

COMMITTEE SUBSTITUTE

FOR

H. B. 4046

(BY DELEGATES MORGAN, SWARTZMILLER, HARTMAN,
GIVENS, MANYPENNY AND STAGGERS)

(Originating in the Committee on Judiciary)
[January 27, 2012]

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

Be it enacted by the Legislature of West Virginia:

That §16-1-16 of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-11 of said code be amended and reenacted;

that §9-2-1a of said code be amended and reenacted; that §18-10A-2 of said code be amended and reenacted; that §19-1-3a of said code be amended and reenacted; that §22C-12-6 of said code be amended and reenacted; that §24A-1A-2 of said code be amended and reenacted; and that §47A-1-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

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

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

- 7 (1) The Developmental Disabilities Council;
8 (2) The Statewide Independent Living Council;
9 (3) The Mental Health Planning Council; and
10 (4) The State Rehabilitation Council.

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

16 (c) The coordinator shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 ~~(h) The state Americans with disabilities coordinator~~
84 ~~shall continue to exist until the first day of July, two~~
85 ~~thousand nine, unless sooner terminated, continued or~~
86 ~~reestablished pursuant to the provisions of article ten, chapter~~
87 ~~four of this code.~~

CHAPTER 9. HUMAN SERVICES.

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

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

1 The Department of Health and Human Resources shall be
2 charged with the administration of this chapter. Pursuant to
3 ~~the provisions of article ten, chapter four of this code, the~~
4 ~~Department of Health and Human Resources shall continue~~
5 ~~to exist until the first day of July, two thousand six, unless~~
6 ~~sooner terminated, continued or reestablished.~~

CHAPTER 18. EDUCATION.

ARTICLE 10A. REHABILITATION SERVICES.

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

1 (a) The Division of Rehabilitation Services is hereby
2 transferred to the department of education and the arts
3 created in article one, chapter five-f of this code. The
4 secretary shall appoint any such board, commission or
5 council over the division to the extent required by federal law
6 to qualify for federal funds for providing rehabilitation

7 services for disabled persons. The secretary and such boards,
8 commissions or councils as he or she is required by federal
9 law to appoint are authorized and directed to cooperate with
10 the federal government to the fullest extent in an effort to
11 provide rehabilitation services for disabled persons.

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

22 ~~Pursuant to the provisions of article ten, chapter four of~~
23 ~~this code, the Division of Rehabilitation Services shall~~
24 ~~continue to exist until the first day of July, two thousand~~
25 ~~four.~~

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

1 ~~In recognition that article ten, chapter four of this code~~
2 ~~requires a preliminary performance review of the rural~~
3 ~~resource division of the Department of Agriculture and that~~
4 ~~performance standards must be stated before such audit can~~
5 ~~be performed, the rural resources division is hereby formally~~
6 ~~established and renamed the marketing and development~~
7 ~~division in the Department of Agriculture. The duties of the~~
8 Marketing and Development Division are to establish
9 marketing, promotional and development programs to
10 advance West Virginia agriculture in the domestic and
11 international markets; to provide grading, inspection and
12 market news services to the various elements of the West
13 Virginia agricultural industry; and to regulate and license
14 individuals involved in the marketing of agricultural
15 products.

**CHAPTER 22C. ENVIRONMENTAL
RESOURCES; BOARDS, AUTHORITIES,
COMMISSIONS AND COMPACTS.**

**ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION
COMMISSION.**

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

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

6 ~~After having conducted a preliminary performance~~
7 ~~review through its joint committee on government~~
8 ~~operations, pursuant to article ten, chapter four of this code,~~
9 ~~the Legislature hereby finds and declares that West Virginia~~
10 ~~should remain a member of the compact. Accordingly,~~
11 ~~notwithstanding the provisions of article ten, chapter four of~~
12 ~~this code, West Virginia shall continue to be a member of~~
13 ~~this compact until the first day of July, two thousand six,~~
14 ~~unless sooner terminated, continued or reestablished by act~~
15 ~~of the Legislature.~~

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (h) On or before January 1 2004, ~~and of~~ of each ~~subsequent~~
52 year ~~thereafter~~ the committee shall submit to the Governor
53 and to the Legislature a report of its recommendations for

54 improving the effectiveness of the commercial vehicle
55 weight and safety enforcement program.

56 ~~(i) The commercial vehicle weight and safety~~
57 ~~enforcement advisory committee shall continue to exist until~~
58 ~~the first day of July, two thousand seven, pursuant to the~~
59 ~~provisions of article ten, chapter four of this code, unless~~
60 ~~sooner terminated, continued or reestablished pursuant to the~~
61 ~~provisions of that article.~~

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

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

1 (a) The Legislature hereby finds and declares that:

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

8 while affording a competitive return to persons extending
9 such credit;

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

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

22 (b) In view of the foregoing findings, it is the purpose of
23 this section to establish the West Virginia Lending and Credit
24 Rate Board and authorize said board to prescribe
25 semiannually the maximum interest rates and finance charges
26 on loans, credit sales or transactions, forbearance or similar

27 transactions made pursuant to this section subject to the
28 provisions, conditions and limitations hereinafter set forth
29 and to authorize lenders, sellers and other creditors to charge
30 up to the maximum interest rates or finance charges so fixed.
31 The rates prescribed by the board are alternative rates and
32 any creditor may utilize either the rate or rates set by the
33 board or any other rate or rates which the creditor is
34 permitted to charge under any other provision of this code.

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

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

39 (2) The West Virginia State Treasurer;

40 (3) The West Virginia Banking Commissioner;

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

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

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

62 (d) The West Virginia Lending and Credit Rate Board is
63 ~~hereby~~ authorized and directed to meet after December 31,
64 1983, on the first Tuesday of April and on the first Tuesday

65 of October of each year or more or less frequently as required
66 by the circumstances and to prescribe by order a maximum
67 rate of interest and finance charge for the next succeeding six
68 months, effective on June 1 and on December 1, for any
69 loans, credit sales or transactions, forbearance or similar
70 transactions made pursuant to this section. In fixing said
71 maximum rates of interest and finance charge, the board shall
72 take into consideration prevailing economic conditions,
73 including the monthly index of long-term United States
74 government bond yields for the preceding calendar month,
75 yields on conventional commercial short-term loans and
76 notes throughout West Virginia and throughout the United
77 States and on corporate interest-bearing securities of high
78 quality, the availability of credit at reasonable rates to the
79 citizens of this state which afford a competitive return to
80 persons extending ~~such~~ credit and ~~such~~ other factors as the
81 board may determine.

82 (e) Any petition proposing a change in the prescribed
83 maximum rates of interest and finance charges must be filed

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

98 (f) The board shall prescribe by order issued not later
99 than April 20 and not later than October 20, in accordance
100 with the provisions of subsection (d) of this section, the
101 maximum rates of interest and finance charge for the next
102 succeeding six months for any loan, credit sale, forbearance

103 or similar transaction made pursuant to this section and shall
104 cause ~~such~~ the maximum rate of interest and finance charge
105 to be issued and disseminated to the public, ~~such maximum~~
106 ~~rate of interest and finance charge~~ to be effective on June 1
107 and December 1 for the next succeeding six months.

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

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

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

140 upon a requisition upon the State Auditor, properly certified
141 by the Banking Commissioner.

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

149 ~~(k) Pursuant to the provisions of article ten, chapter four~~
150 ~~of this code, the West Virginia lending and credit rate board~~
151 ~~shall continue to exist until the first day of July, two~~
152 ~~thousand five.”~~