

1 **H. B. 4515**

2
3 (By Delegates Skinner, Poore, Lane,
4 Fleischauer, Manypenny, Hunt, Manchin,
5 Guthrie, Lawrence, Skaff and Wells)
6

7 [Introduced February 13, 2014; referred to the
8 Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §15-5-29; and to
12 amend said code by adding thereto a new article, designated
13 §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6,
14 §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12,
15 §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17 and
16 §22-30-18, all relating to generally preventing and mitigating
17 catastrophes involving toxic substances; providing the
18 Division of Homeland Security and Emergency Management with
19 subpoena powers; giving the division the ability to hire
20 hearing examiners and other staff; giving a short title to
21 article thirty, chapter twenty-two of this code; providing
22 legislative findings and a purpose for the section; defining
23 terms in the article; listing extraordinarily hazardous
24 substances; providing a registration process for facilities
25 that generate, store or handle toxic substances; listing safer

1 materials, methods and technologies; providing a risk
2 management program for registrants; providing a process for a
3 risk management assessment; providing a hazardous substance
4 risk reduction plan; providing a process for verification of
5 compliance; authorizing the division to propose legislative
6 rules regarding the issuance of insurance; requiring the
7 agency to propose rules for the protection of confidential
8 information; providing violations and penalties for violations
9 of this article; providing for collection of fees from
10 facility owners and operators; providing guidance for the
11 division's working relationship with local governmental
12 bodies; providing the division with adjudicative powers;
13 providing the division with an adjudicatory procedure and
14 process; and providing an appeal process on final judgments.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new section, designated §15-5-29; and to amend
18 said code by adding thereto a new article, designated §22-30-1,
19 §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7,
20 §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13,
21 §22-30-14, §22-30-15, §22-30-16, §22-30-17 and §22-30-18, all to
22 read as follows:

23 **CHAPTER 15. PUBLIC SAFETY.**

24 **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

1 **§15-5-29. Administrative adjudicative powers.**

2 (a) The Division of Homeland Security and Emergency Management
3 has the power to issue subpoenas and subpoenas duces tecum, and may
4 conduct hearings pursuant to article five, chapter twenty-nine-a of
5 this code, in order to meet its responsibilities under article
6 thirty, chapter twenty-two of this code.

7 (b) The director of the division shall hire hearing examiners
8 and may hire other staff in order to exercise the division's duties
9 under this section.

10 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

11 **ARTICLE 30. TOXIC CATASTROPHE PREVENTION ACT.**

12 **§22-30-1. Short title.**

13 This article may be known and cited as the "Toxic Catastrophe
14 Prevention Act."

15 **§22-30-2. Legislative findings and purpose.**

16 The Legislature finds that a variety of industrial facilities
17 and related operations generate, store, handle and transport
18 extremely hazardous substances, and that some of those operations
19 may represent a catastrophic threat to public health and safety,
20 especially in more densely populated parts of the state. A number
21 of events have demonstrated that modern technology, operations
22 systems and safeguards can fail in protecting against such threats.
23 These events include the 2014 chemical spill into the Elk River and

1 the toxic release in 2008 of methyl isocyanate--a chemical which is
2 known to have injured over five hundred fifty thousand people in
3 Bhopal, India-as well as a score of accidental chemical releases
4 into the state's air. The Legislature finds that while a
5 strengthened capacity to minimize and abate discharges once they
6 occur are vital components of a comprehensive public protection
7 program, the single most effective effort to be made is toward
8 prevention of those environmental accidents by anticipating the
9 circumstances that could result in their occurrence and taking
10 those precautionary and preemptive actions required.

11 **§22-30-3. Definitions.**

12 As used in this article:

13 "Director" means the Director of the Division of Homeland
14 Security and Emergency Management;

15 "Division" means the Division of Homeland Security and
16 Emergency Management;

17 "Extraordinarily hazardous accident risk" means a potential
18 for release of an extraordinarily hazardous substance into the
19 environment, which could produce a significant likelihood that
20 persons exposed may suffer acute health effects resulting in death
21 or permanent disability;

22 "Extraordinarily Hazardous Substance" means any substance or
23 chemical compound used, manufactured, stored, or capable of being
24 produced from on-site components in this state in sufficient

1 quantities at a single site so that its release into the
2 environment would produce a significant likelihood that persons
3 exposed will suffer acute health effects resulting in death or
4 permanent disability. It also includes any substance of chemical
5 compound used, manufactured, stored or capable of being produced
6 from on-site components in this state in sufficient quantities at
7 a single site such that its release puts at risk any public water
8 intake system would produce a significant likelihood that public
9 water would not be available for its normal household and
10 commercial uses;

11 “Extraordinarily Hazardous Substance Accident Risk Assessment”
12 or “EHSARA” means a review and safety evaluation of those
13 operations in a facility which involve the generation, storage, or
14 handling of an extraordinarily hazardous substance, as provided in
15 section six of this article;

16 “Extraordinarily Hazardous Substance List” means the
17 substances or chemical compounds identified in subsection (a) of
18 section four of this article and adopted by regulation pursuant to
19 subsection (c) of that section;

20 “Extraordinarily Hazardous Substance Risk Reduction Work Plan”
21 or “work plan” means the document developed by the division for
22 each facility at which is generated, stored, or handled an
23 extraordinarily hazardous substance, setting forth the scope and
24 detail of the EHSARA to which the facility will be submitted, as

1 provided in section six of this article;

2 "Facility" means a building, equipment, and contiguous area.

3 Facility does not include a research and development laboratory,

4 which means a specially designated area used primarily for

5 research, development, and testing activity, and not primarily

6 involved in the production of goods for commercial sale, in which

7 extraordinarily hazardous substances are used by or under the

8 supervision of a technically qualified person; and

9 "Risk management program" means the sum total of programs for

10 the purpose of minimizing extraordinarily hazardous accident risks,

11 including, but not limited to, requirements for safety review of

12 design for new and existing equipment, requirements for standard

13 operating procedures, requirements for preventive maintenance

14 programs, requirements for operator training and accident

15 investigation procedures, requirements for risk assessment for

16 specific pieces of equipment or operating alternatives,

17 requirements for emergency response planning and internal or

18 external audit procedures to ensure programs are being executed as

19 planned.

20 **§22-30-4. Extraordinarily hazardous substance list; registration**

21 **of facilities generating, storing or handling**

22 **substances.**

23 (a) The following chemicals or chemical compounds, in the

24 quantities indicated, constitute the initial extraordinarily

1 hazardous substance list: hydrogen chloride and allyl chloride in
2 quantities of 2,000 pounds or more; hydrogen cyanide, hydrogen
3 fluoride, chlorine, phosphorus trichloride, and hydrogen sulfide in
4 quantities of five hundred pounds or more; and phosgene, bromine,
5 methyl isocyanate and 2,4-Toluene diisocyanate in quantities of one
6 hundred pounds or more.

7 (b) Any other chemical or chemical compound, in any quantity,
8 that is stored, manufactured or used upstream of a water intake is
9 also considered to be extraordinarily hazardous.

10 (c) Within sixty days of the effective date of this article,
11 the division shall develop and issue a registration form to be
12 completed within one hundred twenty days of the effective date of
13 this article, by the owner or operator of each facility in the
14 state which at any time generates, stores, or handles any of the
15 extraordinarily hazardous substances on the initial extraordinarily
16 hazardous substance list, pursuant to subsection (a) of this
17 section. The registration form shall provide, in addition to any
18 other information that may be required by the division, the
19 following: an inventory of the extraordinarily hazardous substance
20 or substances generated, stored, or handled at the facility and the
21 quantity or quantities of the substances, which inventory shall
22 identify whether those substances are end products, intermediate
23 products, by-products, or waste products; a general description of
24 the processes and principal equipment involved in the management of

1 the substance or substances; a profile of the area in which the
2 facility is situated, including its proximity to population and
3 water supplies; the extent to which the risks and hazards of the
4 processes, equipment and operations have been identified, evaluated
5 and abated, and the expertise and affiliation of the evaluators and
6 any direct or indirect relationship between the evaluators and the
7 owner or operator of the facility; and the name or names of all
8 insurance carriers underwriting the facility's environmental
9 liability and workers' compensation insurance policies and the
10 scope of these policies, including any limitations and exclusions.

11 (d) Within eighteen months of the effective date of this
12 article, the Division of Homeland Security and Emergency
13 Management, in consultation with the Bureau of Public Health, shall
14 develop and, after a public hearing, adopt as a rule an
15 extraordinarily hazardous substance list and all locations where
16 public water intakes are at risk from releases. The list shall
17 correlate the substances or compounds with the quantities of the
18 substances or compounds required to produce the potentially
19 catastrophic circumstance. The division shall have the power to
20 amend, by rule, the extraordinarily hazardous substance list to
21 accommodate new chemical compounds that may be developed or reflect
22 new information or scientific data that may become available to the
23 division.

24 (e) Within ninety days of the adoption by the division of an

1 extraordinarily hazardous substance list pursuant to subsection (c)
2 of this section, the owner or operator of each facility in the
3 state which generates, stores, or handles any of the
4 extraordinarily hazardous substances on the extraordinarily
5 hazardous substance list, not registered pursuant to subsection (b)
6 of this section, shall complete the registration form developed and
7 issued by the division.

8 **§22-30-5. Inherently safer materials, method and technology.**

9 In all risk management assessments, programs and systems,
10 owners, operators and the division shall use risk management
11 programs that adopt inherent safety and inherently safe materials,
12 method and technology as a goal. An inherent safety program for
13 hazardous substances uses each of the following strategies:

14 (1) A minimizing strategy that involves minimizing the use of
15 hazardous chemicals or compounds in a system, ideally to the point
16 that the uncontrolled release of the entire inventory of material
17 or energy would not cause significant damage;

18 (2) A substitution strategy that involves using less hazardous
19 reaction chemistry or replacing a hazardous material with a less
20 hazardous substitute;

21 (3) A moderating strategy that involves using a chemical or
22 material in a less hazardous form, or under less severe conditions;
23 and

24 (4) A simplification strategy that involves elimination

1 unnecessary complexities to avoid human error.

2 **§22-30-6. Risk management program of registrants.**

3 (a) If the owner or operator of a facility that submitted a
4 registration form pursuant to section four of this article has
5 established a risk management program, the division shall provide
6 for the submission and review of the risk management program before
7 requiring the owner or operator to take any other action regarding
8 the facility and program pursuant to this article. If the division
9 finds the risk management program has any material deficiencies or
10 omissions that could reduce the effectiveness of the risk
11 management program, it shall recommend to the owner or operator
12 risk management program changes or additions. No later than sixty
13 days after the recommendation, the owner or operator shall submit
14 to the division any action the owner or operator proposes in order
15 to correct the deficiencies or omissions. The owner's or operator's
16 proposals may be in accordance with the changes and additions
17 recommended by the division or in accordance with alternative
18 changes, additions or proposals recommended by the owner or
19 operator.

20 (b) If the owner or operator and the division agree on the
21 measures necessary to correct the deficiencies or omissions in the
22 risk management program, the parties may enter into a consent
23 agreement.

24 (c) If the parties cannot reach an agreement, the director,

1 after notice and hearing and written findings of fact, may issue an
2 administrative order requiring changes or additions to correct the
3 deficiencies. Information available on the cost-effectiveness,
4 extraordinarily hazardous accident risk reduction effectiveness and
5 technical feasibility of any changes or additions that the division
6 or owner or operator recommends shall be considered by the division
7 and the director in making any decision. Any order shall follow
8 administrative hearing procedures, which are subject to judicial
9 review as necessary. This hearing procedure shall, to the maximum
10 extent practicable and feasible, be accorded priority status.

11 **§22-30-7. Extraordinarily hazardous substance risk reduction work**
12 **plan; accident risk assessments.**

13 Upon review of all registrations and accompanying materials
14 submitted pursuant to this article, the division shall, in
15 cooperation with the facility owner or operator, develop an
16 Extraordinarily Hazardous Substance Risk Reduction Work Plan for
17 each registered facility without a risk management program agreed
18 upon by the facility owner and the division or subject to a consent
19 agreement or administrative order entered into pursuant to section
20 five of this article. The work plan shall constitute the basis for
21 any Extraordinarily Hazardous Substance Accident Risk Assessment
22 required of that facility, to be performed pursuant to this
23 section. The work plan shall require: the reporting of the identity
24 and quantity of all extraordinarily hazardous substances generated,

1 stored, handled or that could unwittingly be produced in the event
2 of an equipment breakdown, human error, design defect, a procedural
3 failure or the imposition of an external force; the nature, age and
4 condition of all the equipment and instruments involved in the
5 handling and management of the extraordinarily hazardous substance
6 or substances at the facility and the schedules for their testing
7 and maintenance; the measures and precautions designed to protect
8 against the intrusions of external forces and events, or to control
9 or contain discharges within the facility; the circumstances that
10 would have to be obtained in order for there to result a discharge
11 of an extraordinarily hazardous substance, and the practices,
12 procedures and equipment designed to forestall an event; any
13 alternative processes, procedures or equipment which might reduce
14 the risk of a release of an extraordinarily hazardous substance
15 while yielding the same or commensurate results, and the specific
16 reasons they are not employed; any training or management practices
17 in place which impart knowledge to relevant personnel regarding the
18 dangers posed by a release of an extraordinarily hazardous
19 substance and the training provided to prepare them for the safe
20 operation of the facility and for unanticipated occurrences; and
21 any other preventive maintenance measure or on-site emergency
22 response capability or other internal mechanism developed to
23 safeguard against the occurrence of an accidental release of an
24 extraordinarily hazardous substance or any other aspect or

1 component of the facility deemed relevant by the division. The
2 division may, by rule or on a case-by-case basis, limit the scope
3 or detail of the work plan and the priority or frequency of review
4 of any facility or facility operation or component of a facility or
5 facility operation where the division determines, in writing, that
6 the action does not remove or compromise the protection required
7 for the public interest, and enables the division to allocate its
8 resources more efficiently and effectively.

9 **§22-30-8. Accident risk assessment.**

10 The owner or operator of every facility registered with the
11 division pursuant to section four of this article shall submit
12 those operations in the facility concerned with the generation,
13 storage, handling or safeguarding of any extraordinarily hazardous
14 substance to an EHSARA, except as provided in section five with
15 respect to facilities with an established risk management program.
16 The EHSARA shall be conducted in conformity with the work plan for
17 the facility developed by the division pursuant to section six of
18 this article by an independent consultant selected by the division
19 from a list of three candidates submitted by the owner of the
20 subject facility or, at the option of the division, by the division
21 or by an independent consultant contracted for directly by the
22 division: *Provided*, That the division, with respect to the former
23 option, may request the owner of the subject facility to provide
24 three additional candidate consultants if it finds all three

1 originally submitted by the facility owner unacceptable.

2 The owner of the subject facility shall be assessed a fee
3 established in accordance with a schedule, established as a rule by
4 the division, which reflects all the costs of the risk assessment
5 of that facility conducted by, or on behalf of, the division.

6 **§22-30-9. Extraordinarily hazardous substance risk reduction plan.**

7 (a) Upon review of the EHSARA for each facility, the division
8 shall, if appropriate, order the owner or operator of the facility
9 to undertake an extraordinarily hazardous substance risk reduction
10 plan. The order shall identify the risk or risks that must, within
11 the limits of practicability and feasibility, be abated and a
12 reasonable timetable for implementation of the plan. The division
13 shall, by rule, establish criteria or quantitative standards for
14 determining risk, which criteria and standards shall reflect, among
15 other factors, the size of the potentially exposed population and
16 potential health and environmental consequences. The director may
17 order those operations posing the identified risk or risks that
18 have not been abated on schedule to cease until the risk reduction
19 plan has been implemented.

20 (b) The owner of a facility who is aggrieved by an order
21 issued pursuant to subsection (a) of this section may petition the
22 director for a review of the matter, pursuant to his or her
23 providing the director with all data and documents which he or she
24 believes demonstrate that the order is unwarranted. If the

1 director, after review, affirms the initial order, he or she shall,
2 at the request of the aggrieved owner, transmit all relevant
3 materials and documents on the matter to the Office of
4 Administrative Law, which shall conduct a hearing on the order.
5 This hearing shall be an adjudicatory proceeding conducted as a
6 contested case. The division and the aggrieved owner of the
7 facility are deemed parties in interest in the proceeding. After
8 review of the record of the adjudicatory proceeding and the
9 recommendation of the administrative law judge, the director shall
10 affirm or modify his or her order. The decision of the director
11 constitutes final agency action on the matter, and is subject only
12 to judicial review as provided in the rules of court. During the
13 pendency of the review and the hearing, the timetable for
14 compliance with the order giving rise to the proceeding is
15 suspended.

16 **§22-30-10. Verification of compliance; records.**

17 (a) The division has the right to enter any facility at any
18 time in order to verify compliance with the provisions of this
19 article and the quality of all work performed pursuant to this
20 article except that facility owners or operators are under no
21 obligation to employ any personnel solely to assure access to the
22 facility by the division when this access would otherwise be
23 impossible.

24 (b) The division shall propose legislative rules and enforce

1 a system of record keeping. Owners or operators of each facility
2 registered pursuant to section four of this article are required to
3 report to the division on all risk assessment and risk reduction
4 efforts undertaken pursuant to this article, all ongoing
5 maintenance measures taken, all unanticipated and unusual events
6 and any other information the division deems appropriate. This
7 information shall be so designed as to prevent the destruction or
8 alteration of information and data contained in those records.

9 These legislative rules shall also establish strict penalties,
10 or other sanctions, to be assessed against any party guilty of
11 destroying or tampering with any records required to be kept
12 pursuant to this article.

13 **§22-30-11. Insurance carriers; release of information.**

14 (a) The division may propose legislative rules creating an
15 administrative procedure process to determine whether an owner of
16 a facility which generates, stores or handles any extraordinarily
17 hazardous substances should be required to authorize the insurance
18 carrier or carriers which underwrite environmental liability or
19 workers' compensation insurance for that facility to release to the
20 division information relevant to the risks posed by the facility's
21 management of the substance or substances. If so authorized, the
22 insurance carrier or carriers shall release the information within
23 the period of time established by the division, but in no case less
24 than two weeks.

1 (b) An insurance carrier or its representative may not be held
2 liable in a civil proceeding for any statement made or action taken
3 voluntarily or in response to an authorization or request from the
4 client facility pursuant to this section unless actual malice on
5 the part of the insurer or its representative is present. This
6 immunity shall extend to protect an insurance carrier or its
7 representative from being held liable to any party who sustains any
8 loss or injury as a direct or consequential result of the carrier's
9 or its representative's compliance, noncompliance, or attempt to
10 comply with this article.

11 (c) The division is authorized to disclose information
12 obtained from an insurance carrier or its representative pursuant
13 to this section only to its own employees or agents to assist in
14 enforcing the provisions of this article, or for use in a civil or
15 criminal proceeding, if so ordered by a court.

16 (d) A person who, as required by this section, knowingly and
17 willfully refuses to release information required under this
18 article, or fails to hold information received under this article
19 in confidence, is liable for a penalty not to exceed \$5,000, to be
20 collected and enforced in a summary manner under subsection (d) of
21 section sixteen of this article. The proceedings may be brought by
22 the division or by a person or an insurer injured by a failure to
23 keep the information confidential. If a money judgment is rendered
24 against the defendant, it shall be paid to the plaintiff. A

1 reasonable and good faith effort to comply with the provisions of
2 this section is a defense to an alleged violation of this section.

3 **§22-30-12. Rules governing confidential information.**

4 (a) The division shall, pursuant to the adoption of
5 legislative rules, establish principles, guidelines and procedures
6 governing the internal management of confidential information
7 supplied to the division pursuant to this article. The rules shall
8 provide that information obtained pursuant to this article be
9 disclosed only to its employees or agents to assist in enforcing
10 the provisions of this article, or for use in civil or criminal
11 proceedings, if so ordered by a court, and shall include, but not
12 be limited to, requirements that: (1) All confidential information
13 supplied pursuant to this article be labeled "confidential" by the
14 facility owner; (2) receipt of labeled information be acknowledged
15 in writing by an authorized employee of the division; (3) the
16 division establish a review procedure by which only specifically
17 designated personnel be authorized access to such information and
18 then only on a "need-to-know" basis; and (4) the division establish
19 secure areas for the express purpose of storage of such
20 confidential information.

21 (b) The owner of a facility who alleges that certain
22 information required to be disclosed pursuant to this article
23 contains or relates to a trade secret or constitutes security
24 information which, notwithstanding the management procedures for

1 information adopted by the division pursuant to subsection (a) of
2 this section, must be kept privileged so as not to competitively
3 disadvantage the facility, or compromise the security of the
4 facility or its operations, shall petition the director for the
5 right to withhold the information. Upon receipt of the petition,
6 the director shall review the matter. If the director, in his or
7 her discretion, denies the petition, then the division shall
8 conduct a summary proceeding on the claim pursuant to the
9 provisions of subsection (d) of section sixteen of this article. At
10 the hearing, the petitioner has the burden of showing that the
11 trade secret or security risk claim is valid. This hearing shall be
12 an adjudicatory proceeding, and shall be conducted as a contested
13 case pursuant to chapter twenty-nine-a of this code.

14 **§22-30-13. Violations; penalties.**

15 (a) If any person violates any of the provisions of sections
16 four through eight of this article or any rule adopted pursuant to
17 those sections, the division may institute a civil action in a
18 court of competent jurisdiction for injunctive or any other
19 appropriate relief to prohibit and prevent this violation and the
20 court may proceed in the action in a summary manner.

21 (b) Any person who violates the provisions of sections four
22 through eight of this article or any rule adopted pursuant to those
23 sections is liable to a civil administrative penalty of not more
24 than \$10,000 for the first offense, not more than \$20,000 for the

1 second offense, and up to \$50,000 for the third and each subsequent
2 offense. If the violation is of a continuing nature, each day
3 during which it continues constitutes an additional, separate and
4 distinct offense. No civil administrative penalty may be levied
5 except subsequent to the notification of the violator by certified
6 mail or personal service. The notice shall include: a reference to
7 the section of the statute, rule, order or permit condition
8 violated; a concise statement of the facts alleged to constitute
9 the violation; a statement of the amount of the civil penalties to
10 be imposed; and a statement of the violator's right to a hearing.
11 The violator has twenty days from receipt of the notice within
12 which to deliver to the director a written request for a hearing.
13 Subsequent to the hearing and upon a finding that a violation has
14 occurred, the director may issue a final order after assessing the
15 amount of the fine specified in the notice. If no hearing is
16 requested, the notice becomes a final order upon the expiration of
17 the twenty day period. Payment of the penalty is due when a final
18 order is issued or when the notice becomes a final order. The
19 authority to levy a civil administrative penalty is in addition to
20 all other enforcement provisions in this article, and the payment
21 of a civil administrative penalty does not affect the availability
22 of any other enforcement provision in connection with the violation
23 for which the penalty is levied.

24 (c) The division is authorized and empowered to compromise and

1 settle any claim for a penalty under this section in an amount in
2 the discretion of the division as may appear equitable under the
3 circumstances, including the posting of a performance bond by the
4 violator.

5 (d) Any person who violates any of the provisions of sections
6 four through eight of this article, or any rule adopted pursuant to
7 those sections, an administrative order issued pursuant to
8 subsection (b) of this section, a court order issued pursuant to
9 subsection (a) of this section or who fails to pay a civil
10 administrative penalty in full pursuant to subsection (b) of this
11 section is subject, upon order of the court, to a civil penalty not
12 to exceed \$10,000 per day of the violation, and each day's
13 continuance of the violation constitutes a separate and distinct
14 violation. Any penalty imposed under this subsection may be
15 recovered with costs in a summary proceeding pursuant to subsection
16 (d) of section sixteen of this article.

17 **§22-30-14. Fees.**

18 The division is authorized to charge and collect fees from
19 facility owners registered pursuant to section four of this
20 article, in accordance with a schedule adopted as a rule, which
21 shall reflect the costs to the division of reviewing individual
22 facilities while enabling the division to continue to administer
23 the program on a self-supporting basis.

24 **§22-30-15. Local governmental programs; inconsistent ordinances;**

1 **approval.**

2 The division shall make every effort to involve hazardous
3 materials advisory councils, where they exist; local government
4 officials, and other pertinent entities in explaining actions taken
5 in regard to facilities in their areas. Local ordinances which are
6 inconsistent with, in conflict with, or more restrictive than the
7 provisions of this article must be approved by the division before
8 adoption.

9 **§22-30-16. Division of Homeland Security and Emergency Management**
10 **administrative adjudicative process.**

11 (a) The division shall make available to parties aggrieved by
12 civil violations of this article all the actions and remedies
13 provided in article five, chapter twenty-nine-a of this code.

14 (b) The division's procedure for adjudicating claims made
15 under this article shall follow article five, chapter twenty-nine-a
16 of this code.

17 (c) Pursuant to section one, article six, chapter
18 twenty-nine-a of this code, a party adversely affected by the final
19 judgment of the circuit court under chapter twenty-nine-a may seek
20 review of the final judgment by appeal to the Supreme Court of
21 Appeals of West Virginia.

22 (d) The division may order that a summary proceeding before a
23 hearing examiner be held to recover any penalties it imposes. The
24 party ordered to pay the penalty may challenge a summary ruling to

1 the circuit court of Kanawha County within thirty days of the
2 ruling.

3 **§22-30-17. Administrative adjudicatory action.**

4 Any individual claiming to be aggrieved by a violation of this
5 article may file a claim with the division pursuant to section
6 twenty-nine, article five, chapter fifteen of this code. Any
7 complaint filed pursuant to this article must be filed within
8 ninety days after the discovery of the violation.

9 After the filing of any complaint, the division shall make a
10 prompt investigation into the matter.

11 If it is determined after such investigation that no probable
12 cause exists for substantiating the allegations of the complaint,
13 the division shall, within ten days from such determination, cause
14 to be issued and served upon the complainant written notice of that
15 determination, and the complainant or his or her attorney may,
16 within ten days after service, file with the division a written
17 request for a meeting to show probable cause for substantiating the
18 allegations of the complaint.

19 Where the division finds a violation of this article, the
20 division shall issue and serve a written notice, together with a
21 copy of the complaint as the same may have been amended, in the
22 manner provided by law for the service of summons in civil actions,
23 requiring the respondent to answer the charges of the complaint at
24 a hearing before the division in the county where the respondent

1 resides or transacts business at a time and place to be specified
2 in such notice: *Provided*, That written notice be served at least
3 thirty days prior to the time set for the hearing.

4 The case in support of the complaint shall be presented before
5 the division by one of its attorneys or agents. The respondent may
6 file a written, verified answer to the complaint and appear at the
7 hearing in person or otherwise, with or without counsel, and submit
8 testimony and evidence. Except as provided in this article, all of
9 the pertinent provisions of article five chapter twenty-nine-a of
10 this code apply to and govern the hearing and the administrative
11 procedures in connection with and following the hearing, with like
12 effect as if the provisions of article five were set forth in this
13 section.

14 If, after a hearing and consideration of all of the testimony,
15 evidence and record in the case, the division finds that a
16 respondent has engaged in or is engaging in a violation of this
17 article, the division shall issue and serve the respondent an order
18 to cease and desist from the unlawful activity and pay compensatory
19 damages that may not exceed \$5,000. An order shall be accompanied
20 by findings of fact and conclusions of law as specified in section
21 three, article five, chapter twenty-nine-a of this code. Any action
22 where more than \$5,000 in damages is sought by the complainant
23 shall be filed in a circuit court of this state.

24 If, after a hearing and consideration of all of the testimony,

1 evidence and record in the case, the division finds that a
2 respondent has not engaged in an unlawful discriminatory practice,
3 the division shall state its findings of fact and conclusions of
4 law as noted in this section and shall issue and cause to be served
5 on the complainant an order dismissing the complaint as to the
6 respondent.

7 A copy of its order shall be delivered in all cases by the
8 division to the complainant, the respondent, the Attorney General
9 and to any other public officers as the division may deem proper.
10 Any order shall not be enforceable except as provided section
11 eighteen of this article.

12 **§22-30-18. Appeal and enforcement of division orders.**

13 Any final order of the division may be appealed to the circuit
14 court of Kanawha County within thirty days if the issuing of the
15 final order by the division, pursuant to section four, article
16 five, chapter twenty-nine-a of this code. Where an appeal has been
17 filed, the respondent shall respond within thirty days of filing
18 and the court shall make a determination within the following
19 thirty days. Any party adversely affected by the final judgment of
20 the circuit court of Kanawha County may seek review of the final
21 judgment by appeal to the Supreme Court of Appeals if filing within
22 thirty days of entry of the final order of the circuit court,
23 pursuant to section one, article six, chapter twenty-nine-a of this
24 code.

NOTE: The purpose of this bill is to give the Division of Homeland Security and Emergency Services a process for preventing and mitigating catastrophes involving toxic substances, and providing the division with adjudicatory powers for handling violations of this article.

The language in this bill is new; therefore, it has been completely underscored.