learned treatises in health planning, recommendations and
209 practices of other health planning agencies and organizations,
210 recommendations from consumers, recommendations from
211 health care providers, recommendations from third-party
212 payors, materials reflecting the standard of care, the state
213 agency's own developed expertise in health planning, data
214 accumulated by the state agency or other local, state or
215 federal agency or organization and any other source deemed
216 relevant to the certificate of need standards proposed for
217 amendment or modification.

218 (3) All proposed amendments and modifications to the
219 certificate of need standards, with a record of the public
220 hearing or written statements and documents received
221 pursuant to a public comment period, shall be presented to

222 the Governor. Within thirty days of receiving the proposed
223 amendments or modifications, the Governor shall either
224 approve or disapprove all or part of the amendments and
225 modifications and, for any portion of amendments or
226 modifications not approved, shall specify the reason or
227 reasons for nonapproval. Any portions of the amendments or
228 modifications not approved by the Governor may be revised
229 and resubmitted.

230 (4) The certificate of need standards adopted pursuant to
231 this section which are applicable to the provisions of this
232 article are not subject to article three, chapter twenty-nine-a
233 of this code. The state agency shall follow the provisions set
234 forth in this subsection for giving notice to the public of its
235 actions, holding hearings or receiving comments on the
236 certificate of need standards. The certificate of need
237 standards in effect on November 29, 2005, and all prior
238 versions promulgated and adopted in accordance with the
239 provisions of this section are and have been in full force and
240 effect from each of their respective dates of approval by the
241 Governor.

242 (m) The state agency may exempt from or expedite rate
243 review, certificate of need and annual assessment
244 requirements and issue grants and loans to financially
245 vulnerable health care facilities located in underserved areas
246 that the state agency and the Office of Community and Rural
247 Health Services determine are collaborating with other
248 providers in the service area to provide cost effective health
249 care services.

§16-2D-7. Procedures for certificate of need reviews.

1 (a) Prior to submission of an application for a certificate
2 of need, the state agency shall require the submission of
3 long-range plans by health care facilities with respect to the
4 development of proposals subject to review under this article.

5 The plans shall be in such form and contain such information
6 as the state agency requires.

7 (b) An application for a certificate of need shall be
8 submitted to the state agency prior to the offering or
9 development of all new institutional services within this state.
10 Persons proposing new institutional health services shall
11 submit letters of intent not less than fifteen days prior to
12 submitting an application. The letters of intent shall be of
13 such detail as specified by the state agency.

14 (c) The state agency may adopt rules pursuant to section
15 eight of this article for:

16 (1) Provision for applications to be submitted in
17 accordance with a timetable established by the state agency;

18 (2) Provision for such reviews to be undertaken in a
19 timely fashion; and

20 (3) Except for proposed new institutional health services
21 which meet the requirements for consideration under
22 subsection (f), section nine of this article with regard to the
23 elimination or prevention of certain imminent safety hazards
24 or to comply with certain licensure or accreditation standards,
25 provision for all completed applications pertaining to similar
26 types of services, facilities or equipment to be considered in
27 relation to each other at least three times a year.

28 (d) An application for a certificate of need shall specify
29 the time the applicant will require to make such service or
30 equipment available or to obligate such expenditure and a
31 timetable for making such service or equipment available or
32 obligating such expenditure.

33 (e) The application shall be in such form and contain
34 such information as the state agency establishes by rule, but

35 requests for information shall be limited to only that
36 information which is necessary for the state agency to
37 perform the review.

38 (f) Within fifteen days of receipt of application, the state
39 agency shall determine if the application is complete. The
40 state agency may request additional information from the
41 applicant.

42 (g) The state agency shall provide timely written notice
43 to the applicant and to all affected persons of the beginning
44 of the review and to any person who has asked the state
45 agency to place the person's name on a mailing list
46 maintained by the state agency. Notification shall include the
47 proposed schedule for review, the period within which a
48 public hearing during the course of the review may be
49 requested by affected persons, which period may not be less
50 than thirty days from the date of the written notification of
51 the beginning of the review required by this section, and the
52 manner in which notification will be provided of the time and
53 place of any public hearing so requested. For the purposes of
54 this subsection, the date of notification is the date on which
55 the notice is sent or the date on which the notice appears in
56 a newspaper of general circulation, whichever is later.

57 (h) Written notification to members of the public and
58 third-party payers may be provided through newspapers of
59 general circulation in the applicable health service area and
60 public information channels; notification to all other affected
61 persons shall be by mail which may be as part of a
62 newsletter.

63 (i) If, after a review has begun, the state agency requires
64 the person subject to the review to submit additional
65 information respecting the subject of the review, such person
66 shall be provided at least fifteen days to submit the
67 information and the state agency shall, at the request of such

68 person, extend the review period by fifteen days. This
69 extension applies to all other applications which have been
70 considered in relation to the application for which additional
71 information is required.

72 (j) The state agency shall adopt schedules for reviews
73 which provide that no review may, to the extent practicable,
74 take longer than ninety days from the date that notification,
75 as described under subsection (g) of this section, is sent to the
76 applicant to the date of the final decision of the state agency
77 and in the case of expedited applications, may, by rules
78 adopted pursuant to section eight of this article, provide for
79 a shortened review period.

80 (k) The state agency shall adopt criteria for determining
81 when it would not be practicable to complete a review within
82 ninety days.

83 (l) The state agency shall provide a public hearing in the
84 course of agency review if requested by any affected person
85 and the state agency may on its own initiate such a public
86 hearing:

87 (1) The state agency shall, prior to such hearing, provide
88 notice of such hearing and shall conduct such hearing in
89 accordance with administrative hearing requirements in
90 article five, chapter twenty-nine-a of this code and its
91 procedure adopted pursuant to this section.

92 (2) In a hearing any person has the right to be represented
93 by counsel and to present oral or written arguments and
94 evidence relevant to the matter which is the subject of the
95 hearing. Any person affected by the matter which is the
96 subject of the hearing may conduct reasonable questioning of
97 persons who make factual allegations relevant to such matter.

98 (3) The state agency shall maintain a verbatim record of
99 the hearing.

100 (4) After the commencement of a hearing on the
101 applicant's application and before a decision is made with
102 respect to it, there may be no ex parte contacts between: (A)
103 The applicant for the certificate of need, any person acting on
104 behalf of the applicant or holder of a certificate of need or
105 any person opposed to the issuance of a certificate for the
106 applicant; and (B) any person in the state agency who
107 exercises any responsibility respecting the application.

108 (5) The state agency may not impose fees for such a
109 public hearing.

110 (m) If a public hearing is not conducted during the review
111 of a new institutional health service, the state agency may, by
112 rules adopted pursuant to section eight of this article, provide
113 for a file closing date during the review period after which
114 date no other factual information or evidence may be
115 considered in the determination of the application for the
116 certificate of need. A detailed itemization of documents in
117 the state agency file on a proposed new institutional health
118 service shall, on request, be made available by the state
119 agency at any time before the file closing date.

120 (n) The extent of additional information received by the
121 state agency from the applicant for a certificate of need after
122 a review has begun on the applicant's proposed new
123 institutional health service, with respect to the impact on such
124 new institutional health service and additional information
125 which is received by the state agency from the applicant, may
126 be cause for the state agency to determine the application to
127 be a new proposal, subject to a new review cycle.

128 (o) The state agency shall in timely fashion notify, upon
129 request, providers of health services and other persons

130 subject to review under this article of the status of the state
131 agency review of new institutional health services subject to
132 review, findings made in the course of such review and other
133 appropriate information respecting such review.

134 (p) The state agency shall prepare and publish, at least
135 annually, reports of reviews completed and being conducted
136 with general statements about the status of each review still
137 in progress and the findings and rationale for each completed
138 review since the publication of the last report.

139 (q) The state agency shall provide for access by the
140 general public to all applications reviewed by the state
141 agency and to all other pertinent written materials essential
142 to agency review.

143 (r) (1) Any person may request in writing a public
144 hearing for purposes of reconsideration of a state agency
145 decision. No fees may be imposed by the state agency for the
146 hearing. For purposes of this section, a request for a public
147 hearing for purposes of reconsideration shall be considered
148 to have shown good cause if, in a detailed statement, it:

149 (A) Presents significant, relevant information not
150 previously considered by the state agency and demonstrates
151 that with reasonable diligence the information could not have
152 been presented before the state agency made its decision;

153 (B) Demonstrates that there have been significant
154 changes in factors or circumstances relied upon by the state
155 agency in reaching its decision;

156 (C) Demonstrates that the state agency has materially
157 failed to follow its adopted procedures in reaching its
158 decision; or

159 (D) Provides such other bases for a public hearing as the
160 state agency determines constitutes good cause.

161 (2) To be effective, a request for such a hearing shall be
162 received within thirty days after the date of the state agency
163 decision and the hearing shall commence within thirty days
164 of receipt of the request.

165 (3) Notification of such public hearing shall be sent, prior
166 to the date of the hearing, to the person requesting the
167 hearing, the person proposing the new institutional health
168 service and to others upon request.

169 (4) The state agency shall hold public reconsideration
170 hearings in accordance with the provisions for administrative
171 hearings contained in:

172 (A) Its adopted procedures;

173 (B) Ex parte contact provisions of subdivision (4),
174 subsection (l) of this section; and

175 (C) The administrative procedures for contested cases
176 contained in article five, chapter twenty-nine-a of this code.

177 (5) The state agency shall make written findings which
178 state the basis for its decision within forty-five days after the
179 conclusion of such hearing.

180 (6) A decision of the state agency following a
181 reconsideration hearing shall be considered a decision of the
182 state agency for purposes of sections nine and ten of this
183 article and for purposes of the notification of the status of
184 review, findings and annual report provisions of subsections
185 (o) and (p) of this section.

186 (s) The state agency may adopt rules pursuant to section
187 eight of this article for reviews and such rules may vary
188 according to the purpose for which a particular review is
189 being conducted or the type of health services being
190 reviewed.

191 (t) Notwithstanding other provisions of this article, the
192 state agency shall adopt rules for determining when there is
193 an application which warrants expedited review.

CHAPTER 112

**(S.B. 669 - By Senators Kessler, Yost, Stollings,
Unger and Wells)**

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §16-2J-3 and §16-2J-7 of the Code of West Virginia, 1931, as amended, all relating to extending the Preventative Care Pilot Program (PCPP) for two years under certain conditions; increasing the number of parties the Health Care Authority and the Insurance Commissioner could permit to participate in the PCPP; and allowing sales to those with high deductible health benefit plans in certain circumstances and providing notice to the parties that prepaid services under the program may not count towards applicable health insurance deductibles.

Be it enacted by the Legislature of West Virginia:

That §16-2J-3 and §16-2J-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2J. PREVENTATIVE CARE PILOT PROGRAM.

§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.

§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.

§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.

1 (a) The Health Care Authority shall, in consultation with
2 the Insurance Commissioner, develop and implement during
3 the fiscal year beginning July 1, 2006, a pilot program that
4 permits providers to market and sell prepaid memberships
5 entitling subscribers to obtain preventive and primary health
6 care from the participating providers. Participating providers
7 shall not be allowed to offer their qualifying services at more
8 than six separate sites. The pilot program shall expire on
9 June 30, 2011.

10 (b) Subject to this article, the Health Care Authority is
11 vested with discretion to select providers using diversity in
12 practice organization, geographical diversity and other
13 criteria it deems appropriate. The Health Care Authority also
14 shall give consideration to providers located in rural areas or
15 serving a high percentage or large numbers of uninsured.

16 (c) In furtherance of the objectives of this article, the
17 Health Care Authority is authorized to accept any and all
18 gifts, grants and matching funds whether in the form of
19 money or services. However, no gifts, grants and matching
20 funds shall be provided to the Health Care Authority by the
21 State of West Virginia to further the objectives of this article.

§16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.

1 In addition to this article and any guidelines established
2 by the Health Care Authority and Insurance Commissioner,
3 the plans offered pursuant to this article shall be subject to
4 the following:

5 (1) Each participating provider and site must offer a
6 minimum set of preventive and primary care services as
7 established by the Health Care Authority.

8 (2) No participating provider may offer: (i) An individual
9 plan to any individual who currently has a health benefit plan
10 or who was covered by a health benefit plan within the
11 preceding twelve months unless said coverage was lost due
12 to a qualifying event; (ii) a family plan to any family that
13 includes an adult to be covered who currently has a health
14 benefit plan or who was covered by a health benefit plan
15 within the preceding twelve months unless said coverage was
16 lost due to a qualifying event; or (iii) an employee group plan
17 to any employer that currently has a group health benefit plan
18 or had a group health benefit plan covering its employees
19 within the preceding twelve months; (iv) Notwithstanding the
20 provisions of (i),(ii) or (iii) of this subsection, a participating
21 provider may offer a plan to an individual if the individual is
22 covered by a high deductible health benefit plan or policy
23 and a participating provider may offer a plan to an employer
24 group if the employer group is covered by a high deductible
25 health benefit plan or policy. The participating provider shall
26 give the perspective individual or employer a notice that
27 indicates that the payment for the prepaid services may not
28 count towards a health benefit plan deductible and that credit
29 towards the deductible will depend on the health benefit
30 policy or certificate language. The Insurance Commissioner
31 shall approve the form of the notice to be used by the
32 provider. For the purpose of this section, "high deductible
33 health benefit plan" means a health benefit plan with a
34 minimum individual annual deductible of \$3,000 or, if

35 applicable, a family annual deductible of \$3,000. Any
36 employer who has converted its health benefit plan from a
37 low deductible plan to a high deductible health benefits plan
38 may not purchase a plan from a participating provider for six
39 months from the date of conversion. Any individual who has
40 converted his or her health benefit policy from a low
41 deductible health policy to a high deductible plan may not
42 purchase a plan from a participating provider for three
43 months from date of conversion.

44 (3) On or before July 1, 2009, the Health Care Authority
45 and the Insurance Commissioner shall propose a rule for
46 legislative approval in accordance with the provisions of
47 article three, chapter twenty-nine-a of this code, to permit
48 participation by a subscriber or employer with a
49 comprehensive high deductible plan if the subscriber or
50 employer is able to demonstrate that the participation will not
51 negatively impact the coverage that is currently offered or
52 will be offered by the employer. The rule shall provide for
53 notice to the subscriber or employer that the payment for the
54 prepaid services may or may not count towards the health
55 insurance deductible, the determination of which will depend
56 on the health insurance policy language.

57 (4) A participating provider must provide subscribers
58 and, where applicable, subscribers' employers with a
59 minimum of thirty days' notice of discontinuance or
60 reduction of subscriber benefits.

CHAPTER 113

**(Com. Sub. for H.B. 2916 - By Delegates Staggers, Morgan,
M. Poling, Caputo, Webster, White and Perdue)**

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

AN ACT to amend and reenact §16-4C-6, §16-4C-6b and §16-4C-8 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Act; providing rule-making authority for fees for certification and recertification of emergency services personnel; providing for fees for certification and recertification of emergency services personnel to be deposited in the Emergency Medical Services Agency Licensure Fund; requiring applicants for certification to submit to a criminal history background check; prohibiting the release of results of criminal history background check to or by private entities; and establishing fees for certification and recertification of emergency services personnel.

Be it enacted by the Legislature of West Virginia:

That §16-4C-6, §16-4C-6b and §16-4C-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Power and duties of commissioner.

§16-4C-6b. Establishment of emergency medical services agency licensure fund; authorized expenditures; annual report.

§16-4C-8. Standards for emergency medical service personnel.

§16-4C-6. Powers and duties of commissioner.

1 The commissioner shall have the following powers and
2 duties:

3 (a) In accordance with chapter twenty-nine-a of this code,
4 to propose rules regarding the age, training, retraining,
5 testing, certification and recertification, and fees for the
6 certification and recertification, of emergency medical
7 service personnel. However, the commissioner may not
8 propose any rule required by this article until it has been
9 submitted for review to the emergency medical services
10 advisory council and this council has had at least thirty days
11 to review such proposed rule. The council may take no
12 action unless a quorum is present;

13 (b) To apply for, receive and expend advances, grants,
14 contributions and other forms of assistance from the state or
15 federal government or from any private or public agencies or
16 foundations to carry out the provisions of this article;

17 (c) To design, develop and annually review a statewide
18 emergency medical services implementation plan. The plan
19 shall recommend aid and assistance and all other acts
20 necessary to carry out the purposes of this article:

21 (1) To encourage local participation by area, county and
22 community officials and regional emergency medical
23 services boards of directors; and

24 (2) To develop a system for monitoring and evaluating
25 emergency medical services programs throughout the state;

26 (d) To provide professional and technical assistance and
27 to make information available to regional emergency medical
28 services boards of directors and other potential applicants or
29 program sponsors of emergency medical services for

30 purposes of developing and maintaining a statewide system
31 of services;

32 (e) To assist local government agencies, regional
33 emergency medical services boards of directors and other
34 public or private entities in obtaining federal, state or other
35 available funds and services;

36 (f) To cooperate and work with federal, state and local
37 governmental agencies, private organizations and other
38 entities as may be necessary to carry out the purposes of this
39 article;

40 (g) To acquire in the name of the state by grant, purchase,
41 gift, devise or any other methods appropriate real and
42 personal property as may be reasonable and necessary to
43 carry out the purposes of this article;

44 (h) To make grants and allocations of funds and property
45 so acquired or which may have been appropriated to the
46 agency to other agencies of state and local government as
47 may be appropriate to carry out the purposes of this article;

48 (i) To expend and distribute by grant or bailment funds
49 and property to all state and local agencies for the purpose of
50 performing the duties and responsibilities of the agency all
51 funds which it may have so acquired or which may have been
52 appropriated by the Legislature of this state;

53 (j) To develop a program to inform the public concerning
54 emergency medical services;

55 (k) To review and disseminate information regarding
56 federal grant assistance relating to emergency medical
57 services;

58 (l) To prepare and submit to the Governor and
59 Legislature recommendations for legislation in the area of
60 emergency medical services;

61 (m) To review, make recommendations for and assist in
62 all projects and programs that provide for emergency medical
63 services whether or not the projects or programs are funded
64 through the Office of Emergency Medical Services. A
65 review and approval shall be required for all emergency
66 medical services projects, programs or services for which
67 application is made to receive state or federal funds for their
68 operation after the effective date of this act; and

69 (n) To take all necessary and appropriate action to
70 encourage and foster the cooperation of all emergency
71 medical service providers and facilities within this state.

72 (o) Nothing in this article may be construed to allow the
73 commissioner to dissolve, invalidate or eliminate any
74 existing emergency medical service program or ambulance
75 providers in service at the time of adoption of the amendment
76 to this article in the regular session of the Legislature in the
77 year 1984, or to deny them fair access to federal and state
78 funding, medical facilities and training programs.

**§16-4C-6b. Establishment of emergency medical services
agency licensure fund; authorized
expenditures; annual report.**

1 (a) There is established in the State Treasury a special
2 revenue fund designated the "Emergency Medical Services
3 Agency Licensure Fund", which shall be administered by the
4 Commissioner of the Bureau of Public Health.

5 (b) All application, personnel certification and
6 recertification and agency licensing fees collected pursuant
7 to the provisions of sections six, six-a and eight of this article
8 shall be deposited into the fund and expended in accordance
9 with the agency licensure and personnel certification and
10 recertification duties imposed in this article.

11 (c) Any remaining balance, including accrued interest, in
12 the fund at the end of the fiscal year shall not revert to the
13 General Revenue Fund, but shall remain in the account.

14 (d) On or before January 1 of each year, the
15 commissioner shall provide the Legislature with an annual
16 fiscal year report on the emergency medical services agency
17 licensure account including, but not limited to, the previous
18 fiscal year's expenditures; projected expenditures for the
19 current and next fiscal years; the number of agency licenses
20 and personnel certifications and recertifications issued,
21 denied, suspended or revoked; and, the status of licensure
22 and certification hearings and court actions.

§16-4C-8. Standards for emergency medical service personnel.

1 (a) Every ambulance operated by an emergency medical
2 service agency shall carry at least two personnel. At least
3 one person shall be certified in cardiopulmonary resuscitation
4 or first aid and the person in the patient compartment shall be
5 certified as an emergency medical technician-basic at a
6 minimum, except that in the case of a specialized
7 multipatient medical transport, only one staff person is
8 required and that person shall be certified, at a minimum, at
9 the level of an emergency medical technician-basic.

10 (b) As a minimum the training for each class of
11 emergency medical service personnel shall include:

12 (1) Emergency medical service attendant: Shall have
13 earned and possess valid certificates from the department or
14 by authorities recognized and approved by the commissioner;

15 (2) Emergency medical technician-basic: Shall have
16 successfully completed the course for certification as an
17 emergency medical technician-basic as established by the
18 commissioner or authorities recognized and approved by the
19 commissioner; and

20 (3) Emergency medical technician-paramedic: Shall have
21 successfully completed the course for certification as an
22 emergency medical technician-paramedic established by the
23 commissioner or authorities recognized and approved by the
24 commissioner.

25 (c) Subsection (b) of this section may not be considered
26 to limit the power of the commissioner to prescribe training,
27 certification and recertification standards.

28 (d) Any person desiring emergency medical service
29 personnel certification shall apply to the commissioner using
30 forms and procedures prescribed by the commissioner. Upon
31 receipt of the application, the commissioner shall determine
32 whether the applicant meets the certification requirements
33 and may examine the applicant, if necessary to make that
34 determination.

35 (e) The applicant shall submit to a national criminal
36 background check, the requirement of which is declared to be
37 not against public policy.

38 (1) The applicant shall meet all requirements necessary
39 to accomplish the national criminal background check,
40 including submitting fingerprints, and authorizing the West
41 Virginia Office of Emergency Services and the Federal
42 Bureau of Investigation to use all records submitted and
43 produced for the purpose of screening the applicant for
44 certification.

45 (2) The results of the national criminal background check
46 may not be released to or by a private entity.

47 (3) The applicant shall submit a fee of \$75 for initial
48 certification and a fee of \$50 for recertification. The fees set
49 forth in this subsection remain in effect until modified by
50 legislative rule.

51 (f) If the Commissioner determines that the applicant
52 meets all of the requirements, he or she shall issue an
53 appropriate emergency medical service personnel certificate
54 which shall be valid for a period as determined by the
55 commissioner.

56 (g) State and county continuing education and
57 recertification programs for all levels of emergency medical
58 service providers shall be available to emergency medical
59 service providers at a convenient site within one hundred
60 miles of the provider's primary place of operation at sites
61 determined by the regional emergency medical services
62 offices. The continuing education program shall be provided
63 at a cost specified in a fee schedule to be promulgated by
64 legislative rule in accordance with article three, chapter
65 twenty-nine-a of this code by the Secretary of the Department
66 of Health and Human Resources to all nonprofit emergency
67 medical service personnel.

68 (h) The commissioner may issue a temporary emergency
69 medical service personnel certificate to an applicant, with or
70 without examination of the applicant, when he or she finds
71 that issuance to be in the public interest. Unless suspended
72 or revoked, a temporary certificate shall be valid initially for
73 a period not exceeding one hundred twenty days and may not
74 be renewed unless the commissioner finds the renewal to be
75 in the public interest. The expiration date of a temporary
76 certificate shall be extended until the holder is afforded at
77 least one opportunity to take an emergency medical service
78 personnel training course within the general area where he or
79 she serves as an emergency medical service personnel, but
80 the expiration date may not be extended for any longer period
81 of time or for any other reason.

CHAPTER 114

**(Com. Sub. for S.B. 307 - By Senators Prezioso, Boley,
Caruth, Foster, Stollings, Jenkins, Guills, White and Kessler)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5 and §16-4E-6, all relating to development of a maternal risk assessment advisory council; providing for legislative findings; setting forth responsibilities of the advisory council; providing for legislative rule-making authority within the Department of Health and Human Resources to develop a uniform maternal risk screening tool; providing for applicability of the screening tool once developed; and providing confidentiality of the tool.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-4E-1, §16-4E-2, §16-4E-3, §16-4E-4, §16-4E-5 and §16-4E-6, all to read as follows:

ARTICLE 4E. UNIFORM MATERNAL SCREENING ACT.

- §16-4E-1. Legislative findings.
- §16-4E-2. Establishment of an advisory council on maternal risk assessment.
- §16-4E-3. Responsibilities of the advisory council on maternal risk assessment.
- §16-4E-4. Legislative rule-making authority.
- §16-4E-5. Applicability of the screening tool.
- §16-4E-6. Confidentiality of screening tool.

§16-4E-1. Legislative findings.

1 The Legislature finds that there is a need for a more
2 comprehensive and uniform approach to any screening
3 conducted by physicians and midwives to discover at-risk
4 and high-risk pregnancies. A uniform approach would
5 simplify the process, standardize the procedure and better
6 identify those pregnancies that need more in-depth care and
7 monitoring. Additionally, a uniform application would
8 provide better and more measurable data regarding at-risk
9 and high-risk pregnancies. This would allow public health
10 officials to gain a better understanding of those conditions
11 that are most frequently observed and to develop
12 methodology to address those concerns.

§16-4E-2. Establishment of an advisory council on maternal risk assessment.

1 (a) There is hereby created within the Department of
2 Health and Human Resources, Bureau for Public Health,
3 Office of Maternal, Child and Family Health the advisory
4 council on maternal risk assessment to provide assistance in
5 the development of a uniform maternal risk screening tool.

6 (b) The Office of Maternal, Child and Family Health is
7 charged with convening the advisory council at least annually
8 and providing administrative and technical assistance to the
9 advisory council as needed. The members of the advisory
10 council shall be appointed by the Commissioner of the
11 Bureau for Public Health.

12 (c) The advisory council shall be comprised of:

13 (1) At least one private provider of maternity services;

14 (2) At least one public provider of maternity services;

15 (3) One representative from each of the state's three
16 medical schools;

17 (4) The Commissioner of the Bureau for Public Health or
18 his or her designee;

19 (5) The Director of the Office of Maternal, Child and
20 Family Health or his or her designee;

21 (6) At least one representative of a tertiary care center;

22 (7) At least one representative of a facility with a level I
23 or II obstetrical unit;

24 (8) At least one certified nurse midwife;

25 (9) At least one allopathic or osteopathic physician who
26 is a private provider of maternity services at a facility with a
27 level I or level II obstetrical unit.

**§16-4E-3. Responsibilities of the advisory council on maternal
risk assessment.**

1 This advisory council shall:

2 (a) Advise the Bureau for Public Health, Office of
3 Maternal, Child and Family Health with respect to the
4 implementation of this article;

5 (b) Offer expert advice to the Office of Maternal, Child
6 and Family Health on the development of a uniform risk
7 screening tool and review the tool at least annually to offer
8 suggested updates based upon current medical knowledge;

9 (c) Provide comments to the Office of Maternal, Child
10 and Family Health on any legislative rules necessary for the
11 accomplishment of any requirements of this article; and

12 (d) Develop in conjunction with the Office of Maternal,
13 Child and Family Health a statistical matrix to measure
14 incidents of high-risk and at-risk pregnancies for planning
15 purposes by public health officials.

§16-4E-4. Legislative rule-making authority.

1 The Department of Health and Human Resources shall
2 propose rules for legislative approval in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code.
4 The legislative rules shall include a uniform maternal risk
5 screening tool to identify women at risk for a preterm birth or
6 other high-risk condition.

§16-4E-5. Applicability of the screening tool.

1 Once developed, all health care providers offering
2 maternity services shall be required to utilize the uniform
3 maternal risk screening tool in their examinations of any
4 pregnant woman. Additionally they shall notify the woman
5 of any high-risk condition which they identify along with any
6 necessary referral and report the results to the Bureau for
7 Public Health, Office of Maternal, Child and Family Health
8 in the manner provided in the legislative rule.

§16-4E-6. Confidentiality of screening tool.

1 (a) The uniform maternal screening tool shall be
2 confidential and shall not be released or disclosed to anyone
3 including any state or federal agency for any reason other
4 than data analysis of high-risk and at-risk pregnancies for
5 planning purposes by public health officials.

6 (b) Proceedings, records and opinions of the advisory
7 council are confidential and are not subject to discovery,
8 subpoena or introduction into evidence in any civil or
9 criminal proceeding. Nothing in this subsection is to be

10 construed to limit or restrict the right to discover or use in
11 any civil or criminal proceeding anything that is available
12 from another source and entirely independent of the
13 proceedings of the advisory council.

14 (c) Members of the advisory council may not be
15 questioned in any civil or criminal proceeding regarding
16 information presented in or opinions formed as a result of a
17 meeting of the panel. Nothing in this subsection may be
18 construed to prevent a member of the advisory council from
19 testifying to information obtained independently of the panel
20 or which is public information.



CHAPTER 115

(Com. Sub. for H.B. 3336 - By Delegate Perdue)

[Passed April 11, 2009; in effect ninety days from passage.]

[Approved by the Governor on May 6, 2009.]

AN ACT to amend and reenact §16-5K-2 and §16-5K-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Bureau for Public Health to continue providing early intervention services to families with developmentally delayed infants and toddlers; authorizes the ability to charge fees on a sliding scale and to bill third party payers; and established that any fees or payments by third party payers will go into the Birth-to-Three Fund.

Be it enacted by the Legislature of West Virginia:

That §16-5K-2 and §16-5K-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-2. Definitions.

§16-5K-6. West Virginia Birth-to-Three Fund.

§16-5K-2. Definitions.

1 Unless the context clearly otherwise indicates, as used in
2 this article:

3 (a) "Bureau" means the Bureau for Children and Families
4 Public Health within the Department of Health and Human
5 Resources.

6 (b) "Council" means the Governor's Early Intervention
7 Interagency Coordinating Council.

8 (c) "Department" means the Department of Health and
9 Human Resources.

10 (d) "Early intervention services" means developmental
11 services which:

12 (1) Are designed to meet the developmental needs of
13 developmentally delayed infants and toddlers and the needs
14 of the family related to enhancing the child's development;

15 (2) Are selected in collaboration with the parents;

16 (3) Are provided under public supervision in conformity
17 with an individualized family service plan;

18 (4) Are provided either at no charge, fees based on a
19 sliding scale, or charges to third party payers and do not

20 restrict access or services because of a client's financial
21 limitations;

22 (5) Meet the state's early intervention standards, as
23 established by the Department of Health and Human
24 Resources with the assistance of the Governor's Early
25 Intervention Interagency Coordinating Council;

26 (6) Include assistive technology, audiology, audiology
27 case management, family training, counseling and home
28 visits, health services necessary to enable a child to benefit
29 from other early intervention services, medical services only
30 for diagnostic or evaluation purposes, nursing services,
31 nutrition services, occupational therapy, physical therapy,
32 psychological services, social work services, special
33 instruction, speech-language pathology, vision and
34 transportation; and

35 (7) Are provided by licensed or otherwise qualified
36 personnel, including audiologists, family therapists, nurses,
37 nutritionists, occupational therapists, orientation and mobility
38 specialists, physical therapists, physicians, psychologists,
39 social workers, special educators, speech-language
40 pathologists and paraprofessionals appropriately trained and
41 supervised.

42 (e) "Infants and toddlers with developmental delay"
43 means children from birth to thirty-six months of age who
44 need early intervention services for any of the following
45 reasons:

46 (1) They are experiencing developmental delays, as
47 measured by appropriate methods and procedures, in one or
48 more of the following areas: Cognitive, physical, including
49 visual and hearing, communicative, adaptive, social,
50 language and speech, or psycho-social development or self-
51 help skills; or

52 (2) They have a diagnosed physical or mental condition
53 that has a high probability of resulting in developmental
54 delay; or

55 (3) They are at risk of having substantial developmental
56 delays if early intervention services are not provided.

§16-5K-6. West Virginia Birth-to-Three Fund.

1 (a) There is hereby created in the state treasury a fund to
2 be known as the “West Virginia Birth-to-Three Fund” that
3 shall be an interest-bearing account established and
4 maintained to pay costs, fees and expenses incurred, or to be
5 incurred, for early intervention services for children who are
6 developmentally delayed.

7 (b) Funds deposited into this account shall be derived
8 from the following sources:

9 (1) Any appropriations by the Legislature;

10 (2) Fund transfers from any fund of the divisions of the
11 department of health and human resources that, in whole or
12 in part, supports early intervention services;

13 (3) All public funds transferred by any public agency as
14 permitted by applicable law;

15 (4) Any private funds contributed, donated or bequeathed
16 by corporations, individuals or other entities; and

17 (5) All proceeds from fees paid by the client or third
18 party payers; and

19 (6) All interest or return on investments accruing to the
20 fund.

21 (c) Moneys deposited in this fund shall be used
22 exclusively to provide early intervention services to
23 accomplish the purposes of this article. Expenditures of
24 moneys deposited in this fund are to be made in accordance
25 with appropriation by the Legislature and in accordance with
26 article three, chapter twelve of this code and upon the
27 fulfillment of the provisions of article two, chapter five-a of
28 this code: *Provided*, That for the fiscal year ending the
29 thirtieth day of June, two thousand three, expenditures are
30 authorized from deposits rather than pursuant to
31 appropriation by the Legislature.

32 (d) Any balance remaining in this fund at the end of any
33 state fiscal year shall not revert to the state treasury but shall
34 remain in this fund and shall be used only in a manner
35 consistent with this article.

CHAPTER 116

(Com. Sub. for H.B. 2360 - By Delegates Schoen and Perdue)

[Passed April 11, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9A-10, relating to the sale of cigarettes; prohibiting the sale of cigarettes in anything other than original factory-wrapped packaging; prohibiting the sale or distribution of cigarettes in any form other than its original factory packaging; requiring warning on all cigarette packages; prohibiting the sale of individual cigarettes; prohibiting the sale of any cigarettes in a

packaging that does not reflect the required warning labels; and providing misdemeanor penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9A-10, to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-10. The sale of cigarettes in a container other than its original factory-wrapped packaging prohibited; sale of individual cigarettes prohibited; and warnings required.

1 (a) A person or business entity may not sell or offer for
2 sale cigarettes in any form other than an original factory-
3 wrapped package.

4 (b) No person or business entity may sell or offer for sale
5 cigarettes in a package that contains fewer than twenty
6 cigarettes.

7 (c) No person or business entity may sell or offer for sale
8 single cigarettes.

9 (d) A person or business entity may not sell or offer for
10 sale cigarettes in any form that does not display the warnings
11 with the display characteristics required by the provisions of
12 15 U.S.C. §1333(b)(3), as amended.

13 (e) Any person or business entity who violates the
14 provisions of this section is guilty of a misdemeanor and,
15 upon conviction thereof, shall be fined \$250.

CHAPTER 117

**(Com. Sub. for S.B. 687 - By Senators Prezioso, Stollings,
Foster, Plymale, Unger and Kessler)**

[Passed April 10, 2009; in effect from passage.]
[Approved by the Governor on May 7, 2009.]

AN ACT to amend and reenact §16-42-3, §16-42-5, §16-42-6 and §16-42-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-17-1 of said code, all relating to health; defining terms; reestablishing the Comprehensive Behavioral Health Commission and Advisory Board; reporting requirements; and terminating the Comprehensive Behavioral Health Commission and Advisory Board.

Be it enacted by the Legislature of West Virginia:

That §16-42-3, §16-42-5, §16-42-6 and §16-42-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-17-1 of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

27. Mentally Ill Persons.

CHAPTER 16. PUBLIC HEALTH.

**ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH
COMMISSION.**

§16-42-3. Comprehensive Behavioral Health Commission.

§16-42-5. Report.

§16-42-6. Certificate of need standards.

§16-42-7. Termination of commission.

§16-42-3. Comprehensive Behavioral Health Commission.

1 (a) Effective May 1, 2009, the Comprehensive
2 Behavioral Health Commission is reestablished within the
3 Department of Health and Human Resources to continue the
4 study of the current behavioral health system, including
5 substance abuse and domestic violence when those
6 conditions have an effect upon or are impacted by the system.

7 (b) The commission consists of:

8 (1) A representative of the circuit and family court
9 system, appointed by the Chief Justice of the West Virginia
10 Supreme Court of Appeals;

11 (2) A representative of the Commissioner of the Division
12 of Corrections;

13 (3) The Commissioner of the Bureau of Senior Services
14 or a designee;

15 (4) The Secretary of the Department of Health and
16 Human Resources or a designee;

17 (5) The Commissioner of the Bureau for Behavioral
18 Health and Health Facilities or a designee;

19 (6) The Commissioner of the Bureau for Children and
20 Families or a designee;

21 (7) The Executive Director of the West Virginia Chapter
22 of the National Alliance on Mental Illness or a designee;

23 (8) The Chancellor for Higher Education or a designee;

24 (9) One physician with a speciality in psychiatry
25 appointed by the Governor from a list provided by the West
26 Virginia Medical Association;

27 (10) One member of the House of Delegates, who is a
28 nonvoting member, appointed by the Speaker; and

29 (11) One member of the Senate, who is a nonvoting
30 member, appointed by the President.

31 (c) The commission shall meet at times and places as it
32 finds necessary and shall be staffed by the Bureau for
33 Behavioral Health and Health Facilities and the Health Care
34 Authority.

35 (d) Effective May 1, 2009, the advisory board is
36 reestablished to serve in a consulting role to the commission
37 with the following members appointed by the Governor:

38 (1) One member from a list provided by the West
39 Virginia Chapter of the National Association of Social
40 Workers;

41 (2) One member from a list provided by the West
42 Virginia Hospital Association;

43 (3) One member who is a psychologist from a list
44 provided by the West Virginia Psychological Association;

45 (4) One citizen member from a list of two nominees from
46 each medical school;

47 (5) One member from a list of five nominees provided by
48 the Primary Care Association;

49 (6) One member from a list provided by the West
50 Virginia Behavioral Healthcare Providers Association;

51 (7) One member from a list provided by the West
52 Virginia Child Care Association; and

53 (8) One member from a list provided by the Council of
54 Churches.

55 (e) Those persons serving on the commission and the
56 advisory board on January 1, 2009, may continue serving on
57 the reestablished commission and advisory board and the
58 person so designated as chairperson of the commission shall
59 remain as chairperson.

60 (f) Each member of the commission and advisory board
61 is entitled to receive compensation and expense
62 reimbursement for attending official meetings or engaging in
63 official duties not to exceed the amount paid to members of
64 the Legislature for their interim duties as recommended by
65 the Citizens Legislative Compensation Commission and
66 authorized by law. A commission member may not receive
67 compensation for travel days that are not on the same day as
68 the official meeting or official duties.

§16-42-5. Report.

1 The commission shall submit a report on its study,
2 including recommendations, to the Governor and the
3 Legislature by January 1, 2011.

§16-42-6. Certificate of need standards.

1 Pursuant to the provisions of article two-d of this chapter,
2 the West Virginia Health Care Authority shall provide the
3 commission with information needed to complete the study
4 required in this article. The staff of the authority shall work
5 jointly with the staff of the Bureau for Behavioral Health and
6 Health Facilities in providing services to the commission.

7 The commission shall make recommendations in its report
8 relating to the certificate of need standards.

§16-42-7. Termination of commission.

1 The commission and advisory board terminate on June
2 30, 2011.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

1 (a) "Developmental disability" means a chronic disability
2 of a person which: (1) Is attributable to a mental or physical
3 impairment or combination of mental and physical
4 impairments; (2) is likely to continue indefinitely; (3) results
5 in substantial functional limitations in self-direction, capacity
6 for independent living or economic self-sufficiency; and (4)
7 reflects the person's need for a combination and sequence of
8 special, interdisciplinary or generic care, treatment or other
9 services which are of lifelong or extended duration and are
10 individually planned and coordinated.

11 (b) "Behavioral disability" means a disability of a person
12 which: (1) Is attributable to severe or persistent mental
13 illness, emotional disorder or chemical dependency; and (2)
14 results in substantial functional limitations in self-direction,
15 capacity for independent living or economic self-sufficiency.

16 (c) "Group residential facility" means a facility which is
17 owned, leased or operated by a behavioral health service
18 provider and which: (1) Provides residential services and
19 supervision for individuals who are developmentally disabled
20 or behaviorally disabled; (2) is occupied as a residence by not
21 more than eight individuals who are developmentally

22 disabled and not more than three supervisors or is occupied
23 as a residence by not more than twelve individuals who are
24 behaviorally disabled and not more than three supervisors;
25 (3) is licensed by the Department of Health and Human
26 Resources; and (4) complies with the State Fire Commission
27 for residential facilities.

28 (d) "Group residential home" means a building owned or
29 leased by developmentally disabled or behaviorally disabled
30 persons for purposes of establishing a personal residence. A
31 behavioral health service provider may not lease a building
32 to such persons if the provider is providing services to the
33 persons without a license as provided for in this article.

CHAPTER 118

(Com. Sub. for S.B. 262 - By Senator Snyder)

[Passed April 9, 2009; in effect ninety days from passage.]
[Approved by the Governor on May 8, 2009.]

AN ACT to amend and reenact §29-1-8 of the Code of West Virginia, 1931, as amended, relating to removing language that prohibits the state from using a county's General Revenue Fund for historic preservation.

Be it enacted by the Legislature of West Virginia:

That §29-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-8. Historic preservation section; director.

1 (a) The purposes and duties of the historic preservation
2 section are to locate, survey, investigate, register, identify,
3 preserve, protect, restore and recommend to the
4 commissioner for acquisition historic, architectural,
5 archaeological and cultural sites, structures and objects
6 worthy of preservation, including human skeletal remains,
7 graves, grave artifacts and grave markers, relating to the State
8 of West Virginia and the territory included therein from the
9 earliest times to the present upon its own initiative or in
10 cooperation with any private or public society, organization
11 or agency; to conduct a continuing survey and study
12 throughout the state to develop a state plan to determine the
13 needs and priorities for the preservation, restoration or
14 development of the sites, structures and objects; to direct,
15 protect, excavate, preserve, study or develop the sites and
16 structures; to review all undertakings permitted, funded,
17 licensed or otherwise assisted, in whole or in part, by the
18 state for the purposes of furthering the duties of the section;
19 to carry out the duties and responsibilities enumerated in the
20 National Historic Preservation Act of 1966, as amended, as
21 they pertain to the duties of the section; to develop and
22 maintain a West Virginia State Register of Historic Places for
23 use as a planning tool for state and local government; to
24 cooperate with state and federal agencies in archaeological
25 work; to issue permits for the excavation or removal of
26 human skeletal remains, grave artifacts and grave markers,
27 archaeological and prehistoric and historic features under the
28 provisions of section eight-a of this article; and to perform
29 any other duties as may be assigned to the section by the
30 commissioner.

31 (b) With the advice and consent of the Archives and
32 History Commission, the commissioner shall appoint a
33 director of the historic preservation section who shall have:
34 (1) A graduate degree in one of the social sciences or

35 equivalent training and experience in the field of historic
36 preservation, archaeology, West Virginia history or history;
37 and (2) three years' experience in administration in the field
38 of West Virginia history, history, historic preservation or
39 archaeology. The director of the historic preservation section
40 shall serve as the deputy state historic preservation officer.

41 (c) With the approval of the commissioner, the director
42 shall establish professional positions within the section and
43 develop appropriate organizational structures to carry out the
44 duties of the section. The director shall employ the personnel
45 with applicable professional qualifications to fill positions
46 within the organizational structure with the minimum
47 professional qualifications necessary to carry out the
48 provisions of the National Historic Preservation Act of 1966,
49 as amended. At the minimum, the following professions
50 shall be represented within the section staff: Historian,
51 architectural historian, a structural historian who specializes
52 in historical preservation, an archaeologist specializing in
53 historic and prehistoric archaeology and such technical and
54 clerical positions as are required.

55 (d) The director shall promulgate rules with the approval
56 of the archives and history commission and in accordance
57 with chapter twenty-nine-a of this code concerning: (1) The
58 professional policies and functions of the historic
59 preservation section; (2) the review of and, when required,
60 issuance of permits for all undertakings permitted, funded,
61 licensed or otherwise assisted, in whole or in part, by the
62 state as indicated in subsection (a) of this section in order to
63 carry out the duties and responsibilities of the section; (3) the
64 establishment and maintenance of a West Virginia State
65 Register of Historic Places, including the criteria for
66 eligibility of buildings, structures, sites, districts and objects
67 for the State Register and procedures for nominations to the
68 State Register and protection of nominated and listed
69 properties; (4) the review of historic structures in accordance

70 with compliance alternatives and other provisions in any state
71 fire regulation and shall coordinate standards with the
72 appropriate regulatory officials regarding their application;
73 (5) review of historic structures in conjunction with existing
74 state or local building codes and shall coordinate standards
75 with the appropriate regulatory officials for their application;
76 and (6) any other rules as may be considered necessary to
77 effectuate the purposes of this article.

CHAPTER 119

**(H.B. 2950 - By Delegates Webster, Moore, Marshall,
Hutchins, Morgan, White, Caputo, Hatfield, Brown,
Frazier and Mahan)**

[Passed April 9, 2009; in effect from passage.]
[Approved by the Governor on April 30, 2009.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-15-6c, relating to the Neighborhood Housing and Economic Stabilization Program for low-income minority neighborhoods; creating the Neighborhood Housing and Economic Stabilization Program; authorizing the Economic Development Authority to contract with the Housing Development Fund to administer the program and distribute funding to program participants; establishing general guidelines and priorities for funding; establishing funding for the program; and legislative findings.

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 §31-15-6c, to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-6c. Neighborhood Housing and Economic Development Stabilization Program; authority to contract with Housing Development Fund; funding.

1 (a) It is hereby determined and declared, as a matter of
2 legislative finding:

3 (1) Local housing initiatives offer a unique opportunity
4 to revitalize and stimulate economic development in low
5 income neighborhoods with high minority populations, which
6 typically have high levels of unemployment and include a
7 large number of distressed properties.

8 (2) Local housing initiatives may include, but are not
9 limited to, demolition, rehabilitation, new construction, land
10 purchases for development, affordable mortgage initiatives
11 and related job training and community service activities.

12 (3) In order to promote a positive long-term economic
13 impact on the community, an effective local housing
14 initiative should include a job training component that is
15 designed to provide additional educational and vocational job
16 opportunities and foster the development of marketable skills
17 among the people living within the targeted neighborhoods
18 served by the program.

19 (4) If done as a part of a focused and coordinated effort,
20 the rehabilitation or replacement of deteriorating residential
21 properties or structures would enhance the value of other
22 properties in the community and improve the overall quality
23 of their neighborhood.

24 (5) A successful neighborhood revitalization and
25 recovery program can attract new businesses and spur
26 additional investment in the community.

27 (6) Using locally based or community based
28 not-for-profit entities to spearhead local housing initiatives
29 encourages the development of additional resources,
30 leadership and administrative skills at a local level which,
31 once in place, would continue to focus on the needs and
32 revitalization of the targeted community, after the initial
33 project is complete.

34 (7) It is reasonable and appropriate to establish a funding
35 mechanism for selected qualifying entities to implement
36 projects that are designed to revitalize and stimulate
37 economic development in low income neighborhoods with
38 relatively high minority populations.

39 (8) The effectiveness of the initial programs can best be
40 assessed if significant funding is awarded to a limited number
41 of qualifying programs serving targeted communities.

42 (9) The state would benefit from the development of a
43 working model for stimulating economic development and
44 neighborhood revitalization through local housing initiatives,
45 so that it may be replicated in other parts of the state which
46 have similar demographic and economic conditions.

47 (10) Substantial federal funds have been earmarked for
48 housing stabilization and stimulating economic recovery,
49 including but not limited to, housing rehabilitation,
50 construction, upgrades and weatherization programs.

51 (b) There is hereby established within the Economic
52 Development Authority the Neighborhood Housing and
53 Economic Development Stabilization Program. The purpose
54 of the program is to provide loans, grants and forgivable
55 loans to support and carry out local economic development
56 initiatives and locally designed housing initiatives in minority

57 neighborhoods with low-income demographics in this state.
58 Housing initiatives funded by this program may include, but
59 are not limited to, demolition, rehabilitation, new
60 construction, land purchases for development, affordable
61 mortgage initiatives and related job training and community
62 service activities.

63 (c) To accomplish these objectives and to administer and
64 distribute the funds provided by the Legislature for this
65 purpose, the Economic Development Authority is authorized
66 to contract with the Housing Development Fund to
67 administer the Neighborhood Housing and Economic
68 Stabilization Program.

69 (d) Upon the effective date of this section, the Economic
70 Development Authority shall, upon appropriation by the
71 Legislature, transfer \$2.4 million from the Economic
72 Development Project Bridge Loan Fund established in
73 section eighteen-a, article twenty-two, chapter twenty-nine of
74 this code to the Housing Development Fund. The fund will
75 administer the program and distribute the funds to locally
76 based West Virginia not-for-profit entities to operate local
77 economic development initiatives and locally designed
78 housing initiatives as described in this section. The project's
79 funds shall be awarded through a statewide request for
80 proposal solicitation issued by the Housing Development
81 Fund, after requests for proposals have been reviewed and
82 accepted by the authority.

83 (e) In awarding the funds, the Housing Development
84 Fund shall give priority to proposals received from local
85 not-for-profit organizations for low-income housing
86 initiatives which include a job training component and
87 promote the employment or utilization of people and
88 businesses who reside within the targeted neighborhoods. A
89 recipient organization must have written established
90 guidelines to promote investment from within and outside the
91 community where the neighborhood is located.

●

CHAPTER 120

**(S.B. 767 - By Senators Snyder, Browning, Foster, Minard,
Palumbo, Sypolt, White and Williams)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9b; and to amend and reenact §9-4-3 of said code, all relating to State Medicaid Agency; exempting certain contracts for the Medicaid program from the competitive bid process of the Division of Purchasing; establishing procedures and requirements for competitive bidding and the awarding of such contracts by the Secretary of the Department of Health and Human Resources; and adding two members to the advisory council of the State Medicaid Agency.

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 §9-2-9b; and that §9-4-3 of said code be amended and reenacted, all to read as follows:

Article

- 2. Department of Health and Human Resources, and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.**
- 4. State Advisory Board; Medical Services Fund; Advisory Council; General Relief Fund.**

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9b. Contract procedure for the Medicaid program.

1 (a) The secretary is authorized to execute a contract to
2 implement professional health care, managed care, actuarial
3 and health care-related monitoring, quality review/utilization,
4 claims processing and independent professional consultant
5 contracts for the Medicaid program.

6 (b) The provisions of article three, chapter five-a of this
7 code do not apply to contracts set out in subsection (a) of this
8 section: *Provided*, That the secretary shall comply with the
9 requirements set forth in this section.

10 (c) The secretary shall develop procedures and
11 requirements for competitive bidding and the awarding of
12 contracts set out in subsection (a) of this section, which
13 procedures and requirements shall include, but are not limited
14 to, the following:

15 (1) Submitting public notice bids;

16 (2) The general terms and conditions for the contract;

17 (3) Awarding contracts;

18 (4) The description of the commodities and services
19 required for the contract, stated with sufficient clarity to
20 assure that there is a comprehensive understanding of the
21 contract's scope and requirements; and

22 (5) Contract management procedures which will ensure
23 the assessment of contractor performance and compliance
24 with contract requirements on a regular basis as appropriate
25 for the specific contract and no less frequently than on an
26 annual basis for any contract awarded pursuant to the
27 provisions of this section.

28 (d) The awarding of the contract may be based on:

29 (1) Best value;

30 (2) Low bid;

31 (3) Sole source; or

32 (4) Any other basis the secretary chooses to award or
33 reject the bid: *Provided*, That the secretary shall document
34 the basis of any decision made pursuant to the provisions of
35 this subsection.

36 (e) The secretary may employ the services of independent
37 professional consultants to assist in preparing solicitations or
38 for the evaluation of any responses to such solicitations:
39 *Provided*, That the independent professional consultant, or
40 member of his or her immediate family, or business with
41 which he or she is associated may not have any interest in the
42 profits or benefits of the contract for which he or she may
43 participate in the preparation of the solicitation or in the
44 evaluation of the response.

45 (f) The secretary may terminate any contract with thirty
46 days' prior written notice.

**ARTICLE 4. STATE ADVISORY BOARD; MEDICAL
SERVICES FUND; ADVISORY
COUNCIL; GENERAL RELIEF FUND.**

§9-4-3. Advisory council.

1 (a) The advisory council, created by chapter one hundred
2 forty-three, Acts of the Legislature, regular session, 1953, as
3 an advisory body to the State Medicaid Agency with respect
4 to the medical services fund and disbursements therefrom
5 and to advise about health and medical services, is continued
6 so long as the medical services fund remains in existence,
7 and thereafter so long as the State Medicaid Agency

8 considers the advisory council to be necessary or desirable,
9 and it is organized as provided by this section and applicable
10 federal law and has those advisory powers and duties as are
11 granted and imposed by this section and elsewhere by law.

12 (b) The advisory council shall consist of not less than
13 nine members, nor more than 15 members, all but four of
14 whom shall be appointed by the State Medicaid Agency and
15 serve until replaced or reappointed on a rotating basis.

16 (c)(1) The heads of the Bureau of Public Health and
17 Bureau for Medical Services are members ex officio.

18 (2) The cochairs of the Legislative Oversight
19 Commission on Health and Human Resources
20 Accountability, or their designees, are nonvoting ex officio
21 members.

22 (3) The remaining members comprising the council
23 consist of:

24 (A) One member of recognized ability in the field of
25 medicine and surgery with respect to whose appointment the
26 State Medical Association shall be afforded the opportunity
27 of making nomination of three qualified persons;

28 (B) One member of recognized ability in the field of
29 dentistry with respect to whose appointment the State Dental
30 Association shall be afforded the opportunity of nominating
31 three qualified persons;

32 (C) One member chosen from a list of three persons
33 nominated by the West Virginia Primary Care Association;

34 (D) One member chosen from a list of three persons
35 nominated by the Behavioral Health Providers Association of
36 West Virginia; and

37 (E) The remaining members chosen from persons of
38 recognized ability in the fields of hospital administration,
39 nursing and allied professions and from consumers groups,
40 including medicaid recipients, members of the West Virginia
41 Directors of Senior and Community Services, labor unions,
42 cooperatives and consumer-sponsored prepaid group
43 practices plans.

44 (d) The council shall meet on call of the state Medicaid
45 Agency.

46 (e) Each member of the advisory council shall receive
47 reimbursement for reasonable and necessary travel expenses
48 for each day actually served in attendance at meetings of the
49 council in accordance with the state's travel regulations.
50 Requisitions for the expenses shall be accompanied by an
51 itemized statement, which shall be filed with the Auditor and
52 preserved as a public record.

53 (f) The advisory council shall assist the State Medicaid
54 Agency in the establishment of rules, standards and bylaws
55 necessary to carry out the provisions of this section and shall
56 serve as consultants to the State Medicaid Agency in carrying
57 out the provisions of this section.