

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2005
First Extraordinary Session, 2005
Second Extraordinary Session, 2005
Third Extraordinary Session, 2005
Third Extraordinary Session, 2004

Volume I
Chapters 1 – 179

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



Office of the Clerk of the House
212 Main Unit
State Capitol
Charleston, West Virginia



The Printing Press, Ltd. Charleston, WV

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FOREWORD

These volumes contain the Acts of the First Regular Session of the 77th Legislature, 2005, and the First and Second Extraordinary Session of the 77th Legislature, 2005, and the Third Extraordinary Sessions of the 76th Legislature, 2004.

First Regular Session, 2005

The First Regular Session of the 77th Legislature convened on January 12, 2005, and following 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 9th day of November, 2004, 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 9, 2005, 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 9, 2005. The Governor issued Proclamations on April 6 and April 15, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned *sine die* on April 16, 2005.

Bills totaling 2,116 were introduced in the two houses during the session (1,364 House and 752 Senate). The Legislature passed 265 bills, 131 House and 134 Senate.

The Governor vetoed seven House bills (Com. Sub. for H. B. 2381, Authorizing patients or residents of certain health care facilities or homes to designate nonrelatives to receive the same visitation privileges as immediate family members; H. B. 2782, Increasing the number of members a municipality may appoint to a board of park and recreation commission from not less than three to not more than seven; Com. Sub. for H. B. 2966, Creating a statewide thoroughbred breeders program; Com. Sub. for H. B. 3178, Relating to domestic

violence and clarifying when permanent injunctions and other provisions may be granted in final divorce orders; H. B. 3203, Authorizing the closure of certain existing retirement funds for municipal policemen and firemen and establishment of a defined contribution plan in lieu thereof; H. B. 3293, Establishing residential treatment programs for regional jail inmates who are abusers of alcohol and other drugs; and H. B. 3360, Requiring the IS & C Director to create and maintain an information systems disaster recovery system) and nine Senate bills (S. B. 42, Limiting liability for waste tire remediation costs for certain owners of real property; Com. Sub. for S. B. 433, Increasing membership of Environmental Protection Advisory Council; S. B. 513, Relating to tax credits available under Capital Company Act; S. B. 584, Allowing Bureau for Child Support Enforcement enter orders for modification of child support amounts; S. B. 616, Relating to priority of legislative business for members and certain employees of the Legislature; Com. Sub. for S. B. 661, Relating to juvenile proceedings and multidisciplinary teams; S. B. 684, Relating to imposition of tax on privilege of severing natural gas or oil; S. B. 741, Exempting farming equipment and livestock from personal property tax; and S. B. 746, Reducing rate of tax paid on privilege of severing timber after certain date). The Legislature amended and again passed H. B. 2381, H. B. 2782, Com. Sub. for H. B. 3178, S. B. 513, S. B. 584 and S. B. 616, leaving a net total of 255 bills, 127 House and 128 Senate, which became law.

There were 217 Concurrent Resolutions introduced during the session, 104 House and 113 Senate, of which 21 House and 21 Senate were adopted. Twenty House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 42 House Resolutions, and the Senate introduced 50 Senate Resolutions, of which 33 House and 50 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 61 Senate bills failed passage by the House.

First Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session at 11:00 A.M., January 24, 2005, contained six items for consideration.

The Legislature passed 4 bills, all of which were Senate bills. Two Joint Resolutions were introduced (one House and one Senate) and one was adopted, S. J. R. 101, Proposing amendment to Constitution designated Pension Bond Amendment. Pursuant to the provisions of S. J. R. 101, a statewide election was held on the Pension Bond Amendment on June 25, 2005, at which election the proposed amendment was defeated by the voters. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* January 29, 2005.

Second Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment *sine die* of the Regular Session, April 16, 2005, contained two items for consideration.

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

The Legislature adjourned the Extraordinary Session *sine die* at 1:17 P.M. that same day.

Third Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session at 4:00 P.M., May 16, 2005, contained thirteen items for consideration.

The Legislature passed 10 bills, all of which were Senate bills. The Legislature adopted two Senate concurrent resolutions and the Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 7:18 P.M., May 17, 2005.

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Third Extraordinary Session, 2004

The Proclamation calling the Legislature into Extraordinary Session at 12:00 Noon, November 15, 2004, contained twenty-two items for consideration.

The Legislature passed 15 bills, 6 House and 9 Senate bills. The Legislature adopted 1 Senate concurrent resolution and the Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* 6:30 P.M., November 16, 2004.

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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, 2005

OFFICERS

Speaker — Robert S. Kiss, Beckley

Clerk — Gregory M. Gray, Charleston

Sergeant at Arms — Oce Smith, Fairmont

Doorkeeper — John A. Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Joe DeLong (D)	Weirton	75th-77th
	Randy Swartzmiller (D)	New Cumberland	75th-77th
Second	Timothy R. Ennis (D)	Wellsburg	72nd-77th
	Jack Yost (D)	Wellsburg	76th-77th
Third	Christopher Wakim (R)	Wheeling	76th-77th
	L. Gil White (R)	Wheeling	70th-71st; 73rd-77th
Fourth	Kenneth D. Tucker (D)	Moundsville	73rd-77th
	Scott G. Varner (D)	Moundsville	71st-77th
Fifth	Dave Pethtel (D)	Hundred	69th-71st; 74th-77th
Sixth	William Rogers Romine (R)	West Union	75th-77th
Seventh	Otis A. Leggett (R)	St. Marys	68th-77th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st-77th
Ninth	Larry W. Border (R)	Davisville	70th-77th
Tenth	Tom Azinger (R)	Vienna	72nd-77th
	J. D. Beane (D)	Parkersburg	70th-77th
	John Ellem (R)	Parkersburg	Appt. 1/4/01, 75th; 76th-77th
Eleventh	Bob Ashley (R)	Spencer	67th-73rd; 75th-77th
Twelfth	Mitch Carmichael (R)	Ripley	75th-77th
Thirteenth	Dale Martin (D)	Poca	75th-77th
Fourteenth	Brady Paxton (D)	Liberty	71st. Appt. 4/22/99, 74th; 75th-77th
	Mike Hall (R)	Hurricane	72nd-77th
Fifteenth	Patti Eagloski Schoen (R)	Scott Depot	76th-77th
	Kevin J. Craig (D)	Huntington	75th-77th
	Margarette R. Leach (D)	Huntington	71st-77th
Sixteenth	Jim Morgan (D)	Huntington	69th-70th; Appt. 2/23/01, 75th; 76th-77th
	Greg Howard (R)	Huntington	76th-77th
Seventeenth	Kelli Sobonya (R)	Huntington	76th-77th
	Dale Stephens (D)	Huntington	75th; 77th
	Don C. Perdue (D)	Prichard	74th-77th
Eighteenth	Richard Thompson (D)	Lavalette	65th, Resigned 6/81; 75th-77th
	Larry W. Barker (D)	Madison	77th
Nineteenth	Greg Butcher (D)	Chapmanville	73rd-77th
	Jeff Eldridge (D)	Harts	77th
	Joe C. Ferrell (D)	Logan	66th; 68th-70th; 74th-77th
	Lidella Wilson Hrutkay (D)	Logan	75th-77th
Twentieth	K. Steven Kominar (D)	Kermit	72nd; Appt. 12/6/96, 73rd; 74th-77th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st-77th.
Twenty-second	Richard Browning (D)	Oceana	69th-72nd; 75th-77th
	Rick Staton (D)	Wyoming	69th-77th
Twenty-third	Cliff Moore (D)	Thorpe	77th
Twenty-fourth	Eustace Frederick (D)	Bluefield	Appt. 10/17/93, 71st; 72nd-77th
Twenty-fifth	Marshall Long (D)	Mercer	Appt. 9/17/02, 75th; 76th-77th
	Thomas Mike Porter (R)	Princeton	77th
Twenty-sixth	Gerald Crosier (D)	Union	76th-77th
Twenty-seventh	Robert S. Kiss (D)	Beckley	69th-77th
	Virginia Mahan (D)	Green Sulphur Springs	73rd-77th
	Linda Sumner (R)	Beckley	76th-77th
	Sally Matz Susman (D)	Beckley	74th-77th
	Ron Thompson (D)	Beckley	72nd-77th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd-77th
	Ray Canterbury (R)	Ronceverte	75th-77th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th-68th; 70th-77th
	David G. Perry (D)	Oak Hill	75th-77th
	John Pino (D)	Oak Hill	67th-68th; 71st-77th
Thirtieth	Jon Amores (D)	Charleston	72nd-77th
	Bonnie Brown (D)	South Charleston	66th-68th; 70th-71st; 75th-77th
	Barbara Burruss Hatfield (D)	South Charleston	67th-69th; 74th-77th
	Mark Hunt (D)	Charleston	72nd-75th; 77th
	Corey Palumbo (D)	Charleston	76th-77th
	Sharon Spencer (D)	Charleston	66th; 68th-71st; 73rd-77th
Thirty-first	Danny Wells (D)	Charleston	77th
	Carrie Webster (D)	Charleston	75th-77th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th-77th
	Patrick Lane (R)	Cross Lanes	77th
	Ron Walters (R)	Charleston	71st-73rd; 75th-77th
Thirty-third	William F. Stemple (D)	Arnoldsburg	73rd-77th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd-77th
Thirty-fifth	Sam J. Argento (D)	Mt. Nebo	77th
Thirty-sixth	Joe Talbot (D)	Webster	71st-72nd; 76th-77th
Thirty-seventh	William G. Hartman (D)	Elkins	76th-77th
	Bill Proudfoot (D)	Elkins	70th-77th
Thirty-eighth	Doug Stalnaker (D)	Weston	72nd-77th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76th-77th
Fortieth	Mary M. Poling (D)	Moatsville	75th-77th
Forty-first	Samuel J. Cann (D)	Clarksburg	72nd-77th
	Ron Fragale (D)	Clarksburg	70th-73rd; 75th-77th
	Richard J. Iaquina (D)	Clarksburg	76th-77th
	Tim Miley (D)	Clarksburg	77th
Forty-second	Jeffery L. Tansill (R)	Grafton	77th
Forty-third	Michael Caputo (D)	Fairmont	73rd-77th
	Linda Longstreth (D)	Fairmont	77th
	Tim Manchin (D)	Fairmont	Appt. 11/03, 76th; 77th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98, 74th; 75th-77th
	Cindy Frich (R)	Morgantown	76th-77th
	Nancy Houston (D)	Morgantown	74th; 76th-77th
	Charlene Marshall (D)	Morgantown	74th-75th; 77th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/08/93, 71st; 72nd-77th
Forty-sixth	Debbie Stevens (R)	Parsons	77th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-77th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th-77th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th-70th; 74th-77th
Fiftieth	Ruth Rowan (R)	Points	77th
Fifty-first	Charles S. Trump IV (R)	Berkeley Springs	71st-77th
Fifty-second	Craig P. Blair (R)	Martinsburg	76th-77th
Fifty-third	Victor A. Roberts, Jr. (R)	Gerrardstown	77th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76th-77th
Fifty-fifth	John Overington (R)	Martinsburg	67th-77th
Fifty-sixth	Robert C. Tabb (D)	Kearneysville	76th-77th
Fifty-seventh	John Doyle (D)	Shepherdstown	66th; 71st-77th
Fifty-eighth	Locke Wysong (D)	Charles Town	77th

(D) Democrats 68

(R) Republicans 32

TOTAL 100

MEMBERS OF THE SENATE

REGULAR SESSION, 2005

OFFICERS

President — Earl Ray Tomblin, Chapmanville

Clerk — Darrell E. Holmes, Charleston

Sergeant at Arms — Howard Wellman, Bluefield

Doorkeeper — Andrew J. Trail, Charleston

District	Name	Address	Legislative Service
First	Edwin J. Bowman (D)	Weirton	72nd-77th
	Andy McKenzie (R)	Wheeling	73rd-77th
Second	Larry J. Edgell (D)	New Martinsburg	74th-77th
	Jeffrey V. Kessler (D)	Glen Dale	Appt. 11/97, 73rd; 74th-77th
Third	Donna J. Boley (R)	St. Marys	Appt. 5/14/85, 67th; 68th-77th
	J. Frank Deem (R)	Vienna	(House 52nd-56th); 57th-64th; (House 69th); 72nd-77th
Fourth	Karen L. Facemyer (R)	Ripley	(House 71st-74th); 75th-77th
	Charles C. Lanham (R)	Point Pleasant	Appt. 1/7/05, 77th
Fifth	Evan H. Jenkins (D)	Huntington	(House 72nd-74th); 76th-77th
	Robert H. Plymale (D)	Ceredo	71st-77th
Sixth	H. Truman Chafin (D)	Williamson	66th-77th
	John Pat Fanning (D)	laeger	Appt. 6/10/68, 58th; 59th-64th; 67th-68th; 73rd-77th
Seventh	Tracy Dempsey (D)	Harts	(House 70th-75th); 76th-77th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-77th
Eighth	Steve Harrison (R)	Cross Lanes	(House 71st-75th); 76th-77th
	Vic Sprouse (R)	South Charleston	(House 72nd); 73rd-77th
Ninth	Billy Wayne Bailey, Jr. (D)	Pineville	Appt. 1/9/91, 70th; 71st-77th
	Russ Weeks (R)	Beckley	76th-77th
Tenth	Donald T. Caruth (R)	Athens	(House 76th); 77th
	Jesse O. Guillis (R)	Lewisburg	76th-77th
Eleventh	Shirley Love (D)	Oak Hill	Appt. 8/14/94, 71st; 72nd-77th
	C. Randy White (D)	Webster Springs	(House 73rd-75th); 76th-77th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83, 66th; 67th-69th); 70th-71st; 74th-77th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-77th
Thirteenth	Michael A. Oliverio, II (D)	Morgantown	(House 71st); 72nd-77th
	Roman W. Prezioso, Jr. (D)	Fairmont	(House 69th-72nd); 73rd-77th
Fourteenth	Jon Blair Hunter (D)	Clarksburg	73rd-77th
	Sarah M. Minear (R)	Davis	72nd-77th
Fifteenth	Clark Barnes (R)	Elkins	77th
	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/13/89, 69th; 70th-77th
Sixteenth	John R. Unger II (D)	Martinsburg	74th-77th
	John Yoder (R)	Harpers Ferry	71st-72nd; 77th
Seventeenth	Dan Foster (D)	Charleston	(House 76th); 77th
	Brooks F. McCabe, Jr. (D)	Charleston	74th-77th
(D) Democrats			21
(R) Republicans			12
TOTAL			33

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2005

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (*Agriculture Chair*), Tabb (*Agriculture Vice Chair*), Stemple (*Natural Resources Chair*), Crosier (*Natural Resources Vice Chair*), Argento, Ennis, Fragale, Louisos, Martin, Eldridge, Paxton, Pethtel, Poling, Swartzmiller, Richard Thompson, Wells, Williams, Anderson, Canterbury, Evans, Hamilton, Leggett, Overington, Romine and Schoen.

BANKING AND INSURANCE

Ron Thompson (*Banking Chair*), Perry (*Banking Vice Chair*), H. White (*Insurance Chair*), Hrutkay (*Insurance Vice Chair*), Barker, Beach, Butcher, Cann, Ennis, Hartman, Hatfield, Iaquinta, Marshall, Morgan, Perdue, Spencer, Webster, Azinger, Canterbury, Carmichael, Frich, Hamilton, Roberts, Stevens and G. White.

CONSTITUTIONAL REVISION

Talbott (*Chair*), Webster (*Vice Chair*), Argento, Caputo, Craig, Crosier, Eldridge, Fragale, Houston, Hunt, Kominar, Louisos, Pino, Spencer, Varner, H. White, Anderson, Armstead, Blair, Ellem, Lane, Overington, Schoen and Sobonya.

EDUCATION

Campbell (*Chair*), Williams (*Vice Chair*), Beach, Crosier, Eldridge, Fragale, Longstreth, Louisos, Marshall, Paxton, Perry, Poling, Spencer, Stephens, Tabb, Wells, Wysong, Canterbury, Duke, Lane, Leggett, Roberts, Stevens, Sumner and Tansill.

FINANCE

Michael (*Chair*), Doyle (*Vice Chair*), Boggs, Browning, Cann, Frederick, Houston, Kominar, Leach, Palumbo, Proudfoot, Stalnaker, Susman, Ron Thompson, Varner, H. White, Williams,

Anderson, Ashley, Border, Carmichael, Evans, Hall, Wakim and G. White.

GOVERNMENT ORGANIZATION

Beane (*Chair*), Ennis (*Vice Chair*), Argento, Barker, Butcher, Ferrell, Hatfield, Hunt, Iaquina, Manchin, Martin, Miley, Perdue, Swartzmiller, Talbott, Tucker, Yost, Blair, Frich, Porter, Romine, Rowan, Schoen, Trump and Walters.

HEALTH AND HUMAN RESOURCES

Perdue (*Chair*), Hatfield (*Vice Chair*), Boggs, Brown, DeLong, Frederick, Hrutkay, Leach, Long, Longstreth, Marshall, Miley, Moore, Pino, Susman, Tucker, Webster, Ashley, Border, Hall, Lane, Rowan, Schadler, Sumner and Wakim.

INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

Pethtel (*Industry and Labor Chair*), Poling (*Industry and Labor Vice Chair*), Cann (*Economic Development and Small Business Chair*), Frederick (*Economic Development and Small Business Vice Chair*), Browning, Caputo, Craig, Fragale, Hartman, Martin, Miley, Moore, Palumbo, Perry, Talbott, Wysong, Yost, Blair, Carmichael, Frich, Howard, Sobonya, Stevens, Walters and G. White.

JUDICIARY

Amores (*Chair*), Craig (*Vice Chair*), Brown, Caputo, DeLong, Hartman, Hrutkay, Long, Mahan, Moore, Morgan, Pethtel, Pino, Stemple, Tabb, Rick Thompson, Webster, Armstead, Azinger, Ellem, Hamilton, Howard, Overington, Schadler and Sobonya.

PENSIONS AND RETIREMENT

Stalnaker (*Cochair*), Manchin (*Vice Cochair*), Browning, Frederick, Williams, Duke and Hall.

POLITICAL SUBDIVISIONS

Proudfoot (*Chair*), Susman (*Vice Chair*), Brown, Caputo, Ferrell, Houston, Hunt, Morgan, Palumbo, Perry, Stalnaker, Staton,

Swartzmiller, Tabb, Varner, Wysong, Yost, Anderson, Armstead, Duke, Howard, Schadler, Sumner, Tansill and Walters.

ROADS AND TRANSPORTATION

Boggs (*Chair*), Butcher (*Vice Chair*), Barker, Craig, Ennis, Ferrell, Kominar, Manchin, Martin, Miley, Paxton, Poling, Stephens, Susman, Rick Thompson, Ron Thompson, Wells, Ellem, Evans, Leggett, Porter, Roberts, Romine, Rowan and Tansill.

RULES

Kiss (*Chair*), Amores, Beane, Browning, Campbell, Carmichael, Kominar, Leach, Mahan, Michael, Pino, Staton, Varner, Anderson, Armstead, Border, Hall and Trump.

VETERANS AFFAIRS AND HOMELAND SECURITY

DeLong (*Veterans Affairs Chair*), Martin (*Veterans Affairs Vice Chair*), Swartzmiller (*Homeland Security Chair*), Houston (*Homeland Security Vice Chair*), Butcher, Crosier, Hrutkay, Hunt, Iaquina, Longstreth, Paxton, Poling, Proudfoot, Stephens, Ron Thompson, Tucker, Yost, Ashley, Azinger, Border, Frich, Porter, Schoen, Wakim and Tansill.

JOINT COMMITTEES

ENROLLED BILLS

Browning (*Cochair*), Iaquina (*Vice Cochair*), Varner and Overington.

GOVERNMENT AND FINANCE

Kiss (*Cochair*), Amores, Mahan, Michael, Staton, Hall and Trump.

GOVERNMENT OPERATIONS

Beane (*Cochair*), Ennis (*Vice Cochair*), Talbott, Blair and Leggett.

LEGISLATIVE RULE-MAKING REVIEW

Mahan (*Cochair*), Palumbo (*Vice Cochair*), Cann, Pino, Armstead and Overington.

RULES

Kiss (*Cochair*), Staton and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Cann (*Cochair*), Amores, Browning, Craig, Frederick, Kominar, Michael, Poling, Stalnaker, Azinger, Howard and L. White.

COMMISSION ON INTERSTATE COOPERATION

Caputo (*Cochair*), Tucker (*Vice Cochair*), Frederick, Varner, Blair and Walters.

COMMISSION ON SPECIAL INVESTIGATIONS

Kiss (*Cochair*), Michael, Staton, Howard and Trump.

FOREST MANAGEMENT REVIEW COMMISSION

Morgan (*Cochair*), Hartman (*Vice Cochair*), Proudfoot, Stemple, Williams and Canterbury.

**LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATION ACCOUNTABILITY**

Campbell (*Cochair*), Beach, Doyle, Perry, Williams and Anderson.

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

Leach (*Cochair*), Hatfield, Michael, Perdue, Susman and Hall.

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

Campbell (*Cochair*), Frederick, Stalnaker and Walters.

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

Perry (*Cochair*), Leach (*Vice Cochair*), Pino, Stemple and
Roberts.

STANDING COMMITTEES OF THE SENATE
Regular Session, 2005

STANDING

AGRICULTURE

Edgell (*Chair*), Love (*Vice Chair*), Dempsey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Weeks.

BANKING AND INSURANCE

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Foster, Helmick, Kessler, Prezioso, Sharpe, Deem, Facemyer, Guills, Lanham and Minear.

CONFIRMATIONS

Love (*Chair*), Chafin (*Vice Chair*), Bailey, Bowman, Minard, Plymale, Harrison, McKenzie and Yoder.

ECONOMIC DEVELOPMENT

McCabe (*Chair*), Oliverio (*Vice Chair*), Bowman, Fanning, Helmick, Kessler, Plymale, Prezioso, Unger, Caruth, Facemyer, Lanham, McKenzie and Minear.

EDUCATION

Plymale (*Chair*), Edgell (*Vice Chair*), Bailey, Bowman, Dempsey, Hunter, Oliverio, Unger, White, Barnes, Boley, Guills, Harrison and Sprouse.

ENERGY, INDUSTRY AND MINING

Sharpe (*Chair*), Dempsey (*Vice Chair*), Fanning, Foster, Helmick, Hunter, Jenkins, Kessler, Oliverio, Caruth, Deem, Guills, McKenzie and Weeks.

FINANCE

Helmick (*Chair*), Sharpe (*Vice Chair*), Bailey, Bowman, Chafin, Edgell, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Minear, Sprouse and Yoder.

GOVERNMENT ORGANIZATION

Bowman (*Chair*), Bailey (*Vice Chair*), Chafin, Jenkins, Kessler, McCabe, Minard, Plymale, White, Boley, Harrison, Lanham, Minear and Weeks.

HEALTH AND HUMAN RESOURCES

Prezioso (*Chair*), Unger (*Vice Chair*), Bailey, Edgell, Foster, Hunter, Jenkins, McCabe, Sharpe, Barnes, Boley, Caruth, Guills and Weeks.

INTERSTATE COOPERATION

Jenkins (*Chair*), Dempsey (*Vice Chair*), Minard, Unger, Caruth, Harrison and Yoder.

JUDICIARY

Kessler (*Chair*), Oliverio (*Vice Chair*), Chafin, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks.

LABOR

Oliverio (*Chair*), White (*Vice Chair*), Edgell, Foster, Hunter, Love, Prezioso, Boley, Harrison, Lanham and Yoder.

MILITARY

Hunter (*Chair*), Dempsey (*Vice Chair*), Bailey, Fanning, Minard, Oliverio, Boley, Weeks and Yoder.

NATURAL RESOURCES

Fanning (*Chair*), White (*Vice Chair*), Bowman, Dempsey, Helmick, Love, McCabe, Plymale, Prezioso, Barnes, Caruth, Deem, Facemyer and Minear.

PENSIONS

Foster (*Chair*), McCabe (*Vice Chair*), Edgell, Plymale, Barnes, Deem and Lanham.

RULES

Tomblin (*Chair*), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, Boley, McKenzie, Minear and Sprouse.

TRANSPORTATION AND INFRASTRUCTURE

Unger (*Chair*), Jenkins (*Vice Chair*), Fanning, Love, Oliverio, White, Deem, Facemyer and McKenzie.

JOINT COMMITTEES

ENROLLED BILLS

White (*Cochair*), Bailey, Love, Sprouse and Yoder.

GOVERNMENT AND FINANCE

Tomblin (*Cochair*), Chafin, Helmick, Kessler, Sharpe, Deem and Sprouse.

GOVERNMENT OPERATIONS

Bowman (*Cochair*), Bailey (*Vice Cochair*), Helmick, Boley and Minear.

LEGISLATIVE RULE-MAKING REVIEW

Minard (*Cochair*), Fanning (*Vice Cochair*), Prezioso, Unger, Boley and Minear.

PENSIONS AND RETIREMENT

Foster (*Cochair*), McCabe (*Vice Cochair*), Edgell, Plymale, Barnes, Deem and Lanham.

RULES

Tomblin (*Cochair*), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

McCabe (*Cochair*), Bowman, Chafin, Helmick, Kessler, Oliverio, Plymale, Prezioso, Unger, Facemyer, McKenzie and Minear.

COMMISSION ON INTERSTATE COOPERATION

Jenkins (*Cochair*), Dempsey (*Vice Cochair*), Minard, Unger, Caruth, Harrison and Yoder.

COMMISSION ON SPECIAL INVESTIGATIONS

Tomblin (*Cochair*), Chafin, Sharpe, Boley and Sprouse.

FOREST MANAGEMENT REVIEW COMMISSION

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**LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY**

Plymale (*Cochair*), Bailey, Edgell, Unger, Boley and Harrison.

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

Prezioso (*Cochair*), Hunter, Sharpe, Unger, Boley and Caruth.

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

Unger (*Cochair*), Kessler, McCabe and Sprouse.

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

Love (*Cochair*), Dempsey, Hunter, White and McKenzie.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 2005

CHAPTER 1

**(S. B. 524 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-2-34, relating to requiring a study of the centralized accounting system of the state to determine whether improvements are necessary to obtain optimal function and economical operation of the system, including, but not limited to, whether a transfer of responsibility for administration of the system is warranted or indicated to reach those ends, and for such other related purposes as the Secretary of the Department of Administration, the Secretary of the Department of Revenue, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Transporta-

tion, the West Virginia Higher Education Policy Commission, the State Treasurer and the Auditor of the state may agree are advisable.

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 §5A-2-34, to read as follows:

ARTICLE 2. FINANCE DIVISION.

§5A-2-34. Study of centralized accounting system.

1 (a) The Legislature finds an examination of administration
2 of the state's centralized accounting system is warranted to
3 determine whether improvements are necessary to obtain
4 optimal function and economical operation of the system,
5 including, but not limited to, whether a transfer of responsibility
6 for administration of the system is warranted or indicated to
7 reach those ends. It is, therefore, the intent of the Legislature
8 that appropriate public officials conduct a study of the central-
9 ized accounting system and provide the results of the study and
10 any recommendations indicated for the improvement of the
11 system to the Legislature for its consideration.

12 (b) The Secretary of the Department of Administration, the
13 Secretary of the Department of Revenue, the Secretary of the
14 Department of Health and Human Resources, the Secretary of
15 the Department of Transportation, the West Virginia Higher
16 Education Policy Commission, the State Treasurer and the
17 Auditor of the state shall conduct a study of the centralized
18 accounting system for the purposes specified in subsection (a)
19 of this section and for such other related purposes as they may
20 agree are advisable. The study shall include the examination of
21 the centralized accounting system by an independent consultant
22 agreed upon by the Secretary of the Department of Administra-

23 tion and the Secretary of the Department of Revenue after
24 consultation with the remainder of the public officials desig-
25 nated in this section to conduct the study. A report of the study
26 and any resulting recommendations made by the public officials
27 designated by this section to conduct the study shall be submit-
28 ted to the Joint Committee on Government and Finance on or
29 before the first day of December, two thousand five, and shall
30 include the written report and any recommendations of the
31 independent consultant.

CHAPTER 2

(S. B. 691— By Senator Caruth)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §55-3B-3 of the Code of West Virginia, 1931, as amended, relating to termination of tenancy of a factory-built home.

Be it enacted by the Legislature of West Virginia:

That §55-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. REMEDIES FOR WRONGFUL OCCUPATION OF FACTORY-BUILT HOME SITE.

§55-3B-3. Termination of tenancy.

- 1 (a) Except for termination for good cause, the tenancy of a
- 2 factory-built home site may be terminated by either party only
- 3 by giving at least three months' notice in writing to the other of

4 his or her intention to terminate the tenancy. When such notice
5 is to the tenant, it may be served upon the tenant or upon
6 anyone holding under the tenant the leased premises or any part
7 of the leased premises. When it is by the tenant, it may be
8 served upon anyone who at the time owns the premises, in
9 whole or in part, or the agent of the owner or according to the
10 common law. If the termination is for good cause, no notice
11 requirements other than those provided in sections four and six
12 of this article may be imposed.

13 (b) Unless the landlord is changing the use of the site, if a
14 tenancy is ended by the landlord at the later of its stated term or
15 at the end of the period set out in subsection (b), section two of
16 this article, without good cause, the owner may not prevent the
17 sale of the factory-built home in place to another tenant who
18 meets the standards and criteria in effect for new tenants prior
19 to the termination of the tenancy.

CHAPTER 3

(Com. Sub. for H. B. 3174 — By Delegate Amores)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §55-7-11a of the Code of West Virginia, 1931, as amended, relating to the admissibility of expressions of apology, sympathy, commiseration, condolence, compassion or general sense of benevolence made by a healthcare provider to a patient, or relatives or representatives of the patient; inadmissibility of statements as evidence of admission of liability; and definition of terms.

Be it enacted by the Legislature of West Virginia:

That §55-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.

1 (a) If a person sustains a personal injury, no person shall
2 within twenty days from the date of the personal injury while
3 the injured person is either: (i) An inpatient in any hospital; or
4 (ii) partially or totally unable to engage in his or her usual trade,
5 profession or occupation:

6 (1) Negotiate or attempt to negotiate a settlement of any
7 claim for such personal injury with or for and on behalf of the
8 injured person;

9 (2) Obtain or attempt to obtain from the injured person a
10 partial or general release of liability for such injury; or

11 (3) Obtain or attempt to obtain any statement, either written
12 or oral, from the injured person for use in negotiating a settle-
13 ment or obtaining a partial or general release of liability with
14 respect to the personal injury: *Provided*, That nothing herein
15 shall prohibit a person acting or intending to act for and on
16 behalf of the injured person from obtaining any statement, oral
17 or written, from an injured person upon the express request of
18 the injured person.

19 Nothing herein shall prevent a person who may be liable for
20 damages on account of the personal injury from making an
21 advance payment of all or any part of his or her liability for the
22 damages; any sum paid during the twenty days by a person

23 liable for damages on account of the personal injury is allowed
24 as full credit against any damages which may be finally
25 determined to be due an injured person.

26 Any settlement, release of liability or statement entered
27 into, obtained or made in violation of this section may be
28 disavowed by the injured person at any time within one hundred
29 eighty days from the date of the personal injury by executing a
30 written statement of disavowal and thereupon forwarding a
31 copy of the same to the person violating this section, in which
32 event the settlement, release or statement may not be admissible
33 in evidence for any purpose in any court or other proceeding
34 relating to the personal injury, if any consideration paid for the
35 settlement of or the general release of liability for the personal
36 injury, at the time of the forwarding of the copy of the written
37 statement of disavowal, is repaid or returned to the person who
38 paid the consideration.

39 (b) (1) No statement, affirmation, gesture or conduct of a
40 healthcare provider who provided healthcare services to a
41 patient, expressing apology, sympathy, commiseration, condo-
42 lence, compassion or a general sense of benevolence, to the
43 patient, a relative of the patient or a representative of the patient
44 and which relate to the discomfort, pain, suffering, injury or
45 death of the patient shall be admissible as evidence of an
46 admission of liability or as evidence of an admission against
47 interest in any civil action brought under the provisions of
48 article seven-b, chapter fifty-five of this code, or in any
49 arbitration, mediation or other alternative dispute resolution
50 proceeding related to such civil action.

51 (2) Terms not otherwise defined in this section have the
52 meanings assigned to them in article seven-b, chapter fifty-five
53 of this code. For purposes of this section, unless the context
54 otherwise requires, "relative" means a spouse, parent, grandpar-
55 ent, stepfather, stepmother, child, grandchild, brother, sister,

56 half-brother, half-sister or spouse's parents. The term includes
57 said relationships that are created as a result of adoption. In
58 addition, "relative" includes any person who has a family-type
59 relationship with a patient.

CHAPTER 4

(Com. Sub. for H. B. 2011 — By Delegate Long)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-23, relating to removing health care providers' exposure to liability where, in certain cases involving prescription drugs and medical devices, a person has been injured; and exceptions.

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 §55-7-23, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

1 (a) No health care provider, as defined in section two,
2 article seven-b of this chapter, is liable to a patient or third party
3 for injuries sustained as a result of the ingestion of a prescrip-
4 tion drug or use of a medical device that was prescribed or used

5 by the health care provider in accordance with instructions
6 approved by the U. S. Food and Drug Administration regarding
7 the dosage and administration of the drug, the indications for
8 which the drug should be taken or device should be used, and
9 the contraindications against taking the drug or using the
10 device: *Provided*, That the provisions of this section shall not
11 apply if: (1) The health care provider had actual knowledge that
12 the drug or device was inherently unsafe for the purpose for
13 which it was prescribed or used or (2) a manufacturer of such
14 drug or device publicly announces changes in the dosage or
15 administration of such drug or changes in contraindications
16 against taking the drug or using the device and the health care
17 provider fails to follow such publicly announced changes and
18 such failure proximately caused or contributed to the plaintiff's
19 injuries or damages.

20 (b) The provisions of this section are not intended to create
21 a new cause of action.

CHAPTER 5

**(Com. Sub. for S. B. 194 — By Senators McCabe,
Yoder, Foster, Sharpe, Jenkins and Barnes)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §31-18D-5, §31-18D-6, §31-18D-7
and §31-18D-9 of the Code of West Virginia, 1931, as amended,
relating to the West Virginia Affordable Housing Trust Fund
generally; changing the composition of the Board of Directors of
the West Virginia Affordable Housing Trust Fund by reducing the

number of members appointed representing nonprofit organizations; adding additional members representing real estate, manufactured housing and homebuilding entities; reducing the number of votes necessary for Board action; providing that the West Virginia Housing Development Fund shall establish best practices for recipients of trust fund moneys; permitting trust fund moneys to be used for initial operational expenses of local governmental programs to reduce substandard housing or inappropriate land use patterns; and eliminating certain restrictions on application procedures for trust fund moneys.

Be it enacted by the Legislature of West Virginia:

That §31-18D-5, §31-18D-6, §31-18D-7 and §31-18D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.

§31-18D-5. Housing Trust Fund Board of Directors.

§31-18D-6. Powers and responsibilities of the Board.

§31-18D-7. Eligible activities; eligible organizations.

§31-18D-9. Applications and selection criteria.

§31-18D-5. Housing Trust Fund Board of Directors.

1 (a) The Affordable Housing Trust Fund has a Board of
2 Directors, which consists of eleven voting members. The
3 members of the Board are responsible for administering the
4 Trust Fund.

5 (b) The Trust Fund Board of Directors consists of:

6 (1) The Secretary of the Department of Health and Human
7 Resources, ex officio, or his or her designee;

8 (2) The Executive Director of the West Virginia Develop-
9 ment Office, ex officio, or his or her designee;

10 (3) The Executive Director of the West Virginia Housing
11 Development Fund, ex officio, or his or her designee;

12 (4) One member representative of the manufactured
13 housing sales industry, with special consideration of three
14 nominees submitted by the West Virginia Manufactured
15 Housing Association;

16 (5) One member representative of the real estate develop-
17 ment or real estate sales industry, with special consideration of
18 three nominees submitted by the West Virginia Association of
19 Realtors;

20 (6) One member who is an executive director or an officer
21 of a local, community-based not-for-profit organization
22 currently licensed to do business in West Virginia and which is
23 exempt from federal income tax under Section 501(c)(3) of the
24 Internal Revenue Code, as amended, codified in 26 U. S. C.
25 §501 (c)(3), and are organized and operated exclusively for
26 charitable purposes within the meaning of that section, and in
27 accordance with those purposes, provide housing assistance to
28 low or moderate income citizens of this state;

29 (7) One member representative of the banking industry;

30 (8) One member who is an officer or member of a municipi-
31 pality or county commission, or his or her designee;

32 (9) One member who is an executive director of a public
33 housing authority operating in a county or municipality in this
34 state;

35 (10) One member who is an executive director or officer of
36 a statewide not-for-profit organization which has as one of its

37 primary missions the provision of housing assistance to low and
38 moderate income citizens of this state, currently licensed to do
39 business in West Virginia and is exempt from federal income
40 tax under Section 501(c)(3) of the Internal Revenue Code, as
41 amended, codified in 26 U. S. C. §501 (c)(3), and is organized
42 and operated exclusively for charitable purposes within the
43 meaning of that section; and

44 (11) One member representative of the homebuilding
45 industry, with special consideration of three nominees submit-
46 ted by the Homebuilders Association of West Virginia.

47 (c) Not more than four of the members, excluding the ex
48 officio members, may belong to the same political party.
49 Except for midterm special appointments made to fill irregular
50 vacancies on the Board, members shall be appointed for terms
51 of three years each. Members are eligible for reappointment.
52 However, no member may serve for more than two consecutive
53 full terms. Except for midterm special appointments made to
54 fill irregular vacancies on the Board, appointment terms shall
55 begin on the first day of July of the beginning year. All
56 appointment terms, special and regular, end on the thirtieth day
57 of June of the final year of the term.

58 (d) All members of the Board except those who serve ex
59 officio shall be appointed by the Governor, with the advice and
60 consent of the Senate.

61 (e) The Governor may remove any appointed member in
62 case of incompetency, neglect of duty, moral turpitude or
63 malfeasance in office, and the Governor may declare the office
64 vacant and fill the vacancy as provided in other cases of
65 vacancy.

66 (f) The Board shall annually select its chairperson.

67 (g) The Board shall meet not less than four times during the
68 fiscal year, and additional meetings may be held upon a call of
69 the chairperson or of a majority of the members. Board
70 members shall be reimbursed for sums necessary to carry out
71 responsibilities of the Board and for reasonable travel expenses
72 to attend Board meetings. The ex officio members may not be
73 reimbursed by the Fund for travel expenses to attend Board
74 meetings.

75 (h) Six members of the Board is a quorum. No vacancy in
76 the membership of the Board impairs the right of a quorum to
77 exercise all the rights and perform all the duties of the Board.
78 Action may be taken by the affirmative vote of a majority of
79 members present at a properly noticed and legally convened
80 meeting of the Board.

§31-18D-6. Powers and responsibilities of the Board.

1 (a) The Board shall manage and control the Affordable
2 Housing Trust Fund. In order to carry out the day-to-day
3 management and control of the Trust Fund and effectuate the
4 purposes of this article, the Board may appoint an Executive
5 Director and other staff. The Board shall fix the Executive
6 Director's duties and compensation as well as that of other staff.
7 The Executive Director and other staff serve at the will and
8 pleasure of the Board. The Board may provide for staff payroll
9 and employee benefits in the same manner as the West Virginia
10 Housing Development Fund provides for its employees.

11 (b) The members of the Board and its officers are not liable
12 personally, either jointly or severally, for any debt or obligation
13 created by the Board.

14 (c) Members of the Board and its officers and employees
15 shall be provided insurance coverage by the state's Risk and
16 Insurance Management Board to the same extent and in the
17 same manner the coverage is applicable to state government

18 agencies and appointed state officials and employees. The
19 Board may elect to obtain other forms of insurance coverage it
20 considers reasonable for its operations.

21 (d) The acts of the Board are solely acts of its corporation
22 and are not those of an agent of the state, nor is any debt or
23 obligation of the Board a debt or obligation of the state.

24 (e) The Board shall:

25 (1) Develop and implement comprehensive policies and
26 programs for the use of the Trust Fund that ensures the equita-
27 ble distribution of moneys from the Trust Fund throughout the
28 various geographic areas of this state and between urban and
29 rural areas of this state;

30 (2) Develop and implement an application and selection
31 system to identify housing sponsors or providers of affordable
32 housing developments or programs that qualify to receive
33 assistance from the Trust Fund for eligible activities;

34 (3) Provide funds for technical assistance to prospective
35 applicants;

36 (4) Monitor services, developments, projects or programs
37 receiving assistance from the Trust Fund to ensure that the
38 developments are operated in a manner consistent with this
39 article and in accordance with the representations made to the
40 Trust Fund Board by the sponsors of the services, develop-
41 ments, projects or programs;

42 (5) Recommend legislation to further its mission of
43 providing housing for low to moderate income citizens of this
44 state;

45 (6) Provide funding to increase the capacity of nonprofit
46 community housing organizations to serve their communities;

47 (7) Research and study housing needs and potential
48 solutions to the substandard quality or lack of affordable
49 housing;

50 (8) Coordinate programs with other entities when doing so
51 fulfills its mission to provide housing to low to moderate
52 income citizens of this state;

53 (9) Convene public meetings to gather information or
54 receive public comments regarding housing policy or issues;

55 (10) Distribute available funds pursuant to policies estab-
56 lished by it which may permit the establishment of a permanent
57 endowment; and

58 (11) Serve as a clearinghouse for information regarding
59 housing services and providers within this state.

60 (f) The West Virginia Housing Development Fund shall
61 provide office space and staff support services for the Executive
62 Director and the Board, shall act as fiscal agent for the Board
63 and, as such, shall provide accounting services for the Board,
64 invest all funds as directed by the Board, service all investment
65 and loan activities of the Board as requested, and shall make the
66 disbursements of all funds as directed by the Board, and
67 establish best practices for recipient organizations, for which
68 the West Virginia Housing Development Fund shall be reason-
69 ably compensated, as determined by the Board.

§31-18D-7. Eligible activities; eligible organizations.

1 (a) The Board shall use the moneys from the Trust Fund to
2 make, or participate in the making of, loans or grants for
3 eligible activities that shall include, but not be limited to:

4 (1) Providing funds for new construction, rehabilitation,
5 repair or acquisition of housing to assist low or moderate
6 income citizens including land and land improvements;

7 (2) Providing matching funds for federal housing moneys
8 requiring a local or state match;

9 (3) Providing funds for administrative costs for housing
10 assistance programs or nonprofit organizations eligible for
11 funding pursuant to subsection (b) of this section if the grants
12 or loans provided will substantially increase the recipient's
13 access to housing funds or increase its capacity to supply
14 affordable housing;

15 (4) Providing loan guarantees and other financial mecha-
16 nisms to facilitate the provision of housing products or services;

17 (5) Providing funds for down payments, closing costs,
18 foreclosure prevention, home ownership counseling and
19 security bonds which facilitate the construction, rehabilitation,
20 repair or acquisition of housing by low to moderate income
21 citizens;

22 (6) Providing risk underwriting products not provided by
23 private sector entities to facilitate broader accessibility of
24 citizens to other federal or state housing funds or loan pro-
25 grams. The products shall be established using professional
26 risk underwriting standards and separate corporate vehicles may
27 be created and capitalized by the Trust Fund to provide the
28 products; and

29 (7) Providing start-up funds for initial operational expenses
30 of local government programs to reduce substandard housing or
31 inappropriate land use patterns.

32 (b) Organizations eligible for funding from the Trust Fund
33 include the following: (1) Local governments; (2) local govern-
34 ment housing authorities; (3) nonprofit organizations recog-
35 nized as exempt from federal income tax under Section
36 501(c)(3) of the Internal Revenue Code, as amended, codified

37 in 26 U. S. C. §501 (c)(3), and which are organized and
38 operated exclusively for charitable purposes within the meaning
39 of that section, and in accordance with those purposes provide
40 assistance to low or moderate income citizens of this state; and
41 (4) regional or statewide housing assistance organizations that
42 have been recognized as exempt under Section 501(c)(3) of the
43 Internal Revenue Code, as amended, and which provide
44 assistance to low and moderate income or low income citizens
45 of this state.

§31-18D-9. Applications and selection criteria.

1 (a) No moneys may be expended from the Trust Fund for
2 projects that discriminate against any buyer or renter because of
3 race, religion, sex, familial status or national origin.

4 (b) The Board shall forward to the West Virginia Housing
5 Development Fund for its review and information approved
6 requests, applications and proposals for funding containing
7 information as is necessary to permit the West Virginia
8 Housing Development Fund to carry out its duties under this
9 article.

CHAPTER 6

**(Com. Sub. for S. B. 670 — By Senators Kessler, Edgell, Helmick,
Boley, Bowman, Barnes and Facemyer)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §3-8-5 of the Code of West Virginia,
1931, as amended; and to amend and reenact §19-21A-3,

§19-21A-4, §19-21A-5, §19-21A-6 and §19-21A-7 of said code, all relating to electing supervisors for conservation districts; defining certain terms; authorizing emergency rulemaking; providing that registered voters in the district may vote for supervisors and in referendum; requiring candidate for supervisor file statement; requiring Conservation Committee certify qualified candidates for ballot; providing that candidate may not be on ballot or take office if qualifications not met; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That §3-8-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §19-21A-3, §19-21A-4 §19-21A-5, §19-21A-6 and §19-21A-7 of said code be amended and reenacted, all to read as follows:

Chapter

3. Elections.

19. Agriculture.

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

1 (a) Every candidate, financial agent, person and association
 2 of persons, organization of any kind, including every corpora-
 3 tion, directly or indirectly, supporting a political committee
 4 established pursuant to paragraph (C), subdivision (1), subsec-
 5 tion (b), section eight of this article or engaging in other
 6 activities permitted by this section and also including the
 7 treasurer or equivalent officer of the association or organiza-
 8 tion, advocating or opposing the nomination, election or defeat
 9 of any candidate, and the treasurer of every political party
 10 committee shall keep detailed accounts of every sum of money

11 or other thing of value received by him or her, including all
12 loans of money or things of value, and of all expenditures and
13 disbursements made, liabilities incurred, by the candidate,
14 financial agent, person, association or organization or commit-
15 tee, for political purposes, or by any of the officers or members
16 of the Committee, or any person acting under its authority or on
17 its behalf.

18 (b) Every person or association of persons required to keep
19 detailed accounts under this section shall file with the officers
20 hereinafter prescribed a detailed itemized sworn statement,
21 according to the following provisions and times:

22 (1) On the last Saturday in March or within six days
23 thereafter and annually whenever the total of all financial
24 transactions relating to an election exceed five hundred dollars,
25 a statement which shall include all financial transactions which
26 have taken place by the date of that statement, subsequent to
27 any previous statement filed within the previous five years
28 under this section;

29 (2) Not less than ten nor more than seventeen days preced-
30 ing each primary or other election, a statement which shall
31 include all financial transactions which have taken place by the
32 date of the statement, subsequent to the previous statement, if
33 any;

34 (3) Not less than twenty-five nor more than thirty-one days
35 after each primary or other election, a statement which shall
36 include all financial transactions which have taken place by the
37 date of the statement, subsequent to the previous statement; and

38 (4) On the first Saturday in September or within six days
39 thereafter, preceding the general election day whenever the total
40 of all financial transactions relating to an election exceed five
41 hundred dollars or whenever any loans are outstanding, a
42 statement which shall include all financial transactions which

43 have taken place by the date of the statement, subsequent to the
44 previous statement.

45 (c) Every person who shall announce as a write-in candi-
46 date for any elective office and his or her financial agent or
47 election organization of any kind shall comply with all of the
48 requirements of this section after public announcement of the
49 person's candidacy has been made.

50 (d) For purposes of this section, the term "financial
51 transactions" includes all contributions or loans received and all
52 repayments of loans or expenditures made to promote the
53 candidacy of any person by any candidate or any organization
54 advocating or opposing the nomination, election or defeat of
55 any candidate to be voted on.

56 (e) Candidates for the office of conservation district
57 supervisor elected pursuant to the provisions of article twenty-
58 one-a, chapter nineteen of this code shall only be required to
59 file the reports required by subdivisions (2) and (3), subsection
60 (b) of this section immediately prior to and after the general
61 election.

CHAPTER 19. AGRICULTURE.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-3. Definitions.

§19-21A-4. State conservation committee; continuation.

§19-21A-5. Creation of conservation districts.

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

§19-21A-7. Supervisors to constitute governing body of district; qualifications and
terms of supervisors; powers and duties.

§19-21A-3. Definitions.

1 Wherever used or referred to in this article, unless a
2 different meaning clearly appears from the context:

3 (1) "Agency of this state" includes the government of this
4 state and any subdivision, agency or instrumentality, corporate
5 or otherwise, of the government of this state.

6 (2) "Committee" or "State Conservation Committee" means
7 the agency created in section four of this article.

8 (3) "District" or "conservation district" means a subdivision
9 of this state, organized in accordance with the provisions of this
10 article, for the purposes, with the powers and subject to the
11 restrictions hereinafter set forth.

12 (4) "Governing body" means the supervisors of any
13 conservation district, town or city, council, city commission,
14 county court or body acting in lieu of a county court, in this
15 state, and the term "governmental division" means any conser-
16 vation district, town, city or county in this state.

17 (5) "Land occupier" or "occupier of land" includes any
18 person, firm or corporation who shall hold title to, or shall be in
19 possession of, any lands lying within a district organized under
20 the provisions of this article, whether as owner, lessee, renter or
21 tenant.

22 (6) "Landowners" or "owners of land" includes any person
23 or persons, firm or corporation who shall hold title to three or
24 more acres of any lands lying within a district organized under
25 the provisions of this article.

26 (7) "Notice" means notice published as a Class II legal
27 advertisement in compliance with the provisions of article
28 three, chapter fifty-nine of this code and the publication area for
29 such publication shall be the county in which is located the
30 appropriate area. At any hearing held pursuant to such notice
31 at the time and place designated in such notice, adjournment
32 may be made, from time to time, without the necessity of
33 renewing such notice for such adjournment dates.

34 (8) "Petition" means a petition filed under the provisions of
35 subsection (a), section five of this article for the creation of a
36 district.

37 (9) "Soil conservation", "erosion control" or "erosion
38 prevention projects", when used throughout the article, shall
39 denote those projects that have been established by federal
40 agencies in cooperation with state agencies for the purpose of
41 demonstrating soil erosion control and water conservation
42 practices.

43 (10) "State" means the State of West Virginia.

44 (11) "Supervisor" means one of the members of the
45 governing body of a district, elected or appointed in accordance
46 with the provisions of this article.

47 (12) "United States" or "agencies of the United States"
48 includes the United States of America, Natural Resources
49 Conservation Service of the United States Department of
50 Agriculture and any other agency or instrumentality, corporate
51 or otherwise, of the United States of America.

52 (13) "Works of improvement" means such structures as
53 may be necessary or convenient for flood prevention or the
54 conservation, development, utilization or disposal of water.

§19-21A-4. State conservation committee; continuation.

1 (a) The State Conservation Committee is continued. It
2 serves as an agency of the state and is to perform the functions
3 conferred upon it in this article. The committee consists of the
4 following ten members:

5 (1) Four citizen members;

6 (2) The following ex officio members:

7 (A) The Director of the State Cooperative Extension
8 Service;

9 (B) The Director of the State Agricultural and Forestry
10 Experiment Station;

11 (C) The Secretary of the Department of Environmental
12 Protection;

13 (D) The State Commissioner of Agriculture, who is the
14 chairperson of the committee;

15 (E) The Director of the Division of Forestry; and

16 (F) The President of the West Virginia Association of
17 Conservation Districts.

18 (b) The Governor shall appoint, by and with the consent of
19 the Senate, the four citizen members. Members shall be
20 appointed for four-year terms, which are staggered in accor-
21 dance with the initial appointments under prior enactment of
22 this section. In the event of a vacancy, the appointment is for
23 the unexpired term.

24 (c) The Committee may invite the Secretary of Agriculture
25 of the United States of America to appoint one person to serve
26 with the Committee as an advisory member.

27 (d) The Committee shall keep a record of its official
28 actions, shall adopt a seal, which shall be judicially noticed, and
29 may perform those acts, hold public hearings and adopt or
30 propose for legislative approval rules necessary for the execu-
31 tion of its functions under this article.

32 (e) The State Conservation Committee may employ an
33 administrative officer, technical experts and other agents and
34 employees, permanent and temporary, as it requires. The

35 administrative officer and support staff shall be known as the
36 West Virginia Conservation Agency. The Committee shall
37 determine their qualifications, duties and compensation. The
38 Committee may call upon the Attorney General of the state for
39 legal services it requires. It may delegate to its chairperson, to
40 one or more of its members, or to one or more agents or
41 employees powers and duties it considers proper. The Commit-
42 tee may secure necessary and suitable office accommodations
43 and the necessary supplies and equipment. Upon request of the
44 Committee, for the purpose of carrying out any of its functions,
45 the supervising officer of any state agency or of any state
46 institution of learning shall, insofar as may be possible, under
47 available appropriations and having due regard to the needs of
48 the agency to which the request is directed, assign or detail to
49 the Committee, members of the staff or personnel of the agency
50 or institution of learning and make special reports, surveys or
51 studies required by the Committee.

52 (f) A member of the Committee holds office so long as he
53 or she retains the office by virtue of which he or she is serving
54 on the Committee. A majority of the Committee is a quorum
55 and the concurrence of a majority in any matter within their
56 duties is required for its determination. The chairperson and
57 members of the Committee may receive no compensation for
58 their services on the Committee, but are entitled to reimburse-
59 ment of expenses, including traveling expenses necessarily
60 incurred in the discharge of their duties on the Committee. The
61 Committee shall:

62 (1) Require the execution of surety bonds for all employees
63 and officers who are entrusted with funds or property;

64 (2) Provide for the keeping of a full and accurate public
65 record of all proceedings and of all resolutions, rules and orders
66 issued or adopted; and

67 (3) Provide for an annual audit of the accounts of receipts
68 and disbursements.

69 (g) In addition to other duties and powers conferred upon
70 the State Conservation Committee, it may:

71 (1) Offer appropriate assistance to the supervisors of
72 conservation districts, organized as provided in this article, in
73 the carrying out of any of their powers and programs;

74 (2) Keep the supervisors of each of the several districts,
75 organized under the provisions of this article, informed of the
76 activities and experience of all other districts organized under
77 this article and facilitate an interchange of advice and experi-
78 ence between the districts and cooperation between them;

79 (3) Coordinate the programs of the several conservation
80 districts so far as this may be done by advice and consultation;

81 (4) Secure the cooperation and assistance of the United
82 States and any of its agencies and of agencies of this state in the
83 work of the districts;

84 (5) Disseminate information throughout the state concern-
85 ing the activities and programs of the conservation districts and
86 encourage the formation of the districts in areas where their
87 organization is desirable;

88 (6) Accept and receive donations, gifts, contributions,
89 grants and appropriations in money, services, materials or
90 otherwise from the United States or any of its agencies, from
91 the State of West Virginia or from other sources and use or
92 expend the money, services, materials or other contributions in
93 carrying out the policy and provisions of this article, including
94 the right to allocate the money, services or materials in part to
95 the various conservation districts created by this article in order
96 to assist them in carrying on their operations; and

97 (7) Obtain options upon and acquire by purchase, exchange,
98 lease, gift, grant, bequest, devise or otherwise any property, real
99 or personal, or rights or interests in the property; maintain,
100 administer, operate and improve any properties acquired;
101 receive and retain income from the property and to expend the
102 income as required for operation, maintenance, administration
103 or improvement of the properties or in otherwise carrying out
104 the purposes and provisions of this article; and sell, lease or
105 otherwise dispose of any of its property or interests in the
106 property in furtherance of the purposes and the provisions of
107 this article. Money received from the sale of land acquired in
108 the small watershed program shall be deposited in the special
109 account of the State Conservation Committee and expended as
110 provided in this article.

111 (8) To promulgate emergency and legislative rules to
112 effectuate the provisions of this article as amended and reen-
113 acted by the Legislature during the regular session of the
114 Legislature in the year two thousand five.

§19-21A-5. Creation of conservation districts.

1 (a) Any twenty-five owners of land lying within the limits
2 of the territory proposed to be organized into a district may file
3 a petition with the State Conservation Committee asking that a
4 conservation district be organized to function in the territory
5 described in the petition. The petition shall set forth:

6 (1) The proposed name of the district;

7 (2) That there is need, in the interest of the public health,
8 safety and welfare, for a conservation district to function in the
9 territory described in the petition;

10 (3) A description of the territory proposed to be organized
11 as a district, which shall not be required to be given by metes

12 and bounds or by legal subdivisions, but shall be deemed
13 sufficient if generally accurate;

14 (4) A request that the State Conservation Committee define
15 the boundaries for the district; that a referendum be held within
16 the territory so defined on the question of the creation of a
17 conservation district in the territory; and that the Committee
18 determine that a district be created.

19 Where more than one petition is filed covering neighboring
20 parts of the same region, whether or not these areas overlap, the
21 State Conservation Committee may consolidate all or any such
22 petitions.

23 (b) Within thirty days after a petition has been filed with the
24 State Conservation Committee, it shall cause notice to be given
25 of a proposed hearing upon the question of the desirability and
26 necessity, in the interest of the public health, safety and welfare,
27 of the creation of such district, upon the question of the
28 appropriate boundaries to be assigned to such district, upon the
29 propriety of the petition and other proceedings taken under this
30 article and upon all questions relevant to such inquiries. Notice
31 of the date, place and time of the hearing shall be published no
32 less than fourteen days prior to the hearing as a Class II-0 legal
33 advertisement in compliance with the provisions of article
34 three, chapter fifty-nine of this code. The publication area is
35 the county or counties where the proposed district is located.
36 All owners of land within the limits of the territory described in
37 the petition, and of lands within any territory considered for
38 addition to the described territory, and all other interested
39 parties shall have the right to attend the hearings and to be
40 heard. If it appears upon the hearing that it may be desirable to
41 include within the proposed district territory outside of the area
42 within which notice of the hearing has been given, the hearing
43 shall be adjourned and notice of further hearing shall be given
44 throughout the entire area considered for inclusion in the

45 district and another hearing held. After the hearing, if the
46 Committee determines, upon the facts presented at the hearing
47 and other relevant facts and information as may be available,
48 that there is need, in the interest of the public health, safety and
49 welfare, for a conservation district to function in the territory
50 considered at the hearing, it shall make and record such
51 determination and shall define, by metes and bounds or by legal
52 subdivisions, the boundaries of such district. Districts thus
53 defined may be a watershed or portion thereof and nothing in
54 this article shall be interpreted to exclude from consideration,
55 small areas often constituting a very small part of a large
56 watershed. The district may be large or small, but in making
57 that determination and in defining the boundaries, the commit-
58 tee shall give due weight and consideration to the topography
59 of the area considered and of the state, the composition of soils
60 therein, the distribution of erosion, the prevailing land-use
61 practices, the desirability and necessity of including within the
62 boundaries the particular lands under consideration and the
63 benefits such lands may receive from being included within the
64 boundaries, the relation of the proposed area to existing
65 watersheds and agricultural regions and to other conservation
66 districts already organized or proposed for organization under
67 the provisions of this article and other physical, geographical
68 and economic factors as are relevant, having due regard to the
69 legislative determinations set forth in section two of this article.
70 The territory to be included within the boundaries need not be
71 contiguous. If the Committee determines after the hearing,
72 after consideration of the relevant facts, that there is no need for
73 a conservation district to function in the territory considered at
74 the hearing, it shall make and record its determination and deny
75 the petition. After six months shall have expired from the date
76 of the denial of any petition, subsequent petitions covering the
77 same or substantially the same territory may be filed as
78 aforesaid and new hearings held and determinations made
79 thereon.

80 (c) After the Committee has made and recorded a determi-
81 nation that there is need, in the interest of the public health,
82 safety and welfare, for the organization of a district in a
83 particular territory and has defined the boundaries thereof, it
84 shall consider the question whether the operation of a district
85 within such boundaries with the powers conferred upon
86 conservation districts in this article is administratively practica-
87 ble and feasible. To assist the Committee in the determination
88 of administrative practicability and feasibility, it is the duty of
89 the Committee to hold a referendum within the proposed
90 district upon the proposition of the creation of the district and
91 to cause due notice of such referendum to be given. The
92 question of the creation of the proposed district shall be
93 submitted to the registered voters of the proposed district at the
94 next primary or general election. All of the provisions of
95 chapter three of this code, unless in conflict with the provisions
96 of this article, apply to voting and elections on the referendum,
97 insofar as practicable.

98 The question shall be submitted by ballots upon which the
99 words "For creation of a conservation district of the lands
100 below described and lying in the (counties) of _____,
101 _____, and _____. Against creation of a
102 conservation district of the lands below described and lying in
103 the (counties) of _____, _____, and
104 _____" shall appear, with a square before each
105 proposition and a direction to insert an X mark in the square
106 before one or the other of the propositions as the voter may
107 favor or oppose creation of a district. The ballot shall set forth
108 the boundaries of the proposed districts as determined by the
109 Committee.

110 (d) The Committee shall pay all expenses for the issuance
111 of notices and conducting hearings. It shall promulgate rules in
112 accordance with the provisions of article three, chapter
113 twenty-nine-a of this code governing the conduct of hearings.

114 (e) The Committee shall publish the result of the referen-
115 dum and shall thereafter consider and determine whether the
116 operation of the district within the defined boundaries is
117 administratively practicable and feasible. If the Committee
118 determines that the operation of the district is not administra-
119 tively practicable and feasible, it shall record its determination
120 and deny the petition. If the Committee shall determine that the
121 operation of the district is administratively practicable and
122 feasible, it shall record the determination and proceed with the
123 organization of the district in the manner hereinafter provided.
124 In making its determination the Committee shall give due
125 regard and weight to the attitudes of the occupiers of lands
126 lying within the defined boundaries, the number of landowners
127 eligible to vote in the referendum who have voted, the propor-
128 tion of the votes cast in the referendum in favor of the creation
129 of the district to the total number of votes cast, the approximate
130 wealth and income of the land occupiers of the proposed
131 district, the probable expense of carrying on erosion-control
132 operations within the district and other economic and social
133 factors as may be relevant to the determination, having due
134 regard to the legislative determinations set forth in section two
135 of this article.

136 (f) If the Committee determines that the operation of the
137 proposed district within the defined boundaries is administra-
138 tively practicable and feasible, it shall appoint two supervisors
139 to act with the supervisors elected as provided hereinafter, as
140 the governing body of the district.

141 (g) The two appointed supervisors shall present to the
142 Secretary of State an application signed by them which shall set
143 forth by recitals: (1) That a petition for the creation of the
144 district was filed with the State Conservation Committee
145 pursuant to the provisions of this article and that the proceed-
146 ings specified in this article were taken pursuant to the petition;
147 that the application is being filed in order to complete the

148 organization of the district under this article; and that the
149 Committee has appointed them as supervisors; (2) the name and
150 official residence of each of the supervisors, together with a
151 certified copy of the appointments evidencing their right to
152 office; (3) the term of office of each of the supervisors; (4) the
153 name which is proposed for the district; and (5) the location of
154 the principal office of the supervisors of the district. The
155 application shall be subscribed and sworn to by each of the
156 supervisors before an officer authorized by the laws of this state
157 to take and certify oaths, who shall certify upon the application
158 that he or she personally knows the supervisors and knows them
159 to be the officers as affirmed in the application and that each
160 has subscribed thereto in the officer's presence. The applica-
161 tion shall be accompanied by a statement by the State Conser-
162 vation Committee, which shall certify by recitals that a petition
163 was filed, notice issued and hearing held as aforesaid; that the
164 Committee did determine that there is need, in the interest of
165 the public health, safety and welfare, for a conservation district
166 to function in the proposed territory and did define the bound-
167 aries thereof; that notice was given and a referendum held on
168 the question of the creation of the district; that the result of the
169 referendum showed a majority of the votes cast in the referen-
170 dum to be in favor of the creation of the district; and that
171 thereafter the Committee did determine that the operation of the
172 proposed district is administratively practicable and feasible.
173 The statement shall set forth the boundaries of the district as
174 they have been defined by the Committee.

175 The Secretary of State shall examine the application and
176 statement and, if he or she finds that the name proposed for the
177 district is not identical with that of any other conservation
178 district of this state or so nearly similar as to lead to confusion
179 or uncertainty, he or she shall file them and shall record them
180 in an appropriate book of record in his or her office. If the
181 Secretary of State finds that the name proposed for the district
182 is identical with that of any other conservation district of this

183 state, or so nearly similar as to lead to confusion and uncer-
184 tainty, he or she shall certify that fact to the State Conservation
185 Committee which shall thereupon submit to the Secretary of
186 State a new name for the district, which shall not be subject to
187 defects. Upon receipt of the new name, free of defects, the
188 Secretary of State shall record the application and statement,
189 with the name so modified, in an appropriate book of record in
190 his or her office. The Secretary of State shall make and issue
191 to the supervisors a certificate, under the seal of the state, of the
192 organization of the district and shall record the certificate with
193 the application and statement. The boundaries of the district
194 shall include the territory as determined by the State Conserva-
195 tion Committee as aforesaid, but in no event shall they include
196 any area included within the boundaries of another conservation
197 district organized under the provisions of this article.

198 (h) After six months has expired from the date of entry of
199 a determination by the State Conservation Committee that
200 operation of a proposed district is not administratively practica-
201 ble and feasible and denial of a petition pursuant to such
202 determination, subsequent petitions may be filed as aforesaid
203 and action taken thereon in accordance with the provisions of
204 this article.

205 (i) Petitions for including additional territory within an
206 existing district may be filed with the State Conservation
207 Committee and the proceedings herein provided for in the case
208 of petitions to organize a district shall be observed in the case
209 of petitions for inclusion. The Committee shall prescribe the
210 form for petitions, which shall be as nearly as may be in the
211 form prescribed in this article for petitions to organize a district.
212 Where the total number of landowners in the area proposed for
213 inclusion is less than twenty-five, the petition may be filed
214 when signed by a majority of the landowners of the area and in
215 such case no referendum need be held.

216 (j) In any suit, action or proceeding involving the validity
217 or enforcement of, or relating to, any contract, proceeding or
218 action of the district, the district shall be deemed to have been
219 established in accordance with the provisions of this article
220 upon proof of the issuance of the aforesaid certificate by the
221 Secretary of State. A copy of the certificate certified by the
222 Secretary of State shall be admissible in evidence in any suit,
223 action or proceeding and shall be proof of the filing and
224 contents thereof.

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

1 Within thirty days after the date of issuance by the Secre-
2 tary of State of a certificate of organization of a conservation
3 district, nominating petitions may be filed with the State
4 Conservation Committee to nominate candidates for supervisors
5 of the district. A candidate for supervisor shall own land in the
6 district and have the education, training or experience necessary
7 to carry out the duties required by this article and rules promul-
8 gated thereunder. A candidate shall file with the Committee a
9 sworn written statement specifying that he or she meets the
10 requirements of office. A candidate may not be placed on the
11 ballot or be seated as a supervisor unless he or she meets these
12 requirements. The Committee shall provide a list of qualified
13 candidates to the Secretary of State prior to any election for
14 supervisor at the time and in the manner specified by the
15 Secretary.

16 The Committee shall have authority to extend the time
17 within which nominating petitions may be filed. No nominat-
18 ing petition shall be accepted by the Committee unless it is
19 subscribed by twenty-five or more owners of lands lying within
20 the boundaries of the district and within the boundaries of the
21 county in which the candidate resides. Registered voters in the
22 district may sign more than one nominating petition to nomi-
23 nate more than one candidate for supervisor. All registered

24 voters in the district shall be eligible to vote in the election for
25 two candidates from the county or portion thereof within the
26 boundaries of the district in which they reside. The two
27 candidates in each county who receive the largest number of
28 votes cast in the election shall be elected supervisors for
29 district.

30 Supervisors shall be elected in the general election to be
31 conducted in the year two thousand eight as nonpartisan
32 candidates. The term of office for supervisor receiving the
33 second highest number of votes in the general election of two
34 thousand eight shall be for two years, commencing on the first
35 day of January, two thousand nine, and ending on the thirty-first
36 day of December, two thousand eleven. Subsequent terms of
37 office for supervisors elected thereafter shall be for four years.
38 Persons currently holding the position of supervisor shall,
39 regardless of the expiration of the currently designated term of
40 office, continue to serve until the two thousand eight election.
41 Unless otherwise provided or in conflict with this article, the
42 provisions of chapter three shall apply to election of supervi-
43 sors.

**§19-21A-7. Supervisors to constitute governing body of district;
qualifications and terms of supervisors; powers
and duties.**

1 (a) The governing body of the district consists of the
2 supervisors, appointed or elected, as provided in this article.
3 The supervisors shall be persons who are by training and
4 experience qualified to perform the specialized skilled services
5 which are required of them in the performance of their duties
6 under this section and shall be legal residents and landowners
7 in the district.

8 (b) The supervisors shall designate a chairperson and may,
9 from time to time, change the designation. On and after the
10 election of supervisors in two thousand eight, term of office of

11 each supervisor is four years. A supervisor holds office until
12 his or her successor has been elected or appointed. In case a
13 new county or portion of a county is added to a district, the
14 committee may appoint a supervisor to represent it until the
15 next regular election of supervisors for the district takes place.
16 If a vacancy occurs among the elected supervisors of a district,
17 the Committee shall appoint a successor from the same county
18 to fill the unexpired term. The appointment shall be made from
19 a name or list of names submitted by the conservation district.

20 (c) A supervisor is entitled to expenses and a per diem not
21 to exceed thirty dollars when engaged in the performance of his
22 or her duties.

23 (d) The supervisors may, with the approval of the State
24 Committee, employ a secretary, technical experts and any other
25 officers, agents and employees, permanent and temporary, as
26 they may require and shall determine their qualifications, duties
27 and compensation. The supervisors may delegate to their
28 chairperson, to one or more supervisors or to one or more
29 agents, or employees, those administrative powers and duties
30 they consider proper. The supervisors shall furnish to the State
31 Conservation Committee, upon request, copies of the ordi-
32 nances, rules, orders, contracts, forms and other documents they
33 adopt or employ and any other information concerning their
34 activities required in the performance of State Conservation
35 Committee's duties under this article.

36 (e) The supervisors shall:

37 (1) Require the execution of surety bonds for all employees
38 and officers who are entrusted with funds or property;

39 (2) Provide for the keeping of a full and accurate record of
40 all proceedings and of all resolutions, rules and orders issued or
41 adopted; and

42 (3) Provide for an annual audit of the accounts of receipts
43 and disbursements.

44 (f) Any supervisor may be removed by the State Conserva-
45 tion Committee upon notice and hearing for neglect of duty or
46 malfeasance in office, but for no other reason.

47 (g) The supervisors may invite the legislative body of any
48 municipality or county located near the territory comprised
49 within the district to designate a representative to advise and
50 consult with the supervisors of a district on all questions of
51 program and policy which may affect the property, water
52 supply or other interests of the municipality or county.

CHAPTER 7

**(Com. Sub. for H. B. 2663 — By Delegates Beach, Stemple,
Proudfoot, Swartzmiller, Williams, Anderson and Schoen)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor April 29, 2005.]

AN ACT to amend and reenact §19-1A-3 and §19-1A-3a of the Code of West Virginia, 1931, as amended, all relating to digging, growing, collecting, gathering, possessing and selling ginseng; defining certain terms; authorizing Division of Forestry to regulate ginseng; providing rule-making authority; establishing ginseng harvest seasons; requiring permits to grow or dig ginseng, or to act as dealer; providing exceptions to the permit requirement; setting forth other permit requirements; requiring records be kept; authorizing certain inspections; requiring ginseng to be certified; providing for denial, suspension or revocation of permit; and establishing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §19-1A-3 and §19-1A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

1 The Division of Forestry heretofore created is hereby
 2 continued. And, except as otherwise provided in this article, all
 3 powers and duties previously exercised by the Director of
 4 Natural Resources under subsection (13), section seven, article
 5 one and article three, chapter twenty of this code, except those
 6 powers and duties relating solely to wildlife areas as described
 7 in section three, article three, chapter twenty of this code,
 8 heretofore transferred to the Division of Forestry, are hereby
 9 continued in the Division of Forestry, except Kanawha State
 10 Forest as hereinafter provided. The Division of Forestry has
 11 within its jurisdiction and supervision the state forests, other
 12 forests and woodland areas, the protection of forest areas from
 13 injury and damage by fire, disease, insects and other pestilences
 14 and forces, the management of forest areas for natural re-
 15 sources, conservation and undeveloped recreational activities,
 16 administration of the southeastern interstate forest fire protec-
 17 tion compact and other compacts and agreements relating to
 18 forest management and husbandry, and the administration and
 19 enforcement of laws relating to the conservation, development,
 20 protection, use and enjoyment of all forest land areas of the
 21 state consistent with the provisions of sections one and two of

22 this article. All moneys collected from the sale of timber
23 realized through management of the state-owned forests and the
24 sale of seedlings from the tree nurseries shall be paid into the
25 State Treasury and shall be credited to a special account within
26 the Division of Forestry and used exclusively for the purposes
27 of this article and article three, chapter twenty of this code.

28 The Division of Forestry has jurisdiction to regulate the
29 growing, digging, collecting, gathering, possession and sale of
30 ginseng as provided in section three-a, of this article.

31 The chief of the Division is the Director of the Division of
32 Forestry who shall be appointed and qualified as provided in
33 section five of this article.

34 The Director of the Division of Forestry shall study means
35 and methods of implementing the provisions of section fifty-
36 three, Article VI of the Constitution of West Virginia, relating
37 to forest lands, and shall prepare and recommend legislation
38 thereon.

39 The Division lines within the State Forests between
40 improved recreation areas under the management of the
41 Division of Natural Resources and the demonstration forests
42 under the management of the Division of Forestry, heretofore
43 established by agreement, are hereby continued with the
44 exception of Kanawha State Forest where the entire forest will
45 be managed by and under the jurisdiction of the Division of
46 Natural Resources for multiple uses and the Division of Natural
47 Resources shall continue to provide recreational opportunities,
48 including, but not limited to, mountain-biking trails, hiking
49 trails, horseback-riding trails and hunting, fishing and trapping
50 lands. The forest may not be designated as a state park or state
51 recreation area; however, any sale of timber from Kanawha
52 State Forest shall continue to be prohibited.

53 In the event of disagreement over the placement of a
54 Division line or dual occupancy of a building, the disposition
55 shall be decided by the Legislature's Joint Committee on
56 Government and Finance at a regularly scheduled meeting.

**§19-1A-3a. Providing criminal penalties for the illegal possession
of uncertified ginseng.**

1 (a) (1) The Legislature finds that ginseng trade must be
2 controlled in order to protect the survival of wild ginseng as
3 evidenced by its listing in Appendix II of the Convention on
4 International Trade in Endangered Species of Wild Fauna and
5 Flora. It is the policy of this state to regulate the commerce in
6 ginseng in a manner that protects the survival of wild ginseng.

7 (2) For purposes of this section:

8 (i) "Certified" means the ginseng carries a certificate of
9 origin issued by the Director which allows the export from
10 West Virginia of ginseng legally harvested in this state;

11 (ii) "Commercial use" means to sell or to use ginseng for
12 financial gain;

13 (iii) "Cultivated ginseng" means ginseng that is purpose-
14 fully planted in beds under artificial shade using standard
15 horticultural practices such as mechanical tillage, fertilization,
16 weed control, irrigation and pesticides;

17 (iv) "Dealer" means a person who purchases ginseng for
18 purposes of commercial use;

19 (v) "Digger" means a person who digs, collects or gathers
20 wild ginseng by searching woodlands to find the plants;

21 (vi) "Director" means the Director of the Division of
22 Forestry;

- 23 (vii) "Division" means the Division of Forestry;
- 24 (viii) "Export" means the movement of ginseng from state
25 to state as well as sending it abroad;
- 26 (ix) "Ginseng" means cultivated ginseng, woods grown
27 ginseng, wild simulated ginseng and wild ginseng;
- 28 (x) "Green ginseng" means a fresh wild ginseng root that
29 has not been intentionally subjected to a drying process and
30 from which most natural moisture has not been removed by
31 drying.
- 32 (xi) "Grower" means a person who purposefully plants and
33 grows cultivated ginseng, woods grown ginseng or wild
34 simulated ginseng for purposes of commercial use: *Provided*,
35 That a grower does not include a digger who plants wild
36 ginseng seed from the wild ginseng plants he or she digs,
37 collects or gathers;
- 38 (xii) "Harvest" means to dig, collect or gather ginseng;
- 39 (xiii) "Person" means an individual, corporation, partner-
40 ship, firm or association;
- 41 (xiv) "Rootlets" means woods grown or wild simulated one
42 to two-year old ginseng roots commonly sold as transplants to
43 growers;
- 44 (xv) "Wild ginseng" means *Panax quinquefolius* L. that is
45 not grown or nurtured by a person regardless of the putative
46 origin of the plants: *Provided*, That wild ginseng may originate
47 from seeds planted by a digger at the same site from which the
48 digger harvests the wild ginseng;
- 49 (xvi) "Wild simulated ginseng" means ginseng that is
50 purposefully planted in the woods without a bed being prepared

51 and without the use of any chemical weed, disease or pest
52 control agents;

53 (xvii) "Woods grown ginseng" means ginseng that is
54 purposefully planted in beds prepared in the woods in a manner
55 that uses trees to provide necessary shade and which may be
56 grown with the use of chemical or mechanical weed, disease or
57 pest control agents.

58 (3) (i) The Division of Forestry shall regulate the growing,
59 digging, collecting, gathering, possessing and selling of
60 ginseng.

61 (ii) The Division may propose rules for legislative approval
62 in accordance with article three, chapter twenty-nine-a of this
63 code to implement the provisions of this section including the
64 amount of any permit fee.

65 (iii) For purposes of regulating the growing, harvesting and
66 commercial use of ginseng, a Division employee may enter
67 upon any public or private property, other than a dwelling
68 house, at reasonable times, in order to inspect the ginseng
69 operation or records. No person may obstruct or hinder the
70 employee in the discharge of his or her enforcement duties.

71 (iv) All moneys received from permit fees and civil
72 penalties assessed pursuant to this section shall be credited to
73 the special account within the Division of Forestry to be used
74 for the purposes set forth in section three of this article.

75 (v) The site plats required to be submitted to the Division
76 and other information identifying the specific location of
77 ginseng plants are not open to public inspection pursuant to
78 article one, chapter twenty-nine-b of this code since they
79 disclose information having a significant commercial value.

80 (b) (1) The digging season for wild ginseng begins on the
81 first day of September and ends on the thirtieth day of Novem-
82 ber of each year. It is unlawful for a person to dig, collect, or
83 gather wild ginseng between the first day of December and the
84 thirty-first day of August of the following year.

85 (2) A person digging, collecting, or gathering wild ginseng
86 upon the enclosed or posted lands of another person shall first
87 obtain written permission from the landowner, tenant or agent,
88 and shall carry the written permission on his or her person
89 while digging, collecting or gathering wild ginseng upon the
90 enclosed or posted lands. It is unlawful to dig, collect, or gather
91 wild ginseng from the property of another without the written
92 permission of the landowner.

93 (3) A person digging, collecting or gathering wild ginseng
94 shall plant the seeds from the wild ginseng plants at the time
95 and at the site from which the wild ginseng is harvested. It is
96 unlawful to remove wild ginseng seeds from the site of collec-
97 tion.

98 (4) It is unlawful to dig, collect or gather wild ginseng less
99 than five years old.

100 (5) No person may rescue wild ginseng plants endangered
101 by ground-disturbing activities unless he or she has first
102 obtained a moving permit from the Division. The person shall
103 provide the reason for moving the plants, the current location of
104 the plants, the proposed new planting site and other information
105 required by the Division.

106 (6) It is unlawful to plant ginseng or ginseng seed and to
107 dig, collect or gather ginseng on West Virginia public lands.

108 (c) (1) No person may act as a grower unless he or she has
109 obtained a grower's permit from the Division.

110 (2) Prior to planting cultivated, woods grown or wild
111 simulated ginseng, a grower shall:

112 (i) Submit to the Director a plat of the exact planting
113 location prepared by a licensed surveyor or a registered forester
114 as defined in article nineteen, chapter thirty of this code, along
115 with information verifying the name of the landowner: *Pro-*
116 *vided*, That if the grower is not the landowner, the grower shall
117 also submit written permission from the landowner to grow and
118 harvest cultivated, woods grown or wild simulated ginseng on
119 that property;

120 (ii) Obtain a written determination from the Director
121 certifying that the planting area is free from wild ginseng; and

122 (iii) Submit other information required by the Division.

123 (3) A grower shall keep accurate and complete records on
124 each ginseng planting on forms provided by the Division. The
125 records shall be available for inspection by a Division employee
126 and shall be submitted to the Division at intervals established
127 by rule by the Division. A grower shall maintain records for a
128 period of not less than ten years. The information required to be
129 kept shall include:

130 (i) The origin of ginseng seed, rootlets or plants;

131 (ii) The location of purposefully planted cultivated, wild
132 simulated and woods grown ginseng and a site plat of the
133 planting;

134 (iii) The original of the Director's determination that the
135 site was free from wild ginseng at the time of planting;

136 (iv) The date each site was planted;

137 (v) The number of pounds of seeds planted, or the number
138 and age of rootlets, or both; and

139 (vi) Other information required by the Division.

140 (4) A grower may harvest cultivated ginseng on or after the
141 effective date of this section throughout the year.

142 (5) A grower may harvest wild simulated and woods grown
143 ginseng from the first day of September through the thirtieth
144 day of November of each year.

145 (6) It is unlawful for a person to dig, collect or gather wild
146 simulated and woods grown ginseng between the first day of
147 December and the thirty-first day of August.

148 (7) It is unlawful to dig, collect and gather wild simulated
149 and woods grown ginseng less than five years old.

150 (8) A grower shall comply with the certification procedures
151 set forth in subdivision (f) of this section.

152 (d) (1) No person may act as a dealer unless he or she has
153 obtained a dealer's permit from the Division.

154 (2) A dealer shall keep accurate and complete records on
155 his or her ginseng transactions on forms provided by the
156 Division. A dealer is required to maintain a record of all
157 persons, including a digger, grower and dealer, involved in each
158 purchase or sale transaction and shall include the name,
159 address, permit number, and a copy of each ginseng certifica-
160 tion issued by the Division. All records shall be available for
161 inspection by a Division employee. A dealer shall maintain
162 records for a period of not less than ten years. In addition, a
163 dealer is required to report the following information to the
164 Division monthly:

165 (i) The date of the transaction;

166 (ii) The type of ginseng, whether wild, cultivated, woods
167 grown or wild simulated ginseng;

168 (iii) Whether the ginseng is dried or green at the time of the
169 transaction;

170 (iv) The weight of the ginseng;

171 (v) The county from which the ginseng was harvested;

172 (vi) The identification number from the state ginseng
173 certification; and

174 (vii) Other information required by the Division.

175 (3) A dealer shall include a West Virginia export certificate,
176 numbered by the Division, with each shipment of ginseng
177 transported out-of-state.

178 (4) No dealer may import out-of-state ginseng into this state
179 unless the ginseng is accompanied by a valid export certificate
180 issued by the state of origin. A dealer must return uncertified
181 ginseng to the state of origin within fifteen calendar days.

182 (5) It is unlawful to include false information on any
183 certificate or record required to be completed or maintained by
184 this section. All ginseng harvested in West Virginia must be
185 certified by the Director before being transported or shipped
186 out-of-state.

187 (e) (1) No person may dig wild ginseng, or act as a grower,
188 or act as a dealer unless he or she has been issued the appropri-
189 ate permit by the Division. A person must obtain a separate
190 permit for each activity. Permit applications shall be made on
191 forms provided by the Division. The application for a permit
192 shall be accompanied by the applicable permit fee. The Divi-
193 sion shall assign a permit number to each person granted a
194 permit and it shall keep records of the permits issued.

195 (2) Permits expire on the thirty-first day of December of
196 each year and must be renewed annually. Renewal forms will

197 be mailed to current permit holders. The failure to receive a
198 renewal form does not relieve the permit holder of the obliga-
199 tion to renew. The Division may require a late fee when
200 renewal is received more than sixty days after the expiration of
201 the current permit.

202 (3) The permit holder shall notify the Division of any
203 changes in the information on the permit.

204 (f)(1) All ginseng harvested in this state shall be certified
205 as to type, whether wild, cultivated, woods grown or wild
206 simulated, and to its origin, weight and lawful harvest. Other
207 information may be required for ginseng to be certified by the
208 Division to comply with the Convention on International Trade
209 in Endangered Species of Wild Fauna and Flora to allow for its
210 export: *Provided*, That live one and two-year old cultivated,
211 woods grown or wild simulated rootlets sold by growers for
212 propagation purposes within the United States are not regarded
213 as harvested and are exempt from the certification requirement.
214 All ginseng, except cultivated ginseng, must be certified or
215 weight receipted by the first day of April of the year following
216 harvest: *Provided, however*, That no ginseng may be certified
217 between the first day of January through the thirty-first day of
218 March unless the person requesting certification displays a
219 valid permit. It is unlawful for a person to have in his or her
220 possession uncertified wild ginseng from the first day of April
221 through the thirty-first day of August.

222 (2) The Director shall propose rules for legislative approval
223 in accordance with article three, chapter twenty-nine-a of this
224 code designed to implement the ginseng certification process.

225 (g) (1) The Division may, by order entered in accordance
226 with the provisions of article five, chapter twenty-nine-a, deny,
227 suspend or revoke the permit of a grower or dealer and may
228 invalidate an export certificate completed by a dealer when the

229 Division finds that a grower or dealer has violated any provi-
230 sion of this section or a legislatively approved rule.

231 (2) The Division may assess a civil penalty against a person
232 who violates any provision of this section or a provision of a
233 legislatively approved rule. The Division may assess a mone-
234 tary penalty of not less than one hundred dollars nor more than
235 five hundred dollars.

236 (h) (1) Any person violating a provision of this section is
237 guilty of a misdemeanor and, upon conviction thereof, shall be
238 fined not less than one hundred dollars nor more than five
239 hundred dollars for the first offense, and for each subsequent
240 offense, shall be fined not less than five hundred dollars nor
241 more than one thousand dollars, or confined in jail not more
242 than six months, or both. The court, in imposing the sentence of
243 a person convicted of an offense under this section, shall order
244 the person to forfeit all ginseng involved in the offense.

245 (2) It is the duty of the prosecuting attorney of the county
246 in which the violation occurred to represent the Division, to
247 institute proceedings, and to prosecute the person charged with
248 the violation.

CHAPTER 8

**(H. B. 2650 — By Delegates Beach, Stemple, Proudfoot,
Swartzmiller, Williams, Anderson and Schoen)**

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §19-2F-1, §19-2F-2, §19-

2F-3, §19-2F-4, §19-2F-5, §19-2F-6, §19-2F-7, §19-2F-8, §19-2F-9, §19-2F-10 and §19-2F-11, all relating to beef industry self-improvement assessment program; stating purpose; defining terms; requiring petition to conduct referendum; requiring a public hearing on referendum; requiring notice of referendum; conducting referendum; authorizing subsequent referendum; continuing Beef Industry Council; establishing qualifications, appointment and terms of members; establishing powers and duties of Council; requiring collection and remittance of assessment; authorizing refunds; establishing penalties; and continuing program.

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 §19-2F-1, §19-2F-2, §19-2F-3, §19-2F-4, §19-2F-5, §19-2F-6, §19-2F-7, §19-2F-8, §19-2F-9, §19-2F-10 and §19-2F-11, all to read as follows:

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

- §19-2F-1. Purpose.
- §19-2F-2. Definitions.
- §19-2F-3. Petition for referendum; public hearing; notice.
- §19-2F-4. Conduct of referendum.
- §19-2F-5. Subsequent referendums.
- §19-2F-6. Beef Industry Council; appointment; terms; qualification of members; removal of members; officers; meetings; expenses.
- §19-2F-7. Powers and duties of the council; rule-making authority.
- §19-2F-8. Notice, levy and collection of assessment.
- §19-2F-9. Refunds.
- §19-2F-10. Penalties.
- §19-2F-11. Continuation of program.

§19-2F-1. Purpose.

- 1 The purpose of this article is to promote and stimulate,
- 2 through research, education, advertising and other methods, the

3 increased and efficient production, distribution, sale and use of
4 cattle and beef products by providing a means and procedure
5 for financing a promotional program for the West Virginia
6 cattle industry through activities of the West Virginia Beef
7 Industry Council.

§19-2F-2. Definitions.

1 As used in this article:

2 (1) "Council" means the West Virginia Beef Industry
3 Council.

4 (2) "Commissioner" means the Commissioner of the West
5 Virginia Department of Agriculture.

6 (3) "Person" means an individual, partnership, corporation,
7 association, fiduciary, or other group of persons acting together
8 whether organized or not.

9 (4) "Producer" means any person in the business of raising,
10 breeding or growing cattle or calves for beef production.

§19-2F-3. Petition for referendum; public hearing; notice.

1 (a) Producers may petition the Commissioner to conduct a
2 referendum of West Virginia producers authorizing the levying
3 of an assessment for the purposes set forth in this article:
4 *Provided*, That no referendum may be held until the provisions
5 of 7 U.S.C. §2901 *et seq.*, the federal beef research and infor-
6 mation program, have terminated.

7 (b) The Commissioner, when petitioned by no less than
8 fifty producers, must hold a public hearing no more than forty-
9 five days after receipt of the petition to decide whether a
10 referendum should be held to establish an assessment on the

11 sale of beef and dairy cattle, the amount of the assessment and
12 the duration of the assessment. The Commissioner shall give no
13 less than fifteen days notice of the public hearing including the
14 date, time and place of the public hearing. If a majority of those
15 present vote in favor of holding the referendum, including the
16 amount and duration of the proposed assessment, the Commis-
17 sioner shall notify the Council to schedule and hold a referen-
18 dum on the proposed assessment.

§19-2F-4. Conduct of referendum.

1 (a) The Council shall notify producers of the date, hours
2 and polling places for voting in the referendum, along with the
3 amount and duration of the proposed assessment, the manner of
4 collecting the assessment and the general purposes for which
5 the assessment will be expended. The notice must be published
6 no less than three times in two newspapers of general circula-
7 tion within this state and the Council may give notice of the
8 referendum in other publications and at places the Council
9 considers appropriate.

10 (b) The Council shall provide ballots and polling places in
11 each county. All cattle producers who may be subject to the
12 proposed assessment are eligible to vote in the referendum upon
13 presentation of proof showing them to be bona fide cattle
14 producers subject to the assessment. The referendum is decided
15 by a majority of the votes cast.

16 (c) The Commissioner shall canvass, tabulate and publicly
17 announce the results of the referendum no later than five days
18 after the end of the election. The Commissioner must preserve
19 all ballots for one year after the date of the referendum.

20 (d) All expense and costs necessary to conduct a referen-
21 dum are borne by the Council.

§19-2F-5. Subsequent referendums.

1 (a) In the event that a referendum conducted pursuant to the
2 provisions of this article fails to receive a majority of the
3 affirmative votes cast, the Council is authorized to conduct a
4 subsequent referendum under the provisions of section four of
5 this article no earlier than twelve months after the date on
6 which the last referendum was held without complying with the
7 requirements set forth in section three of this article, so long as
8 the amount and duration of the assessment are not increased.

9 (b) In the event that an assessment is in effect and set to
10 expire, the Council is authorized to conduct a subsequent
11 referendum under the provisions of section four of this article
12 during the last year of the assessment without complying with
13 the requirements set forth in section three of this article, so long
14 as the amount and duration of the subsequent assessment are
15 not increased.

§19-2F-6. Beef Industry Council; appointment; terms; qualification of members; removal of members; officers; meetings; expenses.

1 (a) The West Virginia Beef Industry Council is hereby
2 continued. The members of the Council in office on the date
3 this section becomes effective shall, unless sooner removed,
4 continue to serve until their respective terms expire and until
5 their successors have been appointed and qualified.

6 (b) (1) Commencing with the Council terms beginning on
7 the first day of July, two thousand five, the Council shall
8 consist of nine members appointed for terms of three years by
9 the Governor with the advice and consent of the Senate. Six
10 members of the Council must be beef cattle producers, one
11 member must be a dairy cattle producer, one member must be

12 a representative of a public livestock market and one member
13 must be a meat packer or meat processor.

14 (2) Each member of the Council, at the time of his or her
15 appointment, must have been engaged in his or her representa-
16 tive occupation for a period of not less than five years immedi-
17 ately preceding the appointment and each member must be a
18 United States citizen and a resident of this state during the
19 appointment term.

20 (3) In making appointments to the Council, the Governor
21 shall consider proposed member recommendations made by
22 West Virginia organizations and groups concerned with or
23 engaged in beef production.

24 (4) No member may serve more than two consecutive full
25 terms and any member having served two full terms may not be
26 appointed for one year after completion of his or her second full
27 term. A member continues to serve until his or her successor
28 has been appointed and qualified.

29 (5) The Governor may remove any member of the Council
30 for neglect of duty, incompetency or official misconduct.

31 (c) The Council elects a chair, a secretary and a treasurer
32 from its membership each for a term of two years. The Council
33 meets as often as necessary at the time and place designated by
34 the chair or by call of a majority of the Council members. All
35 Council meetings shall be held in accordance with the provi-
36 sions of article nine-a, chapter six of this code. All decisions of
37 the Council are determined by a majority of the members
38 appointed.

39 (d) The Board shall reimburse each member's expenses for
40 room, meals and mileage in the same manner and amount as

41 state employees receive for travel. No member may receive any
42 other salary or compensation for his or her services.

§19-2F-7. Powers and duties of the council; rule-making authority.

1 (a) The Council has the authority to:

2 (1) Receive and disburse funds as prescribed in this article
3 to be used for the purposes of this article;

4 (2) Enter into contracts;

5 (3) Hire and discharge employees, prescribe their duties and
6 fix their compensation;

7 (4) Accept grants, gifts and contributions for expenditure
8 consistent with the purposes of this article;

9 (5) Sue and be sued as a council without individual liability
10 of the members for acts of the Council when the Council is
11 acting within the scope of the powers conferred by this article;

12 (6) Cooperate with other state or federal agencies and
13 organizations engaged in work or activities consistent with the
14 purposes of this article;

15 (7) Conduct public relations and education programs for
16 increasing beef production and improving beef marketing
17 practices;

18 (8) Conduct or contract for scientific research with any
19 accredited college or university which will aid in implementing
20 the purposes of this article; and,

21 (9) Prepare and submit an annual report of its activities and
22 fiscal accounting to the Commissioner no later than the
23 fifteenth day of January of each year.

24 (b) The Council may propose rules for legislative approval
25 in accordance with the provisions of article three, chapter
26 twenty-nine-a of this code designed to implement the provisions
27 of this article.

§19-2F-8. Notice, levy and collection of assessment.

1 (a) Upon approval of an assessment, the Council shall
2 notify all known livestock markets, packers, buying stations,
3 order buyers, livestock dealers or other persons purchasing
4 cattle, including dairy cattle, that they are required to deduct the
5 amount of the assessment stipulated in the authorizing referen-
6 dum from the sale settlement beginning on the date designated
7 in the notice.

8 (b) The assessment approved by referendum is deducted by
9 all livestock markets, packers, buying stations, order buyers,
10 livestock dealers or other persons purchasing cattle, including
11 dairy cattle, on each cattle purchase from the sale settlement.
12 The purchasers remit the assessments within thirty days of the
13 date of the sale settlement to the treasurer of the Council.

14 (c) The Council must keep accurate records of the amount
15 of assessments received, the date on which they were received
16 and the name of the person making the remittance. The records
17 must be preserved for at least five years.

§19-2F-9. Refunds.

1 Any producer against whom an assessment is made and
2 deducted from the proceeds of sale, if dissatisfied with the
3 assessment, has the right to demand and receive from the

4 treasurer of the Council a refund of the total amount of assess-
5 ment collected from the producer if the demand is made in
6 writing to the Council within thirty days of the date the assess-
7 ment was deducted from the sale proceeds. The demand for
8 refund must contain the name and address of the producer, the
9 date of purchase, the number of head sold, the amount of the
10 assessment, the name and address of the collecting agent, the
11 date of sale and the invoice number. The refund is made upon
12 determination that the assessment was paid by the producer.

§19-2F-10. Penalties.

1 When a person required to collect the assessment in
2 accordance with section eight of this article fails to do so or
3 fails to remit it to the treasurer of the Council within thirty days,
4 the Council certifies that fact to the Commissioner. The
5 Commissioner notifies the person in writing that he or she has
6 fifteen days to begin the collection of the assessment, or to
7 remit previously collected assessments to the Council's
8 treasurer or to submit a written justification for the failure to
9 collect or remit the assessment. If the Commissioner determines
10 that person was required to remit the assessment and if payment
11 is not made within the fifteen-day period, the Commissioner
12 may revoke the person's license to engage in cattle purchasing
13 activities in the state. Persons having their license revoked
14 under this section are not eligible for license-reinstatement for
15 a period of three years.

§19-2F-11. Continuation of program.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the beef industry self-improvement assessment program
3 shall continue to exist until the first day of July, two thousand
4 eight, unless sooner terminated, continued or reestablished.

CHAPTER 9

(Com. Sub. for S. B. 580 — By Senators Facemyer, Edgell and Love)

[Passed April 5, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-16-4a, relating to prohibiting political subdivisions from regulating seeds.

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 §19-16-4a, to read as follows:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-4a. Local laws prohibited.

1 (a) No political subdivision may regulate the registration,
2 packaging, labeling, sale, storage, distribution, transportation
3 or any other use of seeds.

4 (b) No political subdivision may adopt or continue in effect
5 any local laws, ordinances or regulations relating to the
6 regulating, registration, packaging, labeling, sale, storage,
7 distribution, transportation or any other use of seeds.

8 (c) Local laws, ordinances or regulations in violation of this
9 section are void and unenforceable.

CHAPTER 10

(Com. Sub. for H. B. 2522 — By Delegates Argento, DeLong,
Manchin, Stemple, Pino, Amores and Webster)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-1-5b; to amend and reenact §60-4-2, §60-4-3 and §60-4-15 of said code; to amend said code by adding thereto a new section, designated §60-4-3a; and to amend and reenact §60-6-1 and §60-6-2 of said code, all relating to creating and licensing mini-distilleries; allowing the tasting and limited retail sales of liquor produced by a mini-distillery at the licensed premise; establishing requirements and limitations for licensees for sales and free samples of liquor products; requiring a portion of all retail sales to be distributed to certain retailers; and establishing a licensure fee.

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 §60-1-5b; that §60-4-2, §60-4-3 and §60-4-15 be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3a; and that §60-6-1 and §60-6-2 of said code be amended and reenacted, all to read as follows:

Article

1. General Provisions.
4. Licenses.
6. Miscellaneous Provisions.

ARTICLE 1. GENERAL PROVISIONS.**§60-1-5b. Mini-distilleries defined.**

1 For the purpose of this chapter: “mini-distillery” means an
2 establishment where in any year no more than twenty thousand
3 gallons of alcoholic liquor is manufactured with no less than
4 twenty-five percent of raw agricultural products being produced
5 by the owner of the mini-distillery on the premises of that
6 establishment, and no more than twenty-five percent of raw
7 agricultural products originating from any source outside this
8 state: *Provided*, That the maximum allotted production amounts
9 shall not exceed the annual incremental production limitations
10 provided for pursuant to section three-a of this article: *Pro-*
11 *vided, however*, That a distillery licensed and operating as of
12 the effective date of this section that applies for designation by
13 the Commissioner as a mini-distillery is eligible to be licensed
14 as a mini-distillery without compliance with the requirements
15 for the percentage use of on-premises grown and in-state raw
16 agricultural products.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

§60-4-3. To whom licensed manufacturer may sell.

§60-4-3a. Special mini-distillery license to manufacture and sell.

§60-4-15. Amount of license fees.

§60-4-2. Licenses for manufacture.

1 The Commission may grant licenses for the manufacture of
2 alcoholic liquors. Separate licenses shall be issued to the
3 following classes of manufacturing establishments:

4 (1) Distilleries, in which only alcoholic liquors other than
5 wine or beer is manufactured;

6 (2) Wineries, in which only wines are manufactured;

7 (3) Breweries, in which beer is manufactured;

8 (4) Bottling plants, in which beer only is bottled;

9 (5) Industrial plants, in which alcohol is distilled, manufac-
10 tured, or otherwise produced for scientific, chemical, mechani-
11 cal, or industrial purposes;

12 (6) Farm wineries, in which only wines are manufactured
13 and from which the wine so manufactured may be served or
14 sold or both served and sold in accordance with the provisions
15 of this chapter; and

16 (7) Mini-distilleries.

§60-4-3. To whom licensed manufacturer may sell.

1 (a) A person who is licensed to manufacture alcoholic
2 liquors in this state may sell liquors in this state only to the
3 West Virginia Alcohol Beverage Control Commissioner, and to
4 wholesalers and retailers licensed as provided in this chapter:
5 *Provided*, That a holder of a farm winery license may sell wines
6 and a holder of a mini-distillery license may sell alcoholic
7 liquors manufactured by it in this state in accordance with the
8 provisions of section two, article six of this chapter. Hours of
9 retail sale by a farm winery or mini-distillery is subject to
10 regulation by the Commissioner. The Commissioner may not
11 promulgate any rule which prohibits the holder of a farm
12 winery license from the advertising of a particular brand or
13 brands of wine produced by it, and the price of the wine:
14 *Provided, however*, That price may not be advertised in medium
15 of electronic communication subject to the jurisdiction of the
16 Federal Communications Commission. A manufacturer may
17 sell alcoholic liquors outside of the state.

§60-4-3a. Special mini-distillery license to manufacture and sell.

1 (a) *Sales of liquor*- An operator of a mini-distillery may
2 offer liquor for retail sale to customers from the mini-distillery
3 for consumption off premises only. Except for free complimen-
4 tary samples offered pursuant to section one, article six of this
5 chapter, customers are prohibited from consuming any liquor
6 on the premises of the mini-distillery.

7 (b) *Retail sales*- Every licensed mini-distillery shall comply
8 with the provisions of sections nine, eleven, thirteen, sixteen,
9 seventeen, eighteen, nineteen, twenty-two, twenty-three,
10 twenty-four, twenty-five and twenty-six of article three-a of this
11 chapter, and the provisions of article three and four of this
12 chapter applicable to liquor retailers and distillers.

13 (c) *Payment of taxes and fees*- The mini-distillery shall pay
14 all taxes and fees required of licensed retailers and meet
15 applicable licensing provisions as required by this chapter and
16 by rule of the Commissioner.

17 (d) *Payments to market zone retailers*- Each mini-distillery
18 shall submit to the Commissioner ten percent of the gross sales
19 price or each retail liquor sale for the value of all sales at the
20 mini-distillery each month. This collection shall be distributed
21 by the Commissioner, at least quarterly, to each market zone
22 retailer located in the mini-distillery's market zone, proportion-
23 ate to each market zone retailer's annual gross prior years pre-
24 tax value sales.

25 (e) *Limitations on licensees* - No mini-distillery may sell
26 more than three thousand gallons of product at the mini-
27 distillery location the initial two years of licensure. The mini-
28 distillery may increase sales at the mini-distillery location by
29 two thousand gallons following the initial twenty-four month
30 period of licensure, and may increase sales at the mini-distillery
31 location each subsequent twenty-four month period by two
32 thousand gallons, not to exceed ten thousand gallons a year of
33 total sales at the mini-distillery location. No licensed mini-

34 distillery may produce more than twenty thousand gallons per
35 calendar year at the mini-distillery location. No more than one
36 mini-distillery license may be issued to a single person or
37 entity.

§60-4-15. Amount of license fees.

1 A person to whom a license is issued under the provisions
2 of this chapter shall pay annually to the Commissioner a license
3 fee as follows, for:

4 (1) Distilleries, one thousand five hundred dollars;

5 (2) Wineries, one thousand five hundred dollars;

6 (3) Breweries, two hundred fifty dollars;

7 (4) Bottling plants, one hundred dollars;

8 (5) Wholesale druggists, fifty dollars;

9 (6) Institutions, ten dollars;

10 (7) Industrial use, fifty dollars;

11 (8) Industrial plants producing alcohol, two hundred fifty
12 dollars;

13 (9) Retail druggists, ten dollars;

14 (10) Farm wineries, fifty dollars;

15 (11) Mini-distilleries, fifty dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

§60-6-2. When lawful to manufacture and sell wine and cider.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic liquors
3 in his or her residence for the personal use of himself or herself,
4 his or her family, his or her employee or his or her guests if the
5 alcoholic liquors have been lawfully acquired by him or her;

6 (2) A person, his or her family, or employee from giving or
7 serving such alcoholic liquors to guests in the residence, when
8 the gift or service is not for the purpose of evading the provi-
9 sions of this chapter;

10 (3) The holder of a farm winery license from serving
11 complimentary samples of its wine in moderate quantities for
12 tasting at the winery premises; and

13 (4) The holder of a mini-distillery license from serving
14 complimentary samples of its alcoholic liquor in moderate
15 quantities for tasting at the distillery.

§60-6-2. When lawful to manufacture and sell wine and cider.

1 The provisions of this chapter may not prevent:

2 (1) A person from manufacturing wine at his or her
3 residence for consumption at his or her residence as permitted
4 by section one of this article;

5 (2) A person from manufacturing and selling unfermented
6 cider;

7 (3) A person from manufacturing and selling cider made
8 from apples produced by him or her within this state to persons
9 holding distillery licenses, if the manufacture and sale is under
10 the supervision and regulation of the Commissioner;

11 (4) A person from manufacturing and selling wine made
12 from fruit produced by him or her within this state to persons

13 holding winery licenses, if the manufacture and sale is under
14 the supervision and regulation of the Commissioner;

15 (5) The holder of a farm winery license from selling wine
16 produced by it directly to consumers at the winery and at one
17 off-farm winery location or to any other person who is licensed
18 under this chapter to sell wine either at wholesale or at retail:
19 *Provided*, That the winery may ship wines from the farm
20 winery without the bonding requirements of a transporter:
21 *Provided, however*, That notwithstanding any other provisions
22 of law to the contrary, an individual or licensee in a state which
23 affords the wineries of this state equal reciprocal shipping
24 privileges may ship for personal use and not for resale not more
25 than two cases of wine per month to any adult resident in this
26 state. For purposes of this subdivision, "wine" includes dessert
27 wines manufactured exclusively by natural fermentation and
28 port, sherry and Madeira wines having an alcoholic content of
29 not more than twenty-two percent alcohol by volume and which
30 have been matured in wooden barrels or casks; and

31 (6) The holder of a mini-distillery license from selling
32 alcoholic liquor for off premises consumption sold retail at the
33 distillery.

CHAPTER 11

**(H. B. 2960 — By Mr. Speaker, Mr. Kiss, and Delegates Ashley,
Argento, Boggs, Stemple, Michael, Campbell,
Stalnaker, Schadler and Hall)**

[Passed April 6, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting licensed restaurants to sell sealed bottles of wine produced by a West Virginia winery for consumption off the premises.

Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

***§60-8-3. Licenses; fees; general restrictions.**

1 (a) Except as to farm wineries as defined by section five-a,
2 article one of this chapter, no person may engage in business in
3 the capacity of a distributor, retailer or private wine restaurant
4 without first obtaining a license from the Commissioner, nor
5 shall a person continue to engage in any such activity after his
6 or her license has expired, been suspended or revoked. No
7 person may be licensed simultaneously as a distributor and a
8 retailer, as a distributor and a private wine restaurant, or as a
9 retailer and a private wine restaurant.

10 (b) The Commissioner shall collect an annual fee for
11 licenses issued under this article, as follows:

12 (1) Twenty-five hundred dollars per year for a distributor's
13 license and each separate warehouse or other facility from
14 which a distributor sells, transfers or delivers wine shall be
15 separately licensed and there shall be collected with respect to
16 each such location the annual license fee of twenty-five
17 hundred dollars as herein provided.

* **CLERK'S NOTE:** This section was also amended by H. B. 2266 (Chapter 12), which passed subsequent to this act.

18 (2) One hundred fifty dollars per year for a retailer's
19 license.

20 (3) Fifty dollars per year for a wine tasting license.

21 (4) Fifty dollars for each sales representative of or em-
22 ployed by a licensed distributor.

23 (5) Two hundred fifty dollars per year for a private wine
24 restaurant license, and each separate restaurant from which a
25 licensee sells wine shall be separately licensed and there shall
26 be collected with respect to each such location the annual
27 license fee of two hundred fifty dollars as herein provided.

28 (6) Twenty-five dollars per year for a West Virginia wine
29 retailer's license, and each separate retail outlet from which a
30 West Virginia wine retailer sells West Virginia wine shall be
31 separately licensed and there shall be collected with respect to
32 each such location the annual license fee of twenty-five dollars
33 as herein provided. The holder of such a license may sell no
34 wines except those produced by West Virginia Farm Wineries
35 as defined by section five-a, article one of this chapter. Except
36 for the amount of the license fee and the restriction to sales of
37 West Virginia wines, a West Virginia wine retailer is subject to
38 all other provisions of this article which are applicable to a
39 retailer as defined in section two of this article.

40 (c) The license period shall begin on the first day of July of
41 each year and end on the thirtieth day of June of the following
42 year, and if granted for a less period, the same shall be com-
43 puted semiannually in proportion to the remainder of the fiscal
44 year.

45 (d) No retailer may be licensed as a private club as provided
46 by article seven of this chapter.

47 (e) No retailer may be licensed as a Class A retail dealer in
48 nonintoxicating beer as provided by article sixteen, chapter
49 eleven of this code: *Provided*, That a delicatessen, a caterer or
50 party supply store which is a grocery store as defined in section
51 two of this article and which is licensed as a Class A retail
52 dealer in nonintoxicating beer may be a retailer under this
53 article: *Provided, however*, That any delicatessen, caterer or
54 party supply store licensed in both such capacities must
55 maintain average monthly sales exclusive of sales of wine and
56 nonintoxicating beer which exceed the average monthly sales
57 of nonintoxicating beer.

58 (f) A retailer under this article may also hold a wine tasting
59 license authorizing such retailer to serve complimentary
60 samples of wine in moderate quantities for tasting. Such retailer
61 shall organize a winetaster's club, which has at least fifty duly
62 elected or approved dues paying members in good standing.
63 Such club shall meet on the retailer's premises not more than
64 one time per week and shall either meet at a time when the
65 premises are closed to the general public, or shall meet in a
66 separate segregated facility on the premises to which the
67 general public is not admitted. Attendance at tastings shall be
68 limited to duly elected or approved dues paying members and
69 their guests.

70 (g) A retailer who has more than one place of retail
71 business shall obtain a license for each separate retail establish-
72 ment. A retailer's license may be issued only to the proprietor
73 or owner of a bona fide grocery store or wine specialty shop.

74 (h) The Commissioner may issue a special license for the
75 retail sale of wine at any festival or fair which is endorsed or
76 sponsored by the governing body of a municipality or a county
77 Commission. Such special license shall be issued for a term of
78 no longer than ten consecutive days and the fee therefor shall be
79 two hundred fifty dollars regardless of the term of the license

80 unless the applicant is the manufacturer of said wine on a farm
81 winery as defined in section five-a, article one of this chapter,
82 in which event the fee shall be twenty-five dollars. The applica-
83 tion for such license shall contain such information as the
84 Commissioner may reasonably require and shall be submitted
85 to the Commissioner at least thirty days prior to the first day
86 when wine is to be sold at such festival or fair. A farm winery
87 licensed under this subsection may exhibit, conduct tastings, not
88 to exceed a reasonable serving, and may sell wine only for
89 consumption off the premises of such festival or fair. A special
90 license issued other than to a farm winery may be issued to a
91 "wine club" as defined hereinbelow. The festival or fair
92 committee or the governing body shall designate a person to
93 organize a club under a name which includes the name of the
94 festival or fair and the words "wine club". The license shall be
95 issued in the name of the wine club. A licensee may not
96 commence the sale of wine as provided for in this subsection
97 until the wine club has at least fifty dues paying members who
98 have been enrolled and to whom membership cards have been
99 issued. Thereafter, new members may be enrolled and issued
100 membership cards at any time during the period for which the
101 license is issued. A wine club licensed under the provisions of
102 this subsection may sell wine only to its members, and in
103 portions not to exceed eight ounces per serving. Such sales shall
104 take place on premises or in an area cordoned or segregated so
105 as to be closed to the general public, and the general public
106 shall not be admitted to such premises or area. A wine club
107 licensee under the provisions of this subsection shall be
108 authorized to serve complimentary samples of wine in moderate
109 quantities for tasting.

110 A license issued under the provisions of this subsection and
111 the licensee holding such license shall be subject to all other
112 provisions of this article and the rules, regulations and orders of
113 the Commissioner relating to such special license: *Provided,*
114 That the Commissioner may by rule, regulation, or order

115 provide for certain waivers or exceptions with respect to such
116 provisions, rules, regulations, or orders as the circumstances of
117 each such festival or fair may require, including, without
118 limitation, the right to revoke or suspend any license issued
119 pursuant to this section prior to any notice or hearing notwith-
120 standing the provisions of section twelve of this article:
121 *Provided, however,* That under no circumstances shall the
122 provisions of subsection (c) or (d), section twenty of this article
123 be waived nor shall any exception be granted with respect
124 thereto.

125 A license issued under the provisions of this subsection and
126 the licensee holding such license shall not be subject to the
127 provisions of subsection (g) of this section.

128 (i) A license to sell wine granted to a private wine restau-
129 rant under the provisions of this article entitles the operator to
130 sell and serve wine, for consumption on the premises of the
131 licensee, when such sale accompanies the serving of food or a
132 meal to its members and their guests in accordance with the
133 provisions of this article: *Provided,* That a licensed restaurant
134 may offer for sale off the premises, sealed bottles of wine
135 produced by a West Virginia farm winery. Such licensees are
136 authorized to keep and maintain on their premises a supply of
137 wine in such quantities as may be appropriate for the conduct
138 of operations thereof. Any sale of wine so made shall be subject
139 to all restrictions set forth in section twenty of this article. A
140 private wine restaurant may also be licensed as a Class A retail
141 dealer in nonintoxicating beer as provided by article sixteen,
142 chapter eleven of this code.

143 (j) With respect to subsections (h) and (i) of this section, the
144 Commissioner shall promulgate legislative rules in accordance
145 with the provisions of chapter twenty-nine-a of this code with
146 regard to the form of the applications, the suitability of both the
147 applicant and location of the licensed premises and such other

148 legislative rules deemed necessary to carry the provisions of
149 such subsections into effect.

150 (k) The Commissioner shall promulgate legislative rules in
151 accordance with the provisions of chapter twenty-nine-a of this
152 code to allow restaurants to serve West Virginia wine with
153 meals, but not to sell the wine by the bottle. Each restaurant so
154 licensed shall be charged a fee less than that charged for a wine
155 license to a retail outlet, such fees to be set forth in the afore-
156 mentioned rules promulgated pursuant to this subsection.

157 (l) The Commissioner shall establish guidelines to permit
158 West Virginia wines to be sold in state stores.

159 (m) Farm wineries as defined in section one-a of this article
160 may advertise off premises as provided in section seven, article
161 twenty-two, chapter seventeen and in any other media, includ-
162 ing, but not limited to, newspaper, radio, television, magazines
163 and direct mail solicitation.

CHAPTER 12

**(Com. Sub. for H. B. 2266 — By Delegates Doyle,
Hatfield and Amores)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to imposing a one hundred dollar per year fee for licenses allowing wine sampling events by wine retailers; restrictions on wine sampling events; allowing licensed restaurants to offer sealed bottles of wine produced by a West

Virginia farm winery for sale off the premises; authorizing a special license to allow the sale and serving of wine by nonprofit charitable organizations and associations for certain purposes during one-day events; and authorizing special licenses for heritage fairs and festivals allowing the sale, serving and sampling of wine from a West Virginia farm winery.

Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

***§60-8-3. Licenses; fees; general restrictions.**

1 (a) Except as to farm wineries as defined by section five-a,
2 article one of this chapter, no person may engage in business in
3 the capacity of a distributor, retailer or private wine restaurant
4 without first obtaining a license from the Commissioner, nor
5 shall a person continue to engage in any such activity after his
6 or her license has expired, been suspended or revoked. No
7 person may be licensed simultaneously as a distributor and a
8 retailer, as a distributor and a private wine restaurant, or as a
9 retailer and a private wine restaurant.

10 (b) The Commissioner shall collect an annual fee for
11 licenses issued under this article, as follows:

12 (1) Twenty-five hundred dollars per year for a distributor's
13 license and each separate warehouse or other facility from
14 which a distributor sells, transfers or delivers wine shall be
15 separately licensed and there shall be collected with respect to
16 each such location the annual license fee of twenty-five
17 hundred dollars as herein provided;

*CLERK'S NOTE: This section was also amended by H. B. 2960 (Chapter 11), which passed prior to this act.

18 (2) One hundred fifty dollars per year for a retailer's
19 license;

20 (3) Fifty dollars per year for a wine tasting license;

21 (4) Fifty dollars for each sales representative of or em-
22 ployed by a licensed distributor;

23 (5) Two hundred fifty dollars per year for a private wine
24 restaurant license, and each separate restaurant from which a
25 licensee sells wine shall be separately licensed and there shall
26 be collected with respect to each such location the annual
27 license fee of two hundred fifty dollars as herein provided;

28 (6) Twenty-five dollars per year for a West Virginia wine
29 retailer's license, and each separate retail outlet from which a
30 West Virginia wine retailer sells West Virginia wine shall be
31 separately licensed and there shall be collected with respect to
32 each such location the annual license fee of twenty-five dollars
33 as herein provided. The holder of such a license may sell no
34 wines except those produced by West Virginia farm wineries as
35 defined by section five-a, article one of this chapter. Except for
36 the amount of the license fee and the restriction to sales of West
37 Virginia wines, a West Virginia wine retailer is subject to all
38 other provisions of this article which are applicable to a retailer
39 as defined in section two of this article;

40 (7) One hundred dollars per year for a wine sampling
41 license issued for a retailer under subsection (n) of this section;
42 and

43 (8) No fee shall be charged for a special one-day license
44 under subsection (o) of this section or for a heritage fair and
45 festival license under subsection (p) of this section.

46 (c) The license period shall begin on the first day of July of
47 each year and end on the thirtieth day of June of the following

48 year, and if granted for a less period, the same shall be com-
49 puted semiannually in proportion to the remainder of the fiscal
50 year.

51 (d) No retailer may be licensed as a private club as provided
52 by article seven of this chapter.

53 (e) No retailer may be licensed as a Class A retail dealer in
54 nonintoxicating beer as provided by article sixteen, chapter
55 eleven of this code: *Provided*, That a delicatessen, a caterer or
56 party supply store which is a grocery store as defined in section
57 two of this article and which is licensed as a Class A retail
58 dealer in nonintoxicating beer may be a retailer under this
59 article: *Provided, however*, That any delicatessen, caterer or
60 party supply store licensed in both such capacities must
61 maintain average monthly sales exclusive of sales of wine and
62 nonintoxicating beer which exceed the average monthly sales
63 of nonintoxicating beer.

64 (f) A retailer under this article may also hold a wine tasting
65 license authorizing such retailer to serve complimentary
66 samples of wine in moderate quantities for tasting. Such retailer
67 shall organize a winetaster's club, which has at least fifty duly
68 elected or approved dues paying members in good standing.
69 Such club shall meet on the retailer's premises not more than
70 one time per week and shall either meet at a time when the
71 premises are closed to the general public, or shall meet in a
72 separate segregated facility on the premises to which the
73 general public is not admitted. Attendance at tastings shall be
74 limited to duly elected or approved dues paying members and
75 their guests.

76 (g) A retailer who has more than one place of retail
77 business shall obtain a license for each separate retail establish-
78 ment. A retailer's license may be issued only to the proprietor
79 or owner of a bona fide grocery store or wine specialty shop.

80 (h) The Commissioner may issue a special license for the
81 retail sale of wine at any festival or fair which is endorsed or
82 sponsored by the governing body of a municipality or a county
83 commission. Such special license shall be issued for a term of
84 no longer than ten consecutive days and the fee therefor shall be
85 two hundred fifty dollars regardless of the term of the license
86 unless the applicant is the manufacturer of said wine on a farm
87 winery as defined in section five-a, article one of this chapter,
88 in which event the fee shall be twenty-five dollars. The applica-
89 tion for such license shall contain such information as the
90 Commissioner may reasonably require and shall be submitted
91 to the Commissioner at least thirty days prior to the first day
92 when wine is to be sold at such festival or fair. A farm winery
93 licensed under this subsection may exhibit, conduct tastings, not
94 to exceed a reasonable serving, and may sell wine only for
95 consumption off the premises of such festival or fair. A special
96 license issued other than to a farm winery may be issued to a
97 "wine club" as defined hereinbelow. The festival or fair
98 committee or the governing body shall designate a person to
99 organize a club under a name which includes the name of the
100 festival or fair and the words "wine club." The license shall be
101 issued in the name of the wine club. A licensee may not
102 commence the sale of wine as provided in this subsection until
103 the wine club has at least fifty dues paying members who have
104 been enrolled and to whom membership cards have been issued.
105 Thereafter, new members may be enrolled and issued member-
106 ship cards at any time during the period for which the license is
107 issued. A wine club licensed under the provisions of this
108 subsection may sell wine only to its members, and in portions
109 not to exceed eight ounces per serving. Such sales shall take
110 place on premises or in an area cordoned or segregated so as to
111 be closed to the general public, and the general public shall not
112 be admitted to such premises or area. A wine club licensee
113 under the provisions of this subsection shall be authorized to
114 serve complimentary samples of wine in moderate quantities
115 for tasting.

116 A license issued under the provisions of this subsection and
117 the licensee holding such license shall be subject to all other
118 provisions of this article and the rules and orders of the Com-
119 missioner relating to such special license: *Provided*, That the
120 Commissioner may by rule, regulation, or order provide for
121 certain waivers or exceptions with respect to such provisions,
122 rules, regulations, or orders as the circumstances of each such
123 festival or fair may require, including, without limitation, the
124 right to revoke or suspend any license issued pursuant to this
125 section prior to any notice or hearing notwithstanding the
126 provisions of section twelve of this article: *Provided, however*,
127 That under no circumstances shall the provisions of subsection
128 (c) or (d), section twenty of this article be waived nor shall any
129 exception be granted with respect thereto.

130 A license issued under the provisions of this subsection and
131 the licensee holding such license shall not be subject to the
132 provisions of subsection (g) of this section.

133 (i) A license to sell wine granted to a private wine restau-
134 rant under the provisions of this article entitles the operator to
135 sell and serve wine, for consumption on the premises of the
136 licensee, when such sale accompanies the serving of food or a
137 meal to its members and their guests in accordance with the
138 provisions of this article: *Provided*, That a licensed private wine
139 restaurant may offer for sale for consumption off the premises,
140 sealed bottles of wine produced by a West Virginia farm
141 winery. Such licensees are authorized to keep and maintain on
142 their premises a supply of wine in such quantities as may be
143 appropriate for the conduct of operations thereof. Any sale of
144 wine so made shall be subject to all restrictions set forth in
145 section twenty of this article. A private wine restaurant may
146 also be licensed as a Class A retail dealer in nonintoxicating
147 beer as provided by article sixteen, chapter eleven of this code.

148 (j) With respect to subsections (h), (i), (n) and (o) of this
149 section, the Commissioner shall promulgate legislative rules in
150 accordance with the provisions of chapter twenty-nine-a of this
151 code with regard to the form of the applications, the suitability
152 of both the applicant and location of the licensed premises and
153 such other legislative rules deemed necessary to carry the
154 provisions of such subsections into effect.

155 (k) The Commissioner shall promulgate legislative rules in
156 accordance with the provisions of chapter twenty-nine-a of this
157 code to allow restaurants to serve West Virginia wine with
158 meals, but not to sell the wine by the bottle. Each restaurant so
159 licensed shall be charged a fee less than that charged for a wine
160 license to a retail outlet, such fees to be set forth in the afore-
161 mentioned rules promulgated pursuant to this subsection.

162 (l) The Commissioner shall establish guidelines to permit
163 West Virginia wines to be sold in state stores.

164 (m) Farm wineries as defined in section one-a of this article
165 may advertise off premises as provided in section seven, article
166 twenty-two, chapter seventeen and in any other media, includ-
167 ing, but not limited to, newspaper, radio, television, magazines
168 and direct mail solicitation.

169 (n) A retailer under this article may also hold a wine
170 sampling license authorizing the retailer to conduct special
171 wine sampling events at a licensed retail location during regular
172 hours of business. The retailer may serve up to three compli-
173 mentary samples of wine, consisting of no more than one ounce
174 each, to any one consumer in one day. Persons serving the
175 complimentary samples must be twenty-one years of age and
176 duly employed by the licensed retailer, farm winery, or a
177 representative of a distributor or registered supplier. Distributor
178 and supplier representatives attending wine sampling events
179 must be duly licensed by the Commissioner. No licensee,
180 employee, or representative may furnish, give or serve compli-

181 mentary samples of wine to any person less than twenty—one
182 years of age or to a person who is physically incapacitated due
183 to the consumption of alcoholic liquor or the use of drugs. The
184 retailer shall notify and secure permission from the Commis-
185 sioner for all wine sampling events one month prior to the
186 event. Wine sampling events may not exceed six hours per
187 calendar day. Licensees must purchase all wines used during
188 these events from a West Virginia farm winery or a licensed
189 West Virginia distributor.

190 (o) The Commissioner may issue special one-day licenses
191 to duly organized, nonprofit corporations and associations
192 allowing the sale and serving of wine when raising money for
193 athletic, charitable, educational or religious purposes. The
194 license application shall contain information as the Commis-
195 sioner may reasonably require and shall be submitted to the
196 Commissioner at least thirty days prior to the event. Wines used
197 during these events may be donated by or purchased from a
198 licensed retailer, distributor or West Virginia farm winery.
199 Under no circumstances may the provision of subsection (c),
200 section twenty of this article be waived nor may any exception
201 be granted with respect thereto.

202 (p) The Commissioner may issue special licenses to
203 heritage fairs and festivals allowing the sale, serving and
204 sampling of wine from a West Virginia farm winery. The
205 license application shall contain information required by the
206 Commissioner and shall be submitted to the Commissioner at
207 least thirty days prior to the event. Wines used during these
208 events may be donated by or purchased from a West Virginia
209 farm winery. Under no circumstances may the provision of
210 subsection (c), section twenty of this article be waived nor may
211 any exception be granted with respect thereto. The Commis-
212 sioner shall propose rules for legislative approval in accordance
213 with article three, chapter twenty-nine-a of this code to imple-
214 ment the provisions of this subsection.

CHAPTER 13

(Com. Sub. for S. B. 268 — By Senators Kessler, Helmick,
Plymale, Prezioso, Boley, McKenzie, Unger, Foster,
Barnes and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-3A-24 of said code, all relating to underage possession of nonintoxicating beer and alcoholic liquor; and conforming state law to federal requirements by providing that violation by a person under the age of eighteen constitutes a status offense instead of a misdemeanor.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-3A-24 of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

1 (a)(1) Any person eighteen or over but under the age of
2 twenty-one years who purchases, consumes, sells, possesses or

3 serves nonintoxicating beer is guilty of a misdemeanor and,
4 upon conviction thereof, shall be fined an amount not to exceed
5 five hundred dollars or shall be incarcerated in jail for a period
6 not to exceed seventy-two hours, or both fined and imprisoned
7 or, in lieu of such fine and incarceration, may, for the first
8 offense, be placed on probation for a period not to exceed one
9 year. Any person under the age of eighteen years who pur-
10 chases, consumes, sells, possesses or serves nonintoxicating
11 beer is guilty of a status offense as that term is defined in
12 section four, article one, chapter forty-nine of this code and,
13 upon adjudication therefor, shall be referred to the Department
14 of Health and Human Resources for services, as provided in
15 section eleven, article five of said chapter.

16 (2) Nothing in this article, nor any rule or regulation of the
17 Commissioner, shall prevent or be deemed to prohibit any
18 person who is at least eighteen years of age from serving in the
19 lawful employment of any licensee, which may include the sale
20 or delivery of nonintoxicating beer as defined in this article.
21 Further, nothing in this article, nor any rule or regulation of the
22 Commissioner, shall prevent or be deemed to prohibit any
23 person who is less than eighteen but at least sixteen years of age
24 from being employed by a licensee whose principal business is
25 the sale of food or consumer goods or the providing of recre-
26 ational activities, including, but not limited to, nationally
27 franchised fast food outlets, family-oriented restaurants,
28 bowling alleys, drug stores, discount stores, grocery stores and
29 convenience stores: *Provided*, That such person shall not sell or
30 deliver nonintoxicating beer.

31 (3) Nothing in this subsection shall prohibit a person who
32 is at least eighteen years of age from purchasing or possessing
33 nonintoxicating beer when he or she is acting upon the request
34 of or under the direction and control of any member of a state,
35 federal or local law-enforcement agency or the West Virginia
36 Alcohol Beverage Administration while the agency is conduct-

37 ing an investigation or other activity relating to the enforcement
38 of the alcohol beverage control statutes and the rules of the
39 Commissioner.

40 (b) Any person under the age of twenty-one years who, for
41 the purpose of purchasing nonintoxicating beer, misrepresents
42 his or her age or who for such purpose presents or offers any
43 written evidence of age which is false, fraudulent or not
44 actually his or her own or who illegally attempts to purchase
45 nonintoxicating beer is guilty of a misdemeanor and, upon
46 conviction thereof, shall be fined an amount not to exceed fifty
47 dollars or shall be imprisoned in jail for a period not to exceed
48 seventy-two hours, or both such fine and imprisonment or, in
49 lieu of such fine and imprisonment, may, for the first offense,
50 be placed on probation for a period not exceeding one year.

51 (c) Any person who shall knowingly buy for, give to or
52 furnish nonintoxicating beer to anyone under the age of twenty-
53 one to whom they are not related by blood or marriage is guilty
54 of a misdemeanor and, upon conviction thereof, shall be fined
55 an amount not to exceed one hundred dollars or shall be
56 imprisoned in jail for a period not to exceed ten days, or both
57 such fine and imprisonment.

58 (d)(1) Any person who at any one time transports into the
59 state for their personal use, and not for resale, more than six and
60 seventy-five hundredths gallons of nonintoxicating beer, upon
61 which the West Virginia barrel tax has not been imposed, shall
62 be guilty of a misdemeanor and, upon conviction thereof, shall
63 be fined an amount not to exceed one hundred dollars and have
64 all the untaxed nonintoxicating beer in their possession at the
65 time of the arrest confiscated, or imprisoned for ten days in jail,
66 or both fined and imprisoned.

67 (2) If the Congress of the United States repeals the mandate
68 established by the Surface Transportation Assistance Act of

69 1982 relating to national uniform drinking age of twenty-one as
70 found in section six of Public Law 98-363, or a court of
71 competent jurisdiction declares the provision to be unconstitu-
72 tional or otherwise invalid, it is the intent of the Legislature that
73 the provisions contained in this section and section eighteen of
74 this article which prohibit the sale, furnishing, giving, purchase
75 or ownership of nonintoxicating beer to or by a person who is
76 less than twenty-one years of age shall be null and void and the
77 provisions therein shall thereafter remain in effect and apply to
78 the sale, furnishing, giving, purchase or ownership of nonintox-
79 icating beer to or by a person who is less than nineteen years of
80 age.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a)(1) Any person who is eighteen or over but under the age
2 of twenty-one years who purchases, consumes, sells, serves or
3 possesses alcoholic liquor is guilty of a misdemeanor and, upon
4 conviction thereof, shall be fined an amount not to exceed five
5 hundred dollars or shall be incarcerated in jail for a period not
6 to exceed seventy-two hours, or both fined and imprisoned or,
7 in lieu of such fine and incarceration, may, for the first offense,
8 be placed on probation for a period not to exceed one year.
9 Any person who is under eighteen years who purchases,
10 consumes, sells, serves or possesses alcoholic liquor is guilty of
11 a status offense, as that term is defined in section four, article
12 one, chapter forty-nine of this code and, upon adjudication
13 therefor, shall be referred to the Department of Health and
14 Human Resources for services, as provided in section eleven,
15 article five of said chapter.

16 (2) Nothing in this article, nor any rule or regulation of the
17 Commissioner, shall prevent or be deemed to prohibit any
18 person who is at least eighteen years of age from serving in the
19 lawful employment of a licensee which includes the sale and
20 serving of alcoholic liquor.

21 (3) Nothing in this subsection shall prohibit a person who
22 is at least eighteen years of age from purchasing or possessing
23 alcoholic liquor when he or she is acting upon the request of or
24 under the direction and control of any member of a state,
25 federal or local law-enforcement agency or the West Virginia
26 Alcohol Beverage Administration while the agency is conduct-
27 ing an investigation or other activity relating to the enforcement
28 of the alcohol beverage control statutes and the rules and
29 regulations of the Commissioner.

30 (b) Any person under the age of twenty-one years who, for
31 the purpose of purchasing liquor from a retail licensee, misrep-
32 represents his or her age or who for such purpose presents or offers
33 any written evidence of age which is false, fraudulent or not
34 actually his or her own or who illegally attempts to purchase
35 liquor from a retail licensee is guilty of a misdemeanor and,
36 upon conviction thereof, shall be fined an amount not to exceed
37 fifty dollars or imprisoned in jail for a period not to exceed
38 seventy-two hours, or both fined and imprisoned or, in lieu of
39 such fine and imprisonment, may, for the first offense, be
40 placed on probation for a period not exceeding one year.

41 (c) Any person who knowingly buys for, gives to or
42 furnishes to anyone under the age of twenty-one to whom he or
43 she is not related by blood or marriage any liquor from what-
44 ever source is guilty of a misdemeanor and, upon conviction
45 thereof, shall be fined an amount not to exceed one hundred
46 dollars or imprisoned in jail for a period not to exceed ten days,
47 or both fined and imprisoned.

48 (d) No person while on the premises of a retail outlet may
49 consume liquor or break the seal on any package or bottle of
50 liquor. Any person who violates the provisions of this subsec-
51 tion is guilty of a misdemeanor and, upon conviction thereof,
52 shall be fined an amount not to exceed one hundred dollars or
53 imprisoned in jail for a period not to exceed ten days, or both
54 fined and imprisoned.

CHAPTER 14

**(Com. Sub. for H. B. 2980 — By Mr. Speaker, Mr. Kiss, and Delegates
DeLong, Pino, Varner, Pethtel, Cann and Amores)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §21-10-4, §21-10-5 and §21-10-6 of the Code of West Virginia, 1931, as amended, relating to the regulation of amusement rides and amusement attractions; providing for oversight and review of special inspectors; increasing annual permit fee; requiring Division of Labor to set qualifications and process for certification of special inspectors by legislative rule; authorizing annual certification fee; allowing suspension or revocation of certifications; and allowing inspections by special inspectors.

Be it enacted by the Legislature of West Virginia:

That §21-10-4, §21-10-5 and §21-10-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS
SAFETY ACT.**

§21-10-4. Inspection and permit fees.

§21-10-5. Inspectors.

§21-10-6. Permits; application; annual inspection.

§21-10-4. Inspection and permit fees.

1 (a) The Division shall charge inspection and permit fees.
2 The annual permit fee is one hundred dollars for each ride or
3 attraction. The annual inspection fee, if an inspection is to be
4 done by the Division, is one hundred dollars for each ride or
5 attraction. The annual inspection fee, if an inspection is to be
6 done by the Division, is due at the time of application for the
7 annual permit. The Division shall waive the inspection fee for
8 any ride or attraction whose owner provides proof of nonprofit
9 business status or for any ride or attraction whose owner
10 provides proof that an inspection has been completed within the
11 last year by a certified special inspector as provided in section
12 six of this article.

13 (b) The Division may charge additional inspection fees
14 equal to the annual inspection fee for additional inspections
15 required as the result of the condemnation of a device for safety
16 standards violations and for inspections required as a result of
17 accidents involving serious or fatal injury. If any owner or
18 operator requires an inspection as the result of a violation of the
19 permitting requirements of section six of this article, the
20 Division shall charge the owner or operator seventy-five dollars
21 per hour in addition to the established inspection fee, including
22 travel time.

23 (c) All fees received shall be deposited in a special revenue
24 account in the State Treasury known as the "Amusement Rides
25 and Amusement Attractions Safety Fund". The Division may
26 use moneys from the fund for the purpose of enforcement of the
27 provisions of this article. Expenditures are not authorized from

28 collections, but are to be made only in accordance with appro-
29 priation by the Legislature and in accordance with the provi-
30 sions of article three, chapter twelve of this code and upon
31 fulfillment of the provisions of article two, chapter eleven-b of
32 this code.

33 (d) No inspection fee may be charged public agencies.

34 (e) The Division shall issue, and the owner, operator or both
35 of the amusement rides and amusement attractions shall visibly
36 display to the public, inspection stickers denoting and signify-
37 ing that the inspection and permit fee authorized by this section
38 has been paid or waived.

§21-10-5. Inspectors.

1 (a) The Division may hire or contract with inspectors to
2 inspect amusement rides and amusement attractions. The
3 Division is responsible for oversight and review of the activities
4 of special inspectors and may hire or contract with inspectors
5 to review the activities of special inspectors.

6 (b) The Division shall certify all special inspectors who are
7 employed by insurance providers that write insurance policies
8 for amusement rides and amusement attractions required by
9 section twelve of this article. The Division may suspend or
10 revoke any certification of a special inspector upon a showing
11 of good cause. The Division shall propose rules for legislative
12 approval in accordance with the provisions of article three,
13 chapter twenty-nine-a of this code providing an application
14 process and minimum qualifications for certification of special
15 inspectors. The Division may charge an annual certification fee
16 not to exceed fifty dollars.

§21-10-6. Permits; application; annual inspection.

1 No operator or owner may knowingly permit the operation
2 of an amusement ride or amusement attraction without a permit

3 issued by the Division. Each year and at least fifteen days
4 before the first time the amusement ride or amusement attrac-
5 tion is made available in this state for public use, an operator or
6 owner shall apply for a permit to the Division on a form
7 furnished by the Division and containing any information the
8 Division may require. The Division shall, upon application and
9 within ten days of the first time the ride or attraction is made
10 available in this state for public use, inspect all amusement
11 rides and amusement attractions. The Division shall inspect all
12 stationary rides and attractions at least once every year. The
13 Division may inspect all mobile amusement rides and amuse-
14 ment attractions each time they are disassembled and reassem-
15 bled for use in this state. The Division may conduct inspections
16 at any reasonable time without prior notice: *Provided*, That in
17 lieu of performing its own inspection, the Division may accept
18 inspection reports from special inspectors certified by the
19 Division.

CHAPTER 15

**(S. B. 235 — By Senators Edgell, Bailey, Dempsey,
Love, Facemyer and Guills)**

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-9-7a, relating to National Animal Identification System; requiring state participation in the program; providing rule-making authority; and exempting premises and animal identification data from disclosure pursuant to the Freedom of Information Act.

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 §19-9-7a, to read as follows:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-7a. National Animal Identification System; rulemaking; exemption.

1 West Virginia shall be a participating state in the United
2 States Department of Agriculture's National Animal Identifica-
3 tion System. The Commissioner may propose rules for legisla-
4 tive approval in accordance with the provisions of article three,
5 chapter twenty-nine-a of this code governing the collection of
6 farm premises and animal identification data.

7 The premises and animal identification data collected by
8 the Commissioner in accordance with the requirements of the
9 National Animal Identification System are specifically exempt
10 from disclosure under the provisions of article one, chapter
11 twenty-nine-b of this code.

CHAPTER 16

**(Com. Sub. for H. B. 2005 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]**

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor with deletions on April 22, 2005.]

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 Provisions.**
- 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 is to
 2 appropriate money necessary for the economical and efficient
 3 discharge of the duties and responsibilities of the state and its
 4 agencies during the fiscal year two thousand six.

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

2 “Governor” shall mean the governor of the State of West
 3 Virginia.

4 “Code” shall mean the code of West Virginia, one thousand
 5 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 six” shall mean the period
 10 from the first day of July, two thousand five, through the
 11 thirtieth day of June, two thousand six.

12 “General revenue fund” shall mean the general operating
 13 fund of the state and includes all moneys received or collected

14 by the state except as provided in section two, article two,
15 chapter twelve of the code or as otherwise provided.

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

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

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion 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 accordance
12 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 matching,
17 workers’ compensation, unemployment compensation, pension
18 and retirement contributions, public employees insurance
19 matching, personnel fees or any other benefit normally paid by
20 the employer as a direct cost of employment. Should the
21 appropriation be insufficient to cover such costs, the remainder
22 of such cost shall be transferred by each spending unit from its
23 “personal services” line item or its “unclassified” line item or
24 other appropriate line item to its “employee benefits” line item.
25 If there is no appropriation for “employee benefits,” such costs
26 shall be paid by each spending unit from its “personal services”
27 line item, its “unclassified” line item or other appropriate line
28 item. Each spending unit is hereby authorized and required to
29 make such payments in accordance with the provisions of
30 article two, chapter eleven-b of the code.

31 “BRIM Premiums” shall mean the amount charged as
32 consideration for insurance protection and includes the present
33 value of projected losses and administrative expenses. Premi-
34 ums are assessed for coverages, as defined in the applicable
35 policies, for claims arising from, inter alia, general liability,
36 wrongful acts, property, professional liability and automobile
37 exposures.

38 Should the appropriation for “BRIM Premiums” be
39 insufficient to cover such cost, the remainder of such costs shall
40 be transferred by each spending unit from its “personal ser-
41 vices” line item, its “employee benefit” line item, its “unclassi-
42 fied” line item or any other appropriate line item to “BRIM
43 Premiums” for payment to the Board of Risk and Insurance
44 Management. Each spending unit is hereby authorized and
45 required to make such payments.

46 Each spending unit shall be responsible for all contribu-
47 tions, payments or other costs related to coverage and claims of

48 its employees for unemployment compensation. Such expendi-
49 tures shall be considered an employee benefit.

50 "Current expenses" shall mean operating costs other than
51 personal services and shall not include equipment, repairs and
52 alterations, buildings or lands.

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

57 "Equipment" shall mean equipment items which have an
58 appreciable and calculable period of usefulness in excess of one
59 year.

60 "Repairs and alterations" shall mean routine maintenance
61 and repairs to structures and minor improvements to property
62 which do not increase the capital assets.

63 "Buildings" shall include new construction and major
64 alteration of existing structures and the improvement of lands
65 and shall include shelter, support, storage, protection or the
66 improvement of a natural condition.

67 "Lands" shall mean the purchase of real property or interest
68 in real property.

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

73 From appropriations made to the spending units of state
74 government, upon approval of the governor there may be
75 transferred to a special account an amount sufficient to match
76 federal funds under any federal act.

77 Appropriations classified in any of the above categories
78 shall be expended only for the purposes as defined above and
79 only for the spending units herein designated: *Provided*, That
80 the secretary of each department shall have the authority to
81 transfer within the department those general revenue funds
82 appropriated to the various agencies of the department: *Pro-*
83 *vided, however*, That no more than five percent of the general
84 revenue funds appropriated to any one agency or board may be
85 transferred to other agencies or boards within the department:
86 *Provided further*, That the secretary of each department and the
87 director, commissioner, executive secretary, superintendent,
88 chairman or any other agency head not governed by a depart-
89 mental secretary as established by chapter five-f of the code
90 shall have the authority to transfer funds appropriated to
91 “personal services” and “employee benefits” to other lines
92 within the same account and no funds from other lines shall be
93 transferred to the “personal services” line: *And provided*
94 *further*, That the secretary of each department and the director,
95 commissioner, executive secretary, superintendent, chairman or
96 any other agency head not governed by a departmental secretary
97 as established by chapter five-f of the code shall have the
98 authority to transfer general revenue funds appropriated to
99 “annual increment” to other general revenue accounts within
100 the same department, bureau or commission for the purpose of
101 providing an annual increment in accordance with article five,
102 chapter five of the code: *And provided further*, That if the
103 Legislature by subsequent enactment consolidates agencies,
104 boards or functions, the secretary or other appropriate agency
105 head may transfer the funds formerly appropriated to such
106 agency, board or function in order to implement such consolida-
107 tion. No funds may be transferred from a special revenue
108 account, dedicated account, capital expenditure account or any
109 other account or fund specifically exempted by the Legislature
110 from transfer, except that the use of the appropriations from the
111 state road fund for the office of the secretary of the department

112 of transportation is not a use other than the purpose for which
113 such funds were dedicated and is permitted.

114 Appropriations otherwise classified shall be expended only
115 where the distribution of expenditures for different purposes
116 cannot well be determined in advance or it is necessary or
117 desirable to permit the spending unit the freedom to spend an
118 appropriation for more than one of the above classifications.

1 **Sec. 4. Method of expenditure.**—Money appropriated by
2 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 law
5 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 permit-
3 ting an expenditure in excess of the appropriations set out in
4 this bill.

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- SECTION 14. Appropriations for local governments.
- SECTION 15. Total appropriations.
- SECTION 16. General school fund.
- ~~*SECTION 17. Reimbursement Limits.~~

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

* **CLERK'S NOTE:** The Governor struck out Section 17 heading to correspond with his action striking out Section 17 on page 272.

LEGISLATIVE*1—Senate*Fund 0165 FY 2006 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	700,000
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>32,094</u>
13 Total		\$ 6,933,016

14 The appropriations for the senate for the fiscal year 2005
15 are to remain in full force and effect and are hereby
16 reappropriated to June 30, 2006. Any balances so
17 reappropriated may be transferred and credited to the fiscal year
18 2006 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 president,
24 is authorized to draw his or her requisitions upon the auditor,

25 payable out of the Current Expenses and Contingent Fund of
26 the senate, for any bills for supplies and services that may have
27 been incurred by the senate and not included in the appropria-
28 tion bill, for supplies and services incurred in preparation for
29 the opening, the conduct of the business and after adjournment
30 of any regular or extraordinary session, and for the necessary
31 operation of the senate offices, the requisitions for which are to
32 be accompanied by bills to be filed with the auditor.

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

49 For duties imposed by law and by the senate, the clerk of
50 the senate shall be paid a monthly salary as provided by the
51 senate resolution, unless increased between sessions under the
52 authority of the president, payable out of the appropriation for
53 Compensation and Per Diem of Officers and Employees or
54 Current Expenses and Contingent Fund of the senate.

55 The distribution of the blue book shall be by the office of
56 the clerk of the senate and shall include seventy-five copies for
57 each member of the Legislature and two copies for each

58 classified and approved high school and junior high school and
59 one copy for each elementary school within the state.

2—House of Delegates

Fund 0170 FY 2006 Org 2200

1	Compensation of Members (R)	003	\$2,270,000
2	Compensation and Per Diem of Officers		
3	and Employees (R)	005	600,000
4	Current Expenses and		
5	Contingent Fund (R)	021	4,221,162
6	Expenses of Members (R)	399	1,190,000
7	BRIM Premium (R)	913	<u>29,864</u>
8	Total		\$ 8,311,026

9 The appropriations for the house of delegates for the fiscal
10 year 2005 are to remain in full force and effect and are hereby
11 reappropriated to June 30, 2006. Any balances so
12 reappropriated may be transferred and credited to the fiscal year
13 2006 accounts.

14 Upon the written request of the clerk of the house of
15 delegates, the auditor shall transfer amounts between items of
16 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 of the
19 speaker, is authorized to draw his or her requisitions upon the
20 auditor, payable out of the Current Expenses and Contingent
21 Fund of the house of delegates, for any bills for supplies and
22 services that may have been incurred by the house of delegates
23 and not included in the appropriation bill, for bills for services
24 and supplies incurred in preparation for the opening of the
25 session and after adjournment, and for the necessary operation
26 of the house of delegates' offices, the requisitions for which are
27 to be accompanied by bills to be filed with the auditor.

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2006 Org 2300

1	Joint Committee on		
2	Government and Finance (R)	104	\$ 6,745,189
3	Legislative Printing (R)	105	800,000
4	Legislative Rule-Making		
5	Review Committee (R)	106	155,000
6	Legislative Computer System (R)	107	900,000

7	Joint Standing Committee		
8	on Education (R)	108	88,000
9	Tax Reduction and Federal Funding		
10	Increased Compliance(TRAFFIC)(R)	642	10,000,000
11	BRIM Premium (R)	913	<u>22,000</u>
12	Total		\$ 18,710,189

13 The appropriations for the joint expenses for the fiscal year
14 2005 are to remain in full force and effect and are hereby
15 reappropriated to June 30, 2006. Any balances so
16 reappropriated may be transferred and credited to the fiscal year
17 2006 accounts.

18 Upon the written request of the clerk of the senate, with the
19 approval of the president of the senate, and the clerk of the
20 house of delegates, with the approval of the speaker of the
21 house of delegates, and a copy to the legislative auditor, the
22 auditor shall transfer amounts between items of the total
23 appropriation in order to protect or increase the efficiency of
24 the service.

25 The appropriation for the Tax Reduction and Federal
26 Funding Increased Compliance (TRAFFIC) (fund 0175, activity
27 642) is intended for possible general state tax reductions or the
28 offsetting of any reductions in federal funding for state pro-
29 grams.

JUDICIAL

4—Supreme Court—

General Judicial

Fund 0180 FY 2006 Org 2400

1	Personal Services (R)	001	\$ 46,597,298
2	Annual Increment (R)	004	525,000

3	Employee Benefits (R)	010	15,089,844
4	Unclassified (R)	099	13,019,391
5	Judges' Retirement System (R)	110	6,758,169
6	BRIM Premium (R)	913	<u>374,015</u>
7	Total		\$ 82,363,717

8 The appropriations to the supreme court of appeals for the
9 fiscal years 2002, 2004 and 2005 are to remain in full force and
10 effect and are hereby reappropriated to June 30, 2006. Any
11 balances so reappropriated may be transferred and credited to
12 the fiscal year 2006 accounts.

13 This appropriation shall be administered by the administra-
14 tive director of the supreme court of appeals, who shall draw
15 requisitions for warrants in payment in the form of payrolls,
16 making deductions therefrom as required by law for taxes and
17 other items.

18 The appropriation for the Judges' Retirement System is to
19 be transferred to the consolidated public retirement board, in
20 accordance with the law relating thereto, upon requisition of the
21 administrative director of the supreme court of appeals.

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2006 Org 0100

1	Personal Services	001	\$ 2,380,000
2	Salary of Governor	002	95,000
3	Annual Increment	004	15,000
4	Employee Benefits	010	745,994
5	Unclassified (R)	099	933,431
6	National Governors' Association	123	70,200

7	Southern States Energy Board	124	28,732
8	Southern Governors' Association	314	5,740
9	Pharmaceutical Cost		
10	Management Council	796	500,000
11	Special Income Tax Refund		
12	Reserve Fund—Transfer	797	0
13	21 st Century Government Initiative	798	0
14	BRIM Premium	913	<u>254,751</u>
15	Total		\$ 5,028,848

16 Any unexpended balances remaining in the appropriations
 17 for Unclassified (fund 0101, activity 099), Publication of Papers
 18 and Transition Expenses (fund 0101, activity 465), and Publica-
 19 tion of Papers and Transition Expenses—Surplus (fund 0101,
 20 activity 359) at the close of the fiscal year 2005 are hereby
 21 reappropriated for expenditure during the fiscal year 2006.

6—Governor's Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2006 Org 0100

1 Unclassified—Total (R) 096 \$ 577,774

2 Any unexpended balance remaining in the appropriation for
 3 Unclassified-Total (fund 0102, activity 096) at the close of the
 4 fiscal year 2005 is hereby reappropriated for expenditure during
 5 the fiscal year 2006.

6 To be used for current general expenses, including compen-
 7 sation of employees, household maintenance, cost of official
 8 functions and additional household expenses occasioned by
 9 such official functions.

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

(WV Code Chapter 5)

Fund 0105 FY 2006 Org 0100

1	Business & Economic Development		
2	Stimulus	586	\$ 4,000,000
3	Civil Contingent Fund (R)	614	<u>4,000,000</u>
4	Total		\$ 8,000,000

5 Any unexpended balances remaining in the appropriations
6 for Stream Restoration—Surplus (fund 0105, activity 078),
7 Civil Contingent Fund—Total (fund 0105, activity 114), Civil
8 Contingent Fund—Total—Surplus (fund 0105, activity 238),
9 Civil Contingent Fund— Surplus (fund 0105, activity 263),
10 Civil Contingent Fund (fund 0105, activity 614) and Business
11 and Economic Development Stimulus—Surplus (fund 0105,
12 activity 084) at the close of the fiscal year 2005 are hereby
13 reappropriated for expenditure during the fiscal year 2006.

14 From this appropriation there may be expended, at the
15 discretion of the governor, an amount not to exceed one
16 thousand dollars as West Virginia's contribution to the inter-
17 state oil compact commission.

18 The above appropriation is intended to provide contingency
19 funding for accidental, unanticipated, emergency or unplanned
20 events which may occur during the fiscal year and is not to be
21 expended for the normal day-to-day operations of the gover-
22 nor's office.

*8—Auditor's Office—**General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2006 Org 1200

1	Personal Services	001	\$ 2,087,640
2	Salary of Auditor	002	75,000
3	Annual Increment	004	37,265
4	Employee Benefits	010	769,039
5	Unclassified	099	623,326
6	BRIM Premium	913	<u>15,781</u>
7	Total		\$ 3,608,051

9—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2006 Org 1300

1	Personal Services	001	\$ 1,727,893
2	Salary of Treasurer	002	75,000
3	Annual Increment	004	25,000
4	Employee Benefits	010	567,996
5	Unclassified (R)	099	866,756
6	Abandoned Property Program	118	286,134
7	Tuition Trust Fund (R)	692	149,530
8	BRIM Premium	913	<u>38,832</u>
9	Total		\$ 3,737,141

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0126, activity 099) and Tuition Trust
 12 Fund (fund 0126, activity 692) at the close of the fiscal year
 13 2005 are hereby reappropriated for expenditure during the fiscal
 14 year 2006.

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2006 Org 1400

1	Personal Services	001	\$ 3,596,423
2	Salary of Commissioner	002	75,000
3	Annual Increment	004	77,138
4	Employee Benefits	010	1,366,618
5	Animal Identification Program	039	200,810
6	State Farm Museum	055	110,000
7	Unclassified (R)	099	788,483
8	Gypsy Moth Program (R).	119	960,095
9	Huntington Farmers Market	128	50,000
10	Black Fly Control (R)	137	428,982
11	Donated Foods Program	363	50,000
12	Predator Control	470	140,000
13	Bee Research	691	32,421
14	Microbiology Program (R)	785	154,031
15	Moorefield Agriculture Center (R)	786	1,089,333
16	BRIM Premium	913	165,115
17	WV Food Banks	969	100,000
18	Logan Farmers Market	501	40,000
19	Seniors' Farmers' Market Nutrition Coupon		
20	Program	970	<u>60,000</u>
21	Total		\$ 9,484,449

22 Any unexpended balances remaining in the appropriations
 23 for Unclassified (fund 0131, activity 099), Gypsy Moth
 24 Program (fund 0131, activity 119), Black Fly Control (fund
 25 0131, activity 137), Microbiology Program (fund 0131, activity
 26 785) and Moorefield Agriculture Center (fund 0131, activity
 27 786) at the close of the fiscal year 2005 are hereby
 28 reappropriated for expenditure during the fiscal year 2006.

29 A portion of the Unclassified appropriation may be trans-
 30 ferred to a special revenue fund for the purpose of matching
 31 federal funds for marketing and development activities.

32 From the above appropriation for WV Food Banks (activity
 33 969), the full appropriation shall be allocated to the Huntington
 34 Food Bank and the Mountaineer Food Bank in Braxton County.

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2006 Org 1400

1	Personal Services	001	\$	464,113
2	Annual Increment	004		8,150
3	Employee Benefits	010		183,779
4	Unclassified (R)	099		331,251
5	Soil Conservation Projects (R)	120		2,699,352
6	Maintenance of Flood			
7	Control Projects (R)	522		2,183,997
8	BRIM Premium	913		<u>8,853</u>
9	Total		\$	5,879,495

10 Any unexpended balances remaining in the appropriations
 11 for Unclassified (fund 0132, activity 099), Soil Conservation
 12 Projects (fund 0132, activity 120), Soil Conservation Pro-
 13 jects—Surplus (fund 0132, activity 269) and Maintenance of
 14 Flood Control Projects (fund 0132, activity 522) at the close of
 15 the fiscal year 2005 are hereby reappropriated for expenditure
 16 during the fiscal year 2006.

12—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2006 Org 1400

1	Unclassified-Total	096	\$	624,338
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- 2 Any part or all of this appropriation may be transferred to
 3 a special revenue fund for the purpose of matching federal
 4 funds for the above-named program.

13—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2006 Org 1400

1	Programs & Awards for 4-H		
2	Clubs and FFA/FHA	577	\$ 15,000
3	Commissioner's Awards and Programs .	737	<u>48,650</u>
4	Total		\$ 63,650

14—Attorney General

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

Fund 0150 FY 2006 Org 1500

1	Personal Services (R)	001	\$ 1,907,267
2	Salary of Attorney General	002	80,000
3	Annual Increment	004	46,284
4	Employee Benefits (R)	010	773,098
5	Unclassified (R)	099	321,716
6	Better Government Bureau	740	297,322
7	Phone System	532	190,000
8	BRIM Premium	913	<u>131,565</u>
9	Total		\$ 3,747,252

- 10 Any unexpended balances remaining in the above appropri-
 11 ations for Personal Services (fund 0150, activity 001), Em-
 12 ployee Benefits (fund 0150, activity 010) and Unclassified
 13 (fund 0150, activity 099) at the close of the fiscal year 2005 are

14 hereby reappropriated for expenditure during the fiscal year
 15 2006.

16 When legal counsel or secretarial help is appointed by the
 17 attorney general for any state spending unit, this account shall
 18 be reimbursed from such spending units specifically appropri-
 19 ated account or from accounts appropriated by general language
 20 contained within this bill: *Provided*, That the spending unit
 21 shall reimburse at a rate and upon terms agreed to by the state
 22 spending unit and the attorney general: *Provided, however*, That
 23 if the spending unit and the attorney general are unable to agree
 24 on the amount and terms of the reimbursement, the spending
 25 unit and the attorney general shall submit their proposed
 26 reimbursement rates and terms to the Governor for final
 27 determination. ~~*No spending unit governed by the reimburse-~~
 28 ~~ment limits specified in Title II, Section 17 may exceed the~~
 29 ~~respective limit of reimbursement specified therein.~~

15—*Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2006 Org 1600

1	Personal Services	001	\$	607,425
2	Salary of Secretary of State	002		70,000
3	Annual Increment	004		11,950
4	Employee Benefits	010		236,436
5	Unclassified (R)	099		123,325
6	BRIM Premium	913		<u>43,229</u>
7	Total		\$	1,092,365

8 Any unexpended balances remaining in the appropriations
 9 for Unclassified (fund 0155, activity 099) and Administrative
 10 Law Division Improvements (fund 0155, activity 880) at the

* CLERK'S NOTE: The Governor struck language on line 27 through 29.

11 close of the fiscal year 2005 are hereby reappropriated for
12 expenditure during the fiscal year 2006.

16—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2006 Org 1601

1 Unclassified—Total 096 \$ 10,275

DEPARTMENT OF ADMINISTRATION

17—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2006 Org 0201

1	Unclassified	099	\$ 256,810
2	Pay Equity Reserve	364	250,000
3	Lease Rental Payments	516	16,000,000
4	Design-Build Board	540	19,068
5	BRIM Premium	913	<u>13,397</u>
6	Total		\$ 16,539,275

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

18—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service commission

3 and other departments, bureaus, divisions, or commissions
 4 operating from special revenue funds and/or federal funds shall
 5 pay their proportionate share of the retirement costs for their
 6 respective divisions. When specific appropriations are not
 7 made, such payments may be made from the balances in the
 8 various special revenue funds in excess of specific appropria-
 9 tions.

19—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2006 Org 0209

1	Personal Services	001	\$	105,108
2	Annual Increment	004		775
3	Employee Benefits	010		28,782
4	Unclassified	099		140,823
5	GAAP Project (R)	125		888,031
6	BRIM Premium	913		<u>20,008</u>
7	Total		\$	1,183,527

8 Any unexpended balance remaining in the appropriation for
 9 GAAP Project (fund 0203, activity 125) at the close of the
 10 fiscal year 2005 is hereby reappropriated for expenditure during
 11 the fiscal year 2006.

20—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2006 Org 0211

1	Personal Services	001	\$	522,412
2	Annual Increment	004		21,162
3	Employee Benefits	010		231,448
4	Unclassified	099		491,263

5	Fire Service Fee	126	14,000
6	BRIM Premium	913	<u>116,535</u>
7	Total		\$ 1,396,820

21-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2006 Org 0213

1	Personal Services	001	\$ 620,344
2	Annual Increment	004	11,432
3	Employee Benefits	010	200,333
4	Unclassified	099	106,000
5	BRIM Premium	913	<u>4,241</u>
6	Total		\$ 942,350

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

22-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2006 Org 0217

1	Unclassified-Total	096	\$ 29,295
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2 To pay expenses for members of the commission on
 3 uniform state laws.

23-Education and State Employees' Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2006 Org 0219

1	Personal Services	001	\$	563,190
2	Annual Increment	004		8,100
3	Employee Benefits	010		174,968
4	Unclassified	099		142,766
5	BRIM Premium	913		<u>6,050</u>
6	Total		\$	895,074

24-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2006 Org 0220

1	Unclassified	099	\$	700,000
2	BRIM Premium	913		<u>3,651</u>
3	Total		\$	703,651

25-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2006 Org 0221

1	Personal Services	001	\$	521,408
2	Annual Increment	004		5,990
3	Employee Benefits	010		189,695
4	Unclassified	099		308,712
5	Appointed Counsel Fees and			
6	Public Defender Corporations	127		0
7	Public Defender Corporation (R)	352		13,727,936
8	Appointed Counsel-Public Defender			
9	Conflicts	568		2,100,000
10	Appointed Counsel Fees (R)	788		11,185,417
11	BRIM Premium	913		<u>30,190</u>
12	Total		\$	28,069,348

13 Any unexpended balances remaining in the above appropri-
 14 ations for Public Defender Corporations (fund 0226, activity
 15 352), and Appointed Counsel Fees (fund 0226, activity 788) at

16 the close of the fiscal year 2005 are hereby reappropriated for
17 expenditure during the fiscal year 2006.

26-Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2006 Org 0224

1 Unclassified-Total 096 \$ 5,046

27-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2006 Org 0225

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service commission
3 and other departments, bureaus, divisions, or commissions
4 operating from special revenue funds and/or federal funds shall
5 pay their proportionate share of the public employees health
6 insurance cost for their respective divisions.

28-West Virginia Prosecuting Attorneys Institute

Fund 0557 FY 2006 Org 0228

1	Forensic Medical Examinations (R) . . .	683	\$	140,612
2	Federal Funds/Grant Match (R)	749		<u>83,772</u>
3	Total		\$	224,384

4 Any unexpended balances remaining in the appropriations
5 for Forensic Medical Examinations (fund 0557, activity 683)
6 and Federal Funds/Grant Match (fund 0557, activity 749) at the
7 close of the fiscal year 2005 are hereby reappropriated for
8 expenditure during the fiscal year 2006.

29-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2006 Org 0230

- 1 Unclassified-Total (R) 096 \$ 7,128,019
- 2 Any unexpended balance remaining in the appropriation for
- 3 Unclassified-Total (fund 0588, activity 096) at the close of the
- 4 fiscal year 2005 is hereby reappropriated for expenditure during
- 5 the fiscal year 2006.

DEPARTMENT OF COMMERCE

30-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2006 Org 0305

- 1 Personal Services 001 \$ 1,631,940
- 2 Annual Increment 004 46,300
- 3 Employee Benefits 010 816,188
- 4 Aerial Tanker 047 200,000
- 5 Unclassified 099 17,258
- 6 BRIM Premium 913 254,311
- 7 Total \$ 2,965,997
- 8 Out of the above appropriation a sum may be used to match
- 9 federal funds for cooperative studies or other funds for similar
- 10 purposes.

31-Department of Commerce-

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2006 Org 0305

1 Unclassified-Total 096 \$ 400,000

32-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2006 Org 0306

1	Personal Services	001	\$ 1,213,122
2	Annual Increment	004	36,887
3	Employee Benefits	010	435,935
4	Unclassified	099	205,000
5	Mineral Mapping System (R)	207	1,552,028
6	Geoscience Education Program	541	25,000
7	BRIM Premium	913	<u>35,375</u>
8	Total		\$ 3,503,347

9 Any unexpended balances remaining in the appropriations
10 for Mineral Mapping System (fund 0253, activity 207) and
11 Geographic Information System (fund 0253, activity 214) at the
12 close of the fiscal year 2005 are hereby reappropriated for
13 expenditure during the fiscal year 2006.

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

33-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2006 Org 0307

1	Personal Services	001	\$ 2,354,456
2	Annual Increment	004	33,526

3	Employee Benefits	010	755,225
4	ARC-WV Home of Your Own Alliance	048	40,000
5	Southern WV Career Center	071	191,750
6	Secretary of Commerce	079	0
7	Unclassified	099	2,493,845
8	Partnership Grants (R)	131	2,400,000
9	National Youth Science Camp	132	200,000
10	Local Economic Development		
11	Partnerships (R)	133	1,870,000
12	ARC Assessment	136	167,308
13	Institute for Software Research	217	76,213
14	Mid-Atlantic Aerospace Complex (R) ..	231	176,783
15	Guaranteed Work Force Grant (R)	242	2,247,000
16	Mingo County Surface Mine Project ...	296	125,000
17	Small Business Financial Assistance (R)	360	356,787
18	Robert C. Byrd Institute for Advanced/ 19 Flexible Manufacturing-Technology 20 Outreach and Programs for 21 Environmental and 22 Advanced Technologies	367	519,800
23	Advantage Valley	389	74,300
24	Chemical Alliance Zone	390	38,300
25	WV High Tech Consortium	391	159,570
26	Charleston Farmers Market	476	100,000
27	Industrial Park Assistance (R)	480	460,000
28	Leverage Technology and Small 29 Business Development Program (R)	525	642,284
30	International Offices (R)	593	690,644
31	WV Manufacturing		
32	Extension Partnership	731	144,000
33	Small Business Work Force (R)	735	394,902
34	Polymer Alliance	754	72,000
35	National Institute 36 of Chemical Studies	805	70,500
37	Local Economic		
38	Development Assistance (R)	819	4,775,000

39	Community College		
40	Workforce Development (R)	878	1,000,000
41	BRIM Premium	913	28,316
42	Hardwood Alliance Zone	992	<u>42,600</u>
43	Total		\$ 22,700,109

44 Any unexpended balances remaining in the appropriations
45 for Tourism—Unclassified—Surplus (fund 0256, activity 075),
46 Partnership Grants (fund 0256, activity 131), Local Economic
47 Development Partnerships (fund 0256, activity 133), Mid-
48 Atlantic Aerospace Complex (fund 0256, activity 231), Guarant-
49 teed Work Force Grant (fund 0256, activity 242), Local
50 Economic Development Assistance—Surplus (fund 0256,
51 activity 266), Small Business Financial Assistance (fund 0256,
52 activity 360), Industrial Park Assistance (fund 0256, activity
53 480), Leverage Technology and Small Business Development
54 Program (fund 0256, activity 525), International Offices (fund
55 0256, activity 593), Small Business Work Force (fund 0256,
56 activity 735), Local Economic Development Assistance (fund
57 0256, activity 819), Community College Workforce Develop-
58 ment (fund 0256, activity 878) and Economic Development
59 Assistance (fund 0256, activity 900) at the close of the fiscal
60 year 2005 are hereby reappropriated for expenditure during the
61 fiscal year 2006.

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

73 * From the above appropriation for the Community College
 74 Workforce (activity 878), \$200,000 shall be expended on the
 75 Mining Training Program in Southern West Virginia.

34-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2006 Org 0308

1	Personal Services	001	\$ 1,625,054
2	Annual Increment	004	25,220
3	Employee Benefits	010	687,463
4	Unclassified	099	606,293
5	BRIM Premium	913	<u>49,987</u>
6	Total		\$ 2,994,017

35-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2006 Org 0310

1	Personal Services	001	\$ 6,342,978
2	Annual Increment	004	223,387
3	Employee Benefits	010	3,267,644
4	Gypsy Moth Suppression Program –		
5	Wildlife Management Areas	014	42,997
6	Unclassified	099	9,173
7	Litter Control Conservation Officers ...	564	151,471
8	Upper Mud River Flood Control	654	179,090
9	Law Enforcement	806	914,448
10	BRIM Premium	913	<u>326,638</u>
11	Total		\$ 11,457,826

* CLERK'S NOTE: The Governor struck language on line 73 through line 75.

12 Any revenue derived from mineral extraction at any state
 13 park shall be deposited in a special revenue account of the
 14 division of natural resources, first for bond debt payment
 15 purposes and with any remainder to be for park operation and
 16 improvement purposes.

36-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2006 Org 0314

1	Personal Services	001	\$ 4,048,256
2	Annual Increment	004	70,600
3	Employee Benefits	010	1,551,243
4	Unclassified	099	147,893
5	WV Diesel Equipment Commission ...	712	38,034
6	BRIM Premium	913	<u>72,573</u>
7	Total		\$ 5,928,599

37-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2006 Org 0319

1	Personal Services	001	\$ 110,950
2	Annual Increment	004	650
3	Employee Benefits	010	29,610
4	Unclassified	099	<u>28,771</u>
5	Total		\$ 169,981

38-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2006 Org 0320

1	Unclassified-Total	096	\$ 0
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2	Coal Forum	664	25,000
3	Unclassified	099	<u>63,352</u>
4	Total		\$ 88,352

DEPARTMENT OF EDUCATION

39-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2006 Org 0402

1	Personal Services	001	\$ 215,100
2	Annual Increment	004	3,550
3	Employee Benefits	010	86,288
4	Unclassified	099	<u>1,802,151</u>
5	Total		\$ 2,107,089

40-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2006 Org 0402

1	Personal Services	001	\$ 564,100
2	Annual Increment	004	13,550
3	Employee Benefits	010	234,037
4	Unclassified	099	141,932
5	BRIM Premium	913	<u>45,662</u>
6	Total		\$ 999,281

41-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2006 Org 0402

1	Personal Services	001	\$ 2,820,637
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2	Annual Increment	004	34,124
3	Employee Benefits	010	974,408
4	Unclassified (R)	099	3,000,000
5	34/1000 Waiver	139	400,000
6	Increased Enrollment	140	6,000,000
7	Safe Schools	143	2,000,000
8	Teacher Mentor (R)	158	400,000
9	National Teacher Certification (R)	161	0
10	Technology Repair and Modernization .	298	1,000,000
11	HVAC Technicians	355	431,654
12	Early Retirement Notification Incentive	366	150,000
13	FBI Checks	372	98,811
14	Teacher Reimbursement	573	150,000
15	Foreign Student Education (R)	636	82,020
16	State Teacher of the Year	640	38,401
17	Principals Mentorship	649	50,000
18	Allowance for Work Based Learning ..	744	60,000
19	Professional Development	801	0
20	Marshall University Graduate College		
21	Writing Project	807	25,000
22	BRIM Premium	913	387,388
23	Regional Education Service Agencies ..	972	4,000,000
24	Sparse Population	973	525,000
25	Educational Program Allowance	996	250,000
26	Low Student Enrollment Allowance ...	615	450,000
27	HI-Y Youth in Government	616	<u>100,000</u>
28	Total		\$23,427,443

29 The above appropriation includes the state board of
30 education and their executive office.

31 Any unexpended balances remaining in the appropriations
32 for Collaborative Resource Allocation (fund 0313, activity
33 041), Educational Achievement Incentive (fund 0313, activity
34 042), Unclassified (fund 0313, activity 099), Teacher Mentor

35 (fund 0313, activity 158), National Teacher Certification (fund
 36 0313, activity 161), and Foreign Student Education (fund 0313,
 37 activity 636) at the close of the fiscal year 2005 are hereby
 38 reappropriated for expenditure during the fiscal year 2006.

39 From the above appropriation for Sparse Population
 40 Allocation (activity 973), funding shall be provided in the same
 41 manner as in Fiscal Year 2005. It shall be available to those
 42 counties whose population falls at or below 2.5 students per
 43 square mile and which have more than 650 square miles for
 44 transportation purposes.

45 * ~~From the above appropriation for Educational Program~~
 46 ~~Allowance (activity 996), \$100,000 shall be expended for~~
 47 ~~Webster County Board of Education for Hacker Valley and~~
 48 ~~\$150,000 for the Randolph County Board of Education for~~
 49 ~~Pickens School.~~

50 From the above appropriation for Low Student Enrollment
 51 Allowance, funds shall be allocated to county boards of
 52 education in accordance with the provisions of §18-9A-22 of
 53 the Code of West Virginia.

42-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2006 Org 0402

1	Special Education-Counties	159	\$ 7,271,757
2	Special Education-Institutions	160	3,284,258
3	Education of Juveniles Held in		
4	Predispositional Juvenile		
5	Detention Centers	302	525,783

* CLERK'S NOTE: The Governor struck language on line 45 through line 49.

6	Education of Institutionalized		
7	Juveniles and Adults	472	<u>12,112,963</u>
8	Total		\$ 23,194,761

9 From the above appropriations, the superintendent shall
10 have authority to expend funds for the costs of special educa-
11 tion for those children residing in out-of-state placements.

12 ~~*From the above appropriation for Education of Institution-~~
13 ~~alized Juveniles and Adults (activity 472), funding shall be~~
14 ~~provided to Beckley and Burlington Centers at an amount no~~
15 ~~less than the allocations disbursed during Fiscal Year 2004.~~

43-State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2006 Org 0402

1	Other Current Expenses	022	\$127,927,592
2	Professional Educators	151	743,578,038
3	Service Personnel	152	247,804,912
4	Fixed Charges	153	90,810,678
5	Transportation	154	43,629,447
6	Administration	155	3,086,703
7	Improve Instructional Programs	156	<u>33,000,000</u>
8	Basic Foundation Allowances		1,289,837,370
9	Less Local Share		<u>(323,422,629)</u>
10	Total Basic State Aid		966,414,741
11	Public Employees' Insurance Matching	012	203,360,957
12	Early Childhood Collaborative	018	0
13	Teachers' Retirement System	019	355,243,000
14	School Building Authority	453	<u>23,345,748</u>
15	Total		\$ 1,548,364,446

* CLERK'S NOTE: The Governor struck language on line 12 through line 15.

*44-State Board of Education-**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2006 Org 0402

1	Personal Services	001	\$	904,580
2	Annual Increment	004		17,277
3	Employee Benefits	010		348,305
4	Unclassified	099		1,210,000
5	Wood Products-Forestry			
6	Vocational Program	146		56,220
7	Albert Yanni Vocational Program	147		124,263
8	Vocational Aid	148		14,789,753
9	Adult Basic Education	149		3,229,263
10	Program Modernization	305		725,000
11	Technical and Secondary Program			
12	Improvement Staff	330		262,450
13	GED Testing	339		294,825
14	Aquaculture Support	769		<u>80,827</u>
15	Total		\$	22,042,763

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

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2006 Org 0402

1	Personal Services	001	\$	355,000
2	Annual Increment	004		2,950
3	Employee Benefits	010		104,408
4	Unclassified	099		<u>141,264</u>
5	Total		\$	603,622

46-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2006 Org 0403

1	Personal Services	001	\$ 7,150,943
2	Annual Increment	004	5,750
3	Employee Benefits	010	2,783,013
4	Unclassified	099	1,613,470
5	BRIM Premium	913	<u>77,209</u>
6	Total		\$ 11,630,385

DEPARTMENT OF EDUCATION AND THE ARTS

47-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2006 Org 0431

1	Unclassified (R)	099	\$ 782,985
2	Center for Professional Development (R)	115	1,300,000
3	Center for Professional Development-		
4	Principals' Academy (R)	415	395,618
5	Governor's Honor Academy	478	390,450
6	Teacher Education Partnerships *(R) ..	576	0
7	Hospitality Training	600	400,000
8	Energy Express	861	450,000
9	Professional Development Collaborative	629	800,000
10	CPD-Math Initiative	517	300,000
11	BRIM Premium	913	<u>4,509</u>
12	Total		\$ 4,823,562

* CLERK'S NOTE: The Governor struck language on line 6.

13 Any unexpended balances remaining in the appropriations
 14 for Unclassified (fund 0294, activity 099), Center for Profes-
 15 sional Development (fund 0294 activity 115), Center for
 16 Professional Development-Principals' Academy (fund 0294,
 17 activity 415) *~~and Teacher Education Partnerships (fund 0294,~~
 18 ~~activity 576)~~ at the close of the fiscal year 2005 are hereby
 19 reappropriated for expenditure during the fiscal year 2006.

20 The above appropriation for Hospitality Training (activity
 21 600), shall be allocated only to entities that have a plan ap-
 22 proved for funding by the Secretary of Education and the Arts,
 23 at the funding level determined by the Secretary. Plans shall be
 24 submitted to the Secretary of Education and the Arts to be
 25 considered for funding.

48-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2006 Org 0432

1	Personal Services	001	\$ 2,295,523
2	Annual Increment	004	43,302
3	Employee Benefits	010	1,017,198
4	Unclassified	099	470,000
5	Culture and History Programming	732	292,945
6	Marshall Artists Series	518	60,000
7	BRIM Premium	913	<u>60,781</u>
8	Total		\$ 4,239,749

9 Any unexpended balance remaining in the appropriation for
 10 Capital Outlay, Repairs and Equipment—Surplus (fund 0293,
 11 activity 677) at the close of the fiscal year 2005 is hereby
 12 reappropriated for expenditure during the fiscal year 2006.

* CLERK'S NOTE: The Governor struck language on line 17 and line 18.

13 The Unclassified appropriation includes funding for the arts
 14 funds, department programming funds, grants, fairs and
 15 festivals and Camp Washington Carver and shall be expended
 16 only upon authorization of the division of culture and history
 17 and in accordance with the provisions of chapter five-a, article
 18 three, and chapter twelve of the code.

19 All federal moneys received as reimbursement to the
 20 division of culture and history for moneys expended from the
 21 general revenue fund for the arts fund and historical preserva-
 22 tion are hereby reappropriated for the purposes as originally
 23 made, including personal services, current expenses and
 24 equipment.

49-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2006 Org 0433

1	Personal Services	001	\$	916,543
2	Annual Increment	004		28,100
3	Employee Benefits	010		367,289
4	Unclassified	099		229,809
5	Services to Blind and Handicapped	181		38,456
6	BRIM Premium	913		<u>30,294</u>
7	Total		\$	1,610,491

50-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2006 Org 0439

1	Personal Services	001	\$	2,928,839
2	Annual Increment	004		65,100
3	Employee Benefits	010		1,036,338

4	Unclassified	099	493,187
5	BRIM Premium	913	<u>70,845</u>
6	Total		\$ 4,594,309

7 These funds may be transferred to special revenue accounts
 8 for matching college, university, city, county, federal and/or
 9 other generated revenues.

10 The Educational Broadcasting Authority is to continue
 11 assistance to the Allegheny Mountain Radio/WVNR.

51-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2006 Org 0932

1	Personal Services	001	\$ 6,439,836
2	Annual Increment	004	134,049
3	Independent Living Services	009	24,000
4	Employee Benefits	010	2,776,615
5	Workshop Development	163	1,816,149
6	Supported Employment		
7	Extended Services	206	119,032
8	Ron Yost Personal Assistance Fund (R)	407	340,000
9	Employment Attendant Care Program ..	598	179,000
10	Capital Outlay, Repairs and Equipment	589	0
11	BRIM Premium	913	<u>80,139</u>
12	Total		\$ 11,908,820

13 Any unexpended balance remaining in the appropriation for
 14 the Ron Yost Personal Assistance Fund (fund 0310, activity
 15 407) at the close of the fiscal year 2005 is hereby
 16 reappropriated for expenditure during the fiscal year 2006.

17 Any unexpended balance remaining in the appropriation for
 18 Technology-Related Assistance Revolving Loan Fund for
 19 Individuals with Disabilities (fund 0310, activity 766) is hereby
 20 reappropriated for expenditure during the fiscal year 2006 and
 21 may be transferred to a special account for the purpose of
 22 disbursement or loan.

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

**DEPARTMENT OF ENVIRONMENTAL
 PROTECTION**

52-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2006 Org 0311

1	Personal Services	001	\$	89,985
2	Annual Increment	004		945
3	Employee Benefits	010		21,971
4	Unclassified	099		<u>44,870</u>
5	Total		\$	157,771

53-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2006 Org 0313

1	Personal Services	001	\$	3,050,647
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* CLERK'S NOTE: The Governor struck language on line 23 through line 29.

2	Annual Increment	004	52,532
3	Employee Benefits	010	1,112,025
4	West Virginia's Contribution to the		
5	Interstate Commission on		
6	Potomac River Basin	091	38,493
7	West Virginia's Contribution to the		
8	Ohio River Valley Water		
9	Sanitation Commission	092	109,992
10	Unclassified	099	1,284,533
11	Dam Safety	607	202,425
12	Office of Water Resources		
13	Non-Enforcement Activity	855	1,100,525
14	BRIM Premium	913	34,431
15	Welch DEP Office Continuing		
16	Operation	993	<u>79,115</u>
17	Total		\$ 7,064,718

54-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2006 Org 0325

1	Unclassified	099	\$ 103,810
2	BRIM Premium	913	<u>3,124</u>
3	Total		\$ 106,934

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

55-Department of Health and Human Resources-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2006 Org 0501

1	Unclassified-Total	096	\$ 138,695
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*56-Division of Health-**Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2006 Org 0506

1	Personal Services	001	\$ 7,222,614
2	Annual Increment	004	164,981
3	Employee Benefits	010	3,054,354
4	Level 1, 2 and 3 Trauma Centers	013	675,594
5	Chief Medical Examiner	045	3,398,307
6	Unclassified	099	4,737,899
7	Safe Drinking Water Program	187	506,098
8	Women, Infants and Children	210	45,000
9	Basic Public Health Services Support ..	212	3,328,182
10	Early Intervention	223	3,307,043
11	Cancer Registry	225	272,671
12	CARDIAC Project	375	250,000
13	State EMS Technical Assistance	379	1,405,983
14	EMS Program for Children	381	50,236
15	Statewide EMS Program Support	383	557,432
16	Primary Care Centers—		
17	Mortgage Finance	413	675,718
18	Black Lung Clinics	467	198,646
19	Women's Right to Know	546	40,000
20	Pediatric Dental Services	550	150,000
21	Vaccine for Children	551	433,450
22	Adult Influenza Vaccine	552	65,000
23	Tuberculosis Control	553	254,560
24	Center for End of Life	545	195,000
25	Maternal and Child Health Clinics,		
26	Clinicians and Medical Contracts		
27	and Fees (R)	575	4,616,821
28	Epidemiology Support	626	379,593

29	Primary Care Support	628	7,254,178
30	State Aid to Local Health Departments .	702	9,999,718
31	Health Right Free Clinics	727	2,599,336
32	Osteoporosis Prevention Fund	729	135,936
33	Emergency Response Entities		
34	Special Projects	822	400,000
35	BRIM Premium	913	<u>224,757</u>
36	Total		\$ 56,599,107

37 Any unexpended balances remaining in the appropriations
 38 for Unclassified (fund 0407, fiscal year 1997, activity 099) and
 39 Maternal and Child Health Clinics, Clinicians and Medical
 40 Contracts and Fees (fund 0407, activity 575) at the close of the
 41 fiscal year 2005 are hereby reappropriated for expenditure
 42 during the fiscal year 2006.

43 From the Unclassified line item, \$50,000 shall be expended
 44 for the West Virginia Aids Coalition.

45 From the Maternal and Child Health Clinics, Clinicians,
 46 and Medical Contracts and Fees line item, \$400,000 shall be
 47 transferred to the Breast and Cervical Cancer Diagnostic
 48 Treatment Fund.

49 Included in the above appropriation for Primary Care
 50 Centers-Mortgage Finance is \$50,000 for the mortgage payment
 51 for the Lincoln Primary Care Center, Inc.; \$53,140 for the
 52 mortgage payment for the Monroe Health Center; \$42,564 for
 53 the mortgage payment for Roane County Family Health Care,
 54 Inc.; \$25,000 for the mortgage payment for the Tug River
 55 Health Association, Inc.; \$48,000 for the mortgage payment for
 56 the Primary Care Systems (Clay); \$10,800 for the mortgage
 57 payment for the Belington Clinic; \$30,000 for the mortgage
 58 payment for the Tri-County Health Clinic; \$15,000 for the
 59 mortgage payment for Valley Health Care (Randolph); \$58,560
 60 for the mortgage payment for Valley Health Systems, Inc.
 61 (Woman's Place and Harts Health Clinic); \$46,958 for the

62 mortgage payment for Ritchie County Primary Care Associa-
 63 tion, Inc.; \$8,000 for the mortgage payment for Northern
 64 Greenbrier Health Clinic; \$12,696 for the mortgage payment
 65 for the Women’s Care, Inc. (Putnam); \$25,000 for the mortgage
 66 payment for the Preston-Taylor Community Health Centers,
 67 Inc.; \$20,000 for the mortgage payment for the North Fork
 68 Clinic (Pendleton); \$40,000 for the mortgage payment for the
 69 Pendleton Community Care; \$27,000 for the mortgage payment
 70 for South Branch Health Facility (Upper Tract); \$38,400 for the
 71 mortgage payment for Clay-Battelle Community Health Center;
 72 \$33,600 for the mortgage payment for Mountaineer Health
 73 Clinic in Paw Paw; \$13,000 for the mortgage payment for the
 74 St. George Medical Clinic; and \$54,000 for the mortgage
 75 payment for the Shenandoah Valley Medical Systems, Inc.

57-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2006 Org 0506

1	Personal Services	001	\$	616,833
2	Annual Increment	004		11,991
3	Employee Benefits	010		262,075
4	Special Olympics	208		26,074
5	Behavioral Health Program-			
6	Unclassified (R)	219		41,179,562
7	Family Support Act	221		1,092,753
8	Institutional Facilities Operations	335		45,947,092
9	Colin Anderson Community			
10	Placement (R)	803		1,164,000
11	Renaissance Program	804		194,000
12	BRIM Premium	913		<u>1,152,725</u>
13	Total			\$91,647,105

14 Any unexpended balances remaining in the appropriations
 15 for Behavioral Health Program-Unclassified (fund 0525,

16 activity 219) and Colin Anderson Community Placement (fund
17 0525, activity 803) at the close of the fiscal year 2005 are
18 hereby reappropriated for expenditure during the fiscal year
19 2006, with the exception of fund 0525, fiscal year 2001, activity
20 219; fund 0525, fiscal year 2000, activity 803; and fund 0525,
21 fiscal year 2001, activity 803, which shall expire on June 30,
22 2005.

23 The secretary of the department of health and human
24 resources, prior to the beginning of the fiscal year, shall file
25 with the legislative auditor and the department of revenue an
26 expenditure schedule for each formerly separate spending unit
27 which has been consolidated into the above account and which
28 receives a portion of the above appropriation for Institutional
29 Facilities Operations. The secretary shall also, within fifteen
30 days after the close of the six-month period of said fiscal year,
31 file with the legislative auditor and the department of revenue
32 an itemized report of expenditures made during the preceding
33 six-month period.

34 From the Colin Anderson Community Placement (fund
35 0525, activity 803) funds may be both expended for the
36 community placement costs of the Colin Anderson clients and
37 transferred to the Medical Services Program Fund to pay the
38 Medicaid state share of the Medicaid cost of Colin Anderson
39 clients in the community.

40 From the above appropriation to Institutional Facilities
41 Operations, together with available funds from the division of
42 health-hospital services revenue account (fund 5156, activity
43 335) and tobacco settlement expenditure fund (fund 5124,
44 activity 335), on July 1, 2005, the sum of one hundred sixty
45 thousand dollars shall be transferred to the department of
46 agriculture-land division as advance payment for the purchase
47 of food products; actual payments for such purchases shall not
48 be required until such credits have been completely expended.

49 Additional funds have been appropriated in fund 5124,
 50 fiscal year 2006, organization 0506 and fund 5156, fiscal year
 51 2006, organization 0506, for the operation of the institutional
 52 facilities. The secretary of the department of health and human
 53 resources is authorized to utilize up to ten percent of the funds
 54 from the Institutional Facilities Operations line item to facilitate
 55 cost effective and cost saving services at the community level.

58-Division of Health-

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2006 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 appropriate
 6 bank depository and the Drinking Water Treatment
 7 Revolving-Administrative Expense Fund as provided by
 8 chapter sixteen of the code.

59-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2006 Org 0510

1	Personal Services	001	\$	667,467
2	Annual Increment	004		16,000
3	Employee Benefits	010		227,238
4	Unclassified	099		258,760
5	BRIM Premium	913		<u>20,668</u>
6	Total		\$	1,190,133

60-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2006 Org 0511

1	Personal Services	001	\$ 21,575,068
2	Annual Increment	004	648,734
3	Employee Benefits	010	8,873,072
4	Unclassified	099	16,731,576
5	Child Care Development	144	1,247,463
6	Medical Services Contracts and Office		
7	of Managed Care	183	2,329,730
8	Medical Services (R)	189	337,641,649
9	Women's Commission	191	133,942
10	Social Services	195	77,112,737
11	Family Preservation Program	196	1,565,000
12	Family Resource Networks	274	1,941,926
13	Domestic Violence Legal Services Fund	384	150,000
14	James "Tiger" Morton Catastrophic		
15	Illness Fund	455	940,000
16	Child Protective Services Case Workers	468	15,373,192
17	Medical Services Trust Fund Transfer .	512	5,000,000
18	OSCAR and RAPIDS	515	3,471,648
19	WV Teaching Hospitals Tertiary/		
20	Safety Net	547	2,000,000
21	Child Welfare System	603	2,581,948
22	Commission for the Deaf and		
23	Hard of Hearing	704	265,434
24	Child Support Enforcement	705	2,758,468
25	Medicaid Auditing	706	590,841
26	Temporary Assistance for Needy		
27	Families/Maintenance of Effort . . .	707	22,969,096
28	Child Care-Maintenance of		
29	Effort and Match	708	4,409,643
30	Grants for Licensed Domestic Violence		
31	Programs and Statewide Prevention	750	1,000,000

32	Indigent Burials (R)	851	1,600,000
33	BRIM Premium	913	882,229
34	Rural Hospitals Under 150 Beds	940	<u>1,000,000</u>
35	Total		\$534,793,396

36 Any unexpended balances remaining in the appropriations
37 for Indigent Burials (fund 0403, activity 851) and Medical
38 Services (fund 0403, activity 189) at the close of the fiscal year
39 2005 are hereby reappropriated for expenditure during the fiscal
40 year 2006.

41 The above appropriation for James “Tiger” Morton
42 Catastrophic Illness Fund (activity 455) shall be transferred to
43 the James “Tiger” Morton Catastrophic Illness Fund (fund
44 5454) as provided by chapter sixteen, article five-q, of the code.

45 From the above appropriation for Medical Services (fund
46 0403, activity 189) an amount not to exceed \$15,000,000 may
47 be transferred to the Division of Health—Tobacco Settlement
48 Expenditure Fund— Institutional Facilities Operations (fund
49 5124, activity 335) in order to offset any cash flow shortfalls
50 that may occur due to the timing of deposits into the Tobacco
51 Settlement Expenditure Fund. Any funds so transferred from
52 fund 0403 to fund 5124 shall be reimbursed to fund 0403 no
53 later than June 1, 2006.

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

57 Notwithstanding the provisions of Title I, section three of
58 this bill, the secretary of the department of health and human
59 resources shall have the authority to transfer funds within the
60 above account: *Provided*, That no more than five percent of the
61 funds appropriated to one line item may be transferred to other
62 line items: *Provided, however*, That no funds from other line
63 items shall be transferred to the personal services line item.

64 From the above appropriation for the Grants for Licensed
 65 Domestic Violence Programs and Statewide Prevention
 66 (activity 750), \$500,000 shall be divided equally and distributed
 67 among the thirteen (13) licensed programs and the West
 68 Virginia Coalition Against Domestic Violence (WVCADV).

69 Any unexpended balance remaining in the appropriation for
 70 Grants for Licensed Domestic Violence Programs and State-
 71 wide Prevention (activity 750), shall be distributed according to
 72 the formula established by the Family Protection Services
 73 Board.

74 The secretary shall have authority to expend funds for the
 75 educational costs of those children residing in out-of-state
 76 placements, excluding the costs of special education programs.

77 The above appropriation for Family Resource Networks
 78 (activity 274) is to be subject to the control and oversight of the
 79 Governor’s Cabinet on Children and Families and may only be
 80 administered and disbursed by the Division of Human Services
 81 upon the delegation of this authority to the Division of Human
 82 Services by the Governor’s Cabinet on Children and Families
 83 as provided by West Virginia Code §5-26-4(4) for the benefit
 84 of family resource networks, early parent education services
 85 and starting points centers.

**DEPARTMENT OF MILITARY AFFAIRS
 AND PUBLIC SAFETY**

61-Department of Military Affairs and Public Safety-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2006 Org 0601

1 Unclassified (R) 099 \$ 530,697

2	BRIM Premium	913	<u>11,598</u>
3	Total		\$ 542,295

4 Any unexpended balance remaining in the appropriation for
5 Unclassified (fund 0430, activity 099) at the close of the fiscal
6 year 2005 is hereby reappropriated for expenditure during the
7 fiscal year 2006.

62-Adjutant General-

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2006 Org 0603

1	Personal Services	001	\$ 387,196
2	Annual Increment	004	10,300
3	Employee Benefits	010	132,893
4	Unclassified (R)	099	13,984,733
5	College Education Fund	232	4,800,000
6	Mountaineer ChalleNGe Academy	709	1,200,000
7	BRIM Premium	913	<u>53,202</u>
8	Total		\$ 20,568,324

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 0433, activity 099) and Armory Capital
11 Improvements—Surplus (fund 0433, activity 325) at the close
12 of the fiscal year 2005 are hereby reappropriated for expendi-
13 ture during the fiscal year 2006.

14 Should the appropriation for College Education Fund (fund
15 0433, activity 232) be insufficient to cover such costs, the
16 remainder of such cost may be transferred from Unclassified
17 (fund 0433, activity 099).

18 From the above appropriation an amount approved by the
19 adjutant general and the secretary of military affairs and public

- 20 safety may be transferred to the State Armory Board for
- 21 operation and maintenance of National Guard Armories.

63-Adjutant General-

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2006 Org 0603

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

(WV Code Chapter 62)

Fund 0440 FY 2006 Org 0605

1	Personal Services	001	\$	155,149
2	Annual Increment	004		1,744
3	Employee Benefits	010		142,202
4	Unclassified	099		146,298
5	Salaries of Members of West Virginia			
6	Parole Board	227		225,000
7	BRIM Premium	913		<u>16,670</u>
8	Total		\$	687,063

65-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2006 Org 0606

1	Personal Services	001	\$	0
2	Annual Increment	004		0
3	Employee Benefits	010		0
4	Unclassified	099		0

5	Federal Emergency Management		
6	Agency Match (R)	188	0
7	Radiological Emergency Preparedness	554	25,600
8	Federal Funds/Grant Match	749	634,748
9	Early Warning Flood System	877	325,584
10	BRIM Premium	913	<u>16,771</u>
11	Total		\$ 1,002,703

12 Any unexpended balances remaining in the appropriations
 13 for Federal Emergency Management Agency Match (fund
 14 0443, activity 188), Flood Reparations (fund 0443, activity 400)
 15 and Homeland Security Grant Match—Surplus (fund 0443,
 16 activity 957) at the close of the fiscal year 2005 are hereby
 17 reappropriated for expenditure during the fiscal year 2006.

66-Division of Corrections-

Central Office

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

Fund 0446 FY 2006 Org 0608

1	Personal Services	001	\$ 357,881
2	Annual Increment	004	5,775
3	Employee Benefits	010	121,535
4	Unclassified	099	<u>97,594</u>
5	Total		\$ 582,785

6 Any unexpended balance remaining in the appropriation for
 7 Management Information System (fund 0446, activity 398) at
 8 the close of the fiscal year 2005 is hereby reappropriated for
 9 expenditure during the fiscal year 2006.

67-Division of Corrections-

Correctional Units

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

Fund 0450 FY 2006 Org 0608

1	Unclassified	099	\$ 896,204
2	Employee Benefits	010	356,824
3	Charleston Work Release	456	858,707
4	Beckley Correctional Center	490	888,822
5	Huntington Work Release	495	719,188
6	Anthony Center	504	4,117,209
7	Huttonsville Correctional Center	514	14,872,913
8	Northern Correctional Facility	534	6,030,738
9	Inmate Medical Expenses	535	15,951,767
10	Pruntytown Correctional Center	543	5,875,422
11	Payments to Federal, County and/or		
12	Regional Jails	555	17,168,500
13	Corrections Academy	569	1,031,825
14	Martinsburg Correctional Center	663	3,389,500
15	Parole Services	686	1,997,657
16	Special Services	687	2,097,684
17	Stephens Correctional Facility	791	3,709,125
18	St. Mary's Correctional Facility	881	10,846,087
19	Denmar Correctional Facility	882	3,669,851
20	Ohio County Correctional Facility	883	1,190,321
21	Mt. Olive Correctional Facility	888	16,802,229
22	Lakin Correctional Facility	896	7,502,797
23	BRIM Premium	913	<u>1,413,956</u>
24	Total		\$121,387,326

25 Any unexpended balance remaining in the appropriation for
 26 Inmate Medical Expenses—Surplus(fund 0450, activity 846) at
 27 the close of the fiscal year 2005 is hereby reappropriated for
 28 expenditure during the fiscal year 2006.

29 The commissioner of corrections shall within fifteen days
 30 after the close of each six-month period of said fiscal year, file

31 with the legislative auditor and the department of revenue an
 32 itemized report of expenditures made during the preceding
 33 six-month period. Such report shall include the total of expendi-
 34 tures made for personal services, annual increment, current
 35 expenses (inmate medical expenses and other), repairs and
 36 alterations and equipment. The commissioner of corrections
 37 shall also have the authority to transfer between line items
 38 appropriated to the individual correctional units above and may
 39 transfer funds from the individuals units to Payments to
 40 Federal, County and/or Regional Jails (fund 0450, activity 555)
 41 or the Inmate Medical Expenses (fund 0450, activity 535).

42 From the above appropriation to Unclassified, on July 1,
 43 2005, the sum of three hundred thousand dollars shall be
 44 transferred to the department of agriculture-land division as
 45 advance payment for the purchase of food products; actual
 46 payments for such purchases shall not be required until such
 47 credits have been completely expended.

68-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2006 Org 0612

1	Personal Services	001	\$28,038,036
2	Annual Increment	004	199,150
3	Employee Benefits	010	6,856,622
4	Unclassified	099	6,413,158
5	Vehicle Purchase	451	1,000,000
6	Barracks Maintenance		
7	and Construction (R)	494	500,000
8	Trooper Class (R)	521	3,815,177
9	Barracks Lease Payments	556	440,088
10	Communications and		
11	Other Equipment (R)	558	1,013,285
12	Trooper Retirement Fund	605	9,554,158

13	Handgun Administration Expense	747	71,498
14	Automated Fingerprint		
15	Identification System	898	500,334
16	BRIM Premium	913	<u>6,829,157</u>
17	Total		\$65,230,663

18 Any unexpended balances remaining in the appropriations
 19 for Barracks Maintenance and Construction (fund 0453, activity
 20 494), Trooper Class (fund 0453, activity 521) and Communica-
 21 tions and Other Equipment (fund 0453, activity 558) at the
 22 close of the fiscal year 2005 are hereby reappropriated for
 23 expenditure during the fiscal year 2006.

24 ~~*From the above appropriation for Barracks Maintenance~~
 25 ~~and Construction, the sum of \$250,000 shall be utilized for the~~
 26 ~~construction of a new detachment in Calhoun County, provided~~
 27 ~~that the Calhoun County Board of Education is willing to~~
 28 ~~donate the land for the site to the State Police, and provided~~
 29 ~~further that any site preparation needed on the site shall be~~
 30 ~~completed as part of the donation.~~

69-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2006 Org 0613

1	Personal Services	001	\$ 926,723
2	Annual Increment	004	30,130
3	Employee Benefits	010	408,326
4	Unclassified	099	80,517
5	Veterans' Field Offices	228	175,985
6	Veterans' Nursing Home	286	1,640,500
7	Veterans' Toll Free Assistance Line . . .	328	5,000
8	Veterans' Reeducation Assistance (R) .	329	211,604
9	Veterans' Grant Program (R)	342	150,000

* CLERK'S NOTE: The Governor struck language on line 24 through line 30.

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APPROPRIATIONS

[Ch. 16

10	Memorial Day Patriotic Exercise	697	20,000
11	BRIM Premium	913	<u>27,978</u>
12	Total		\$ 3,676,763

13 Any unexpended balances remaining in the appropriations
 14 for Veterans' Reeducation Assistance (fund 0456, activity 329),
 15 Veterans' Grant Program (fund 0456, activity 342), Women's
 16 Veterans' Monument (fund 0456, activity 385) and Veterans'
 17 Monuments (fund 0456, activity 817) at the close of the fiscal
 18 year 2005 are hereby reappropriated for expenditure during the
 19 fiscal year 2006.

20 The above appropriation for Veterans' Nursing Home (fund
 21 0456, activity 286) may be transferred to the Veterans' Nursing
 22 Home Support Fund (fund 6703, org 0613) at the discretion of
 23 the director of the Division of Veterans' Affairs.

70-Division of Veterans' Affairs-

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2006 Org 0618

1	Personal Services	001	\$ 668,646
2	Annual Increment	004	15,100
3	Employee Benefits	010	328,781
4	Unclassified	099	<u>36,735</u>
5	Total		\$ 1,049,262

71-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2006 Org 0619

1	Safe Schools Hotline—Total	093	\$ 200,000
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72-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2006 Org 0620

1	Personal Services	001	\$	236,236
2	Annual Increment	004		3,645
3	Employee Benefits	010		81,958
4	Unclassified	099		129,583
5	Community Corrections	561		800,000
6	Statistical Analysis Program	597		48,607
7	BRIM Premium	913		<u>1,725</u>
8	Total		\$	1,301,754

9 Any unexpended balance remaining in the appropriation for
 10 Community Corrections—Surplus(fund 0546, activity 060) at
 11 the close of the fiscal year 2005 is hereby reappropriated for
 12 expenditure during the fiscal year 2006.

73-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2006 Org 0621

1	Robert L. Shell Juvenile Center (R) ...	267	\$	1,912,727
2	Central Office (R)	701		2,170,145
3	Southern WV Youth Diagnostic Center	792		1,889,284
4	Gene Spadaro Juvenile Center	793		1,906,673
5	BRIM Premium	913		40,079
6	WV Industrial Home for Youth (R)	979		10,468,312
7	Davis Center (R)	980		2,276,827
8	Eastern Regional Juvenile Center (R) ..	981		1,396,110
9	Northern Regional Juvenile Center (R) .	982		1,195,265
10	North Central Regional Juvenile			
11	Center (R)	983		1,692,967

12	Southern Regional Juvenile Center (R) .	984	1,753,346
13	Tiger Morton Center (R)	985	1,872,226
14	Donald R. Kuhn Juvenile Center (R) . . .	986	1,685,623
15	J.M. "Chick" Buckbee		
16	Juvenile Center (R)	987	1,833,967
17	Salem Canine (R)	988	88,491
18	Davis Canine (R)	989	84,451
19	The Academy (R)	990	<u>129,722</u>
20	Total		\$ 32,396,215

21 Any unexpended balances remaining in the appropriations
 22 for Unclassified (fund 0570, activity 099), Robert L. Shell
 23 Juvenile Center (fund 0570, activity 267), Donald R. Kuhn
 24 Diagnostic Center (fund 0570, activity 283) Central Office
 25 (fund 0570, activity 701), WV Industrial Home for Youth (fund
 26 0570, activity 979), Davis Center (fund 0570, activity 980),
 27 Eastern Regional Juvenile Center (fund 0570, activity 981),
 28 Northern Regional Juvenile Center (fund 0570, activity 982),
 29 North Central Regional Juvenile Center (fund 0570, activity
 30 983), Southern Regional Juvenile Center (fund 0570, activity
 31 984), Tiger Morton Center (fund 0570, activity 985), Donald R.
 32 Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick"
 33 Buckbee Juvenile Center (fund 0570, activity 987), Salem
 34 Canine (fund 0570, activity 988), Davis Canine (fund 0570,
 35 activity 989), The Academy (fund 0570, activity 990), and Mt.
 36 Hope Juvenile Center (fund 0570, activity 991) at the close of
 37 the fiscal year 2005 are hereby reappropriated for expenditure
 38 during the fiscal year 2006.

39 From the above appropriation to Unclassified, on July 1,
 40 2005, the sum of fifty thousand dollars shall be transferred to
 41 the department of agriculture-land division as advance payment
 42 for the purchase of food products; actual payments for such
 43 purchases shall not be required until such credits have been
 44 completely expended.

45 The director of juvenile services shall also have the
46 authority to transfer between line items appropriated to the
47 individual juvenile centers above.

74-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2006 Org 0622

1	Personal Services	001	\$	915,411
2	Annual Increment	004		9,650
3	Employee Benefits	010		363,998
4	Unclassified (R)	099		514,518
5	BRIM Premium	913		<u>8,043</u>
6	Total		\$	1,811,620

7 Any unexpended balances remaining in the appropriations
8 for Equipment (fund 0585, activity 070) and Unclassified (fund
9 0585, activity 099) at the close of the fiscal year 2005 are
10 hereby reappropriated for expenditure during the fiscal year
11 2006.

DEPARTMENT OF REVENUE

75-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2006 Org 0701

1	Unclassified-Total (R)	096	\$	625,283
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2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 0465, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006.

76-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2006 Org 0702

1	Personal Services (R)	001	\$ 12,070,000
2	Annual Increment	004	259,060
3	Employee Benefits (R)	010	4,503,968
4	Unclassified (R)	099	5,925,469
5	GIS Development Project (R)	562	150,000
6	Remittance Processor (R)	570	381,015
7	Multi State Tax Commission	653	77,958
8	BRIM Premium	913	<u>13,819</u>
9	Total		\$ 23,381,289

10 Any unexpended balances remaining in the appropriations
 11 for Personal Services (fund 0470, activity 001), Employee
 12 Benefits (fund 0470, activity 010), Tax Technology Upgrade
 13 (fund 0470, activity 094), Unclassified-Surplus (fund 0470,
 14 activity 097), Unclassified (fund 0470, activity 099), Tax
 15 Technology Upgrade-Surplus (fund 0470, activity 450) GIS
 16 Development Project (fund 0470, activity 562) and Remittance
 17 Processor (fund 0470, activity 570) at the close of the fiscal
 18 year 2005 are hereby reappropriated for expenditure during the
 19 fiscal year 2006.

77-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2006 Org 0703

1	Unclassified-Total (R)	096	\$ 1,052,333
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2 Any unexpended balance remaining in the appropriation for
 3 Unclassified—Total(fund 0595, activity 096) at the close of the

4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006.

78-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2006 Org 0709

1 Unclassified-Total (R) 096 \$ 650,564

2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 0593, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006.

79-Division of Professional and Occupational Licenses-

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2006 Org 0933

1 Unclassified-Total 096 \$ 20,000

DEPARTMENT OF TRANSPORTATION

80-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2006 Org 0804

1	Unclassified	099	\$ 2,929,840
2	BRIM Premium	913	<u>242,974</u>
3	Total		\$ 3,172,814

4 ~~*From the above appropriation, \$30,000 shall be expended~~
 5 ~~for improvements at the Duffield Station and \$20,000 shall be~~
 6 ~~expended for the Potomac Eagle Railroad.~~

81-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2006 Org 0805

1	Unclassified (R)	099	\$ 1,258,342
2	Federal Funds/Grant Match (R)	749	<u>1,000,000</u>
3	Total		\$ 2,258,342

4 Any unexpended balances remaining in the appropriations
 5 for Unclassified (fund 0510, activity 099), Grant Match (fund
 6 0510, activity 388) and Federal Funds/Grant Match (fund 0510,
 7 activity 749) at the close of the fiscal year 2005 are hereby
 8 reappropriated for expenditure during the fiscal year 2006.

82-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2006 Org 0806

1	Unclassified (R)	099	\$ 430,217
2	BRIM Premium	913	<u>7,139</u>
3	Total		\$ 437,356

4 Any unexpended balance remaining in the appropriation for
 5 Unclassified-Total (fund 0581, activity 096) and Unclassified
 6 (fund 0581, activity 099) at the close of the fiscal year 2005 is
 7 hereby reappropriated for expenditure during the fiscal year
 8 2006.

* CLERK'S NOTE: The Governor struck language on line 4 through line 6.

83-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2006 Org 0807

1	Unclassified (R)	099	\$ 1,364,594
2	Civil Air Patrol	234	<u>105,258</u>
3	Total		\$ 1,469,852

4 Any unexpended balance remaining in the appropriation for
 5 Unclassified (fund 0582, activity 099) at the close of the fiscal
 6 year 2005 is hereby reappropriated for expenditure during the
 7 fiscal year 2006.

8 From the above appropriation for Unclassified, the sum of
 9 \$110,000 shall be distributed equally to each of the eleven local
 10 Civil Air patrol Squadrons.

BUREAU OF SENIOR SERVICES*84-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 0420 FY 2006 Org 0508

1	Personal Services	001	\$ 125,099
2	Annual Increment	004	2,550
3	Employee Benefits	010	58,773
4	Unclassified	099	348,931
5	Silver Haired Legislature	202	15,000
6	Area Agencies Administration	203	78,685
7	Alzheimers Respite Care	565	0
8	Roger Tompkins Alzheimers		
9	Respite Care	643	250,000
10	BRIM Premium	913	<u>7,539</u>
11	Total		\$ 886,577

HIGHER EDUCATION*85-West Virginia Council for**Community and Technical College Education-**Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2006 Org 0420

1	New River Community and Technical College		
2	of Bluefield State College	358	\$ 4,070,750
3	West Virginia Council for Community		
4	and Technical Education (R)	392	704,000
5	Eastern West Virginia Community and		
6	Technical College	412	1,967,728
7	Fairmont State Community and		
8	Technical College	421	7,707,985
9	Shepherd Community and		
10	Technical College	434	2,353,772
11	West Virginia State Community and		
12	Technical College	445	3,015,577
13	Southern West Virginia Community and		
14	Technical College	446	7,675,626
15	West Virginia Northern Community and		
16	Technical College	447	5,823,188
17	West Virginia University -		
18	Parkersburg	471	8,209,692
19	West Virginia University Institute		
20	for Technology Community and		
21	Technical College	486	3,216,857
22	Marshall Community and		
23	Technical College	487	<u>5,338,983</u>
24	Total		\$ 50,084,158

25 Any unexpended balances remaining in the appropriation
 26 for the West Virginia Council for Community and Technical
 27 Education (fund 0596, activity 392) at the close of the fiscal
 28 year 2005 are hereby reappropriated for expenditure during the
 29 fiscal year 2006.

30 ~~* Included in the above appropriation for Southern West~~
 31 ~~Virginia Community and Technical College is \$373,774 for the~~
 32 ~~Marshall University—Southern WV Community and Technical~~
 33 ~~College 2+2 Program, \$98,912 for delivery of the associate~~
 34 ~~degree nursing program to Eastern WV Community and~~
 35 ~~Technical College, and \$25,000 for the Appleread Program.~~

36 The institutions operating with special revenue funds and/or
 37 federal funds shall pay their proportionate share of the Board of
 38 Risk and Insurance Management total insurance premium cost
 39 for their respective institutions.

86-Higher Education Policy Commission-

Administration-

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2006 Org 0441

1	Unclassified	099	\$ 1,891,511
2	WVNET	169	1,851,198
3	PROMISE Scholarship—Transfer	800	0
4	VISTA E-Learning	519	300,000
5	BRIM Premium	913	<u>66,509</u>
6	Total		\$ 4,109,218

* CLERK'S NOTE: The Governor struck language on line 30 through line 35.

7 Any unexpended balances remaining in the appropriations
 8 for Vice Chancellor for Health Sciences-Rural Health Initiative
 9 Program and Site Support (fund 0589, activity 595), Vice
 10 Chancellor for Health Sciences-Rural Health Residency
 11 Program (fund 0589, activity 601) and HEAPS Grant Program
 12 (fund 0589, activity 867) at the close of the fiscal year 2005 are
 13 hereby reappropriated for expenditure during the fiscal year
 14 2006.

87-Higher Education Policy Commission-

System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2006 Org 0442

1	WVU School of Health Science -		
2	Eastern Division	056	\$ 1,560,000
3	Marshall Medical School	173	8,795,407
4	WVU—School of Health Sciences	174	7,476,474
5	WVU School of Health Sciences -		
6	Charleston Division	175	2,000,236
7	Primary Health Education Medical School		
8	Program Support (R)	177	2,111,012
9	Bluefield State College	408	4,511,024
10	Concord University	410	8,607,893
11	Fairmont State University	414	11,253,604
12	Glennville State College	428	5,355,866
13	Shepherd University	432	8,681,863
14	West Liberty State College	439	8,358,965
15	West Virginia State University	441	9,063,413
16	Marshall University	448	40,655,161
17	Marshall University Medical School		
18	BRIM Subsidy	449	931,452

19	West Virginia University	459	100,876,348
20	West Virginia University School of		
21	Medicine BRIM Subsidy	460	1,558,840
22	West Virginia University Institute		
23	for Technology	479	5,992,241
24	West Virginia University—		
25	Potomac State	994	4,459,074
26	State Priorities-Brownfield Professional		
27	Development	531	<u>800,000</u>
28	Total		\$ 233,048,873

29 Any unexpended balances remaining in the appropriations
30 for Primary Health Education Medical School Program Support
31 (fund 0586, activity 177), Jackson's Mill (fund 0586, activity
32 461) and Jackson's Mill-Surplus (fund 0586, activity 842) at the
33 close of fiscal year 2005 are hereby reappropriated for expendi-
34 ture during the fiscal year 2006.

35 Included in the appropriation for WVU—School of Health
36 Sciences and Marshall Medical School are \$943,080 and
37 \$295,477, respectively, for Graduate Medical Education which
38 may be transferred to the Department of Health and Human
39 Resources' Medical Service Fund (fund 5084) for the purpose
40 of matching federal or other funds to be used in support of
41 graduate medical education, subject to the Vice-Chancellor for
42 Health Sciences and the Secretary of the Department of Health
43 and Human Resources. If approval is denied, the funds may be
44 utilized by the respective institutions for expenditure on
45 graduate medical education.

46 ~~* Included in the above appropriation for WVU—School of~~
47 ~~Health Sciences is \$511,105 for the WVU Charleston Division~~
48 ~~Poison Control Hotline. This amount shall be enhanced by an~~
49 ~~allocation for the director's salary as well as in-kind assistance.~~

* CLERK'S NOTE: The Governor struck language on line 46 through line 79.

~~50 These amounts shall be allocated equally among the four
51 quarters of the fiscal year for disbursement to the WVU-
52 Charleston Division Poison Control Hotline. Also included is
53 \$800,000 for the Blanchette Rockefeller Project.~~

~~54 Included in the above appropriation for West Virginia
55 University is \$34,500 for the Marshall and WVU Faculty and
56 Course Development International Study Project, \$246,429 for
57 the WVU Law School—Skills Program, \$147,857 for the WVU
58 Coal and Energy Research Bureau, \$19,714 for the WVU
59 College of Engineering and Mineral Resources—Diesel
60 Training—Transfer, \$165,000 for the WVU-Sheep
61 Study/Potomac Equine Program, \$500,000 for the Mining
62 Engineering Program, \$150,000 for the Center for Multiple
63 Sclerosis Program, \$500,000 for Reedsville Farm, \$100,000 for
64 the WVU-Soil Testing Program, \$100,000 for a veterinarian,
65 and \$100,000 for the rifle team.~~

~~66 Included in the above appropriation for Marshall Medical
67 School is \$417,351 for the Marshall University Forensic Lab
68 and \$175,061 for the Marshall University Center for Rural
69 Health.~~

~~70 Included in the above appropriation for Marshall University
71 is \$181,280 for the Marshall University-Southern WV CTC 2+2
72 Program and \$795,597 for the Marshall University Autism
73 Training Center.~~

~~74 Included in the above appropriation for Concord University
75 is \$100,000 for the Geographic Alliance.~~

~~76 Included in the above appropriation for Shepherd Univer-
77 sity is \$100,000 for the Gateway Program.~~

~~78 Included in the above appropriation for WVU-Potomac
79 State is \$500,000 for maintenance, repairs and equipment.~~

80 The institutions operating from special revenue funds
81 and/or federal funds shall pay their proportionate share of the
82 Board of Risk and Insurance Management total insurance
83 premium cost for their respective institutions.

84 From the above appropriations to the respective medical
85 schools, the line items for BRIM subsidies funding shall be paid
86 to the Board of Risk and Insurance Management as a general
87 revenue subsidy against the "Total Premium Billed" to each
88 institution as part of the full cost of their malpractice insurance
89 coverage.

88-Higher Education Policy Commission-

Health Sciences-

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2006 Org 0477

1 Any unexpended balances remaining in the appropriations
2 for Primary Health Education Medical School Program Support
3 (fund 0590, activity 177), WVU Charleston Division-Poison
4 Control Hot Line (fund 0590, activity 510), Capital Outlay and
5 Equipment (fund 0590, activity 542) and Rural Health Initiative
6 Site Support Program (fund 0590, activity 853) at the close of
7 the fiscal year 2005 are hereby reappropriated for expenditure
8 during the fiscal year 2006.

89-Higher Education Policy Commission-

Legislative-

Funding Priorities

Control Account

(WV Code Chapter 18B)

Fund 0591 FY 2006 Org 0441

1 Any unexpended balances remaining in the appropriations
 2 for Higher Education—Special Projects (fund 0591, activity
 3 488), Independently Accredited Community and Technical
 4 College Development (fund 0591, activity 491) and Research
 5 Challenge (fund 0591, activity 502) at the close of the fiscal
 6 year 2005 are hereby reappropriated for expenditure during the
 7 fiscal year 2006.

8 The above appropriation shall be allocated only to the
 9 State’s post-secondary institutions with compacts approved by
 10 the Higher Education Policy Commission or West Virginia
 11 Council for Community and Technical College Education, as
 12 stated in §18B-1A-5.

13 Total TITLE II, Section 1-
 14 General Revenue \$ 3,190,336,810

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

DEPARTMENT OF TRANSPORTATION

90-Division of Motor Vehicles

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

Fund 9007 FY 2006 Org 0802

		State Road Fund
	Activity	
1	Personal Services	001 \$ 13,232,017
2	Annual Increment	004 210,425
3	Employee Benefits	010 5,684,394
4	Unclassified	099 <u>17,772,772</u>
5	Total	\$ 36,899,608

91-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2006 Org 0803

1	Debt Service	040 \$ 50,000,000
2	Maintenance	237 249,700,000
3	Maintenance, Contract Paving and	
4	Secondary Road Maintenance	272 50,000,000
5	Bridge Repair and Replacement	273 30,000,000
6	Inventory Revolving	275 2,000,000
7	Equipment Revolving	276 15,000,000
8	General Operations	277 44,500,000
9	Interstate Construction	278 80,000,000
10	Other Federal Aid Programs	279 300,700,000
11	Appalachian Programs	280 170,000,000
12	Nonfederal Aid Construction	281 25,000,000
13	Highway Litter Control	282 1,755,000
14	PSC Weight Enforcement	345 <u>4,566,000</u>
15	Total	\$ <u>1,023,221,000</u>

16 The above appropriation for PSC Weight Enforcement
 17 (activity 345) shall be transferred to the Public Service Com-
 18 mission Fund (fund 8623).

19 The above appropriations are to be expended in accordance
20 with the provisions of chapters seventeen and seventeen-c of
21 the code.

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

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

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

44 ~~*From the above appropriation, \$125,000 is for King Coal~~
45 ~~Highway Authority, \$125,000 is for Coal Field Expressway~~
46 ~~Authority, \$100,000 is for Coal Heritage Highway Authority,~~
47 ~~\$100,000 is for Coal Heritage Area Authority, \$25,000 is for~~
48 ~~Little Kanawha River Parkway, \$50,000 is for Midland Trail~~
49 ~~Scenic Highway Association, 57,000 is for Shawnee Parkway~~

* CLERK'S NOTE: The Governor struck language on line 44 through line 58.

50 Authority, \$100,000 is for Corridor G Highway Authority and
 51 \$125,000 is for Corridor H Authority:

52 ~~Additionally, the department shall assist the Federal~~
 53 ~~Government in the construction, engineering and financing of~~
 54 ~~an access road to the Beckley Veterans Administration Medical~~
 55 ~~center and participate, along with local and federal governmen-~~
 56 ~~tal entities, on the design, engineering and financing of the~~
 57 ~~building of the Raleigh County Emergency Services Authority's~~
 58 ~~911 Center:~~

59 Total TITLE II, Section 2-
 60 State Road Fund \$ 1,060,326,063

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

LEGISLATIVE

92-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2006 Org 2300

	Activity	Other Funds
1 Personal Services	001	\$ 214,000
2 Annual Increment	004	5,000
3 Employee Benefits	010	73,500
4 Unclassified	099	55,500
5 Economic Loss Claim		
6 Payment Fund (R)	334	<u>2,921,500</u>
7 Total		\$ 3,269,500

8 Any unexpended balance remaining in the appropriation for
 9 Economic Loss Claim Payment Fund (fund 1731, activity 334)
 10 at the close of the fiscal year 2005 is hereby reappropriated for
 11 expenditure during the fiscal year 2006.

EXECUTIVE

93-Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2006 Org 0100

1	Unclassified	099	\$ 1,872,961
2	EPSCoR	571	<u>150,000</u>
3	Total		\$ 2,022,961

94-Auditor's Office-

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2006 Org 1200

1	Personal Services	001	\$ 239,629
2	Annual Increment	004	7,500
3	Employee Benefits	010	86,381
4	Unclassified	099	<u>503,416</u>
5	Total		\$ 836,926

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

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

95-Auditor's Office-

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2006 Org 1200

1	Personal Services	001	\$ 1,061,298
2	Annual Increment	004	14,700
3	Employee Benefits	010	342,940
4	Unclassified	099	<u>1,402,017</u>
5	Total		\$ 2,820,955

96-Auditor's Office-

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2006 Org 1200

1	Unclassified-Total	096	\$ 747,368
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2 Fifty percent of the deposits made into this fund shall be
3 transferred to the Treasurer's Office-Technology Support and
4 Acquisition(fund 1329, org 1300) for expenditure for the
5 purposes described in West Virginia Code § 12-3-10c.

97-Auditor's Office-

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2006 Org 1200

1	Unclassified-Total	096	\$	600,000
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*98-Auditor's Office-**Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2006 Org 1200

1	Personal Services	001	\$	1,769,646
2	Annual Increment	004		30,000
3	Employee Benefits	010		568,489
4	Unclassified	099		<u>431,865</u>
5	Total		\$	2,800,000

*99-Treasurer's Office-**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2006 Org 1300

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

(WV Code Chapter 19)

Fund 1401 FY 2006 Org 1400

1	Personal Services	001	\$	936,844
2	Annual Increment	004		10,550
3	Employee Benefits	010		317,340

4	Unclassified	099	<u>1,313,366</u>
5	Total		\$ 2,578,100

101-Department of Agriculture-

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2006 Org 1400

1	Personal Services	001	\$ 50,304
2	Annual Increment	004	800
3	Employee Benefits	010	14,128
4	Unclassified	099	<u>977,000</u>
5	Total		\$ 1,042,232

102-Department of Agriculture-

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2006 Org 1400

1	Unclassified-Total	096	\$ 80,133
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2 The above appropriation shall be expended in accordance
3 with article twenty-six, chapter nineteen of the code.

103-Department of Agriculture-

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2006 Org 1400

1	Unclassified-Total	096	\$ 1,028,903
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104-Department of Agriculture-

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2006 Org 1400

1 Unclassified-Total 096 \$ 3,040,000

105-Attorney General-

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2006 Org 1500

1	Personal Services	001	\$	250,000
2	Annual Increment	004		1,814
3	Employee Benefits	010		79,912
4	Unclassified	099		<u>134,930</u>
5	Total		\$	466,656

106-Attorney General-

Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2006 Org 1500

1 Unclassified-Total 096 \$ 227,284

107-Attorney General-

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2006 Org 1500

1	Unclassified-Total	096	\$ 775,000
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*108-Secretary of State-**Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2006 Org 1600

1	Personal Services	001	\$ 1,050,500
2	Annual Increment	004	10,300
3	Employee Benefits	010	307,907
4	Unclassified	099	<u>1,135,306</u>
5	Total		\$ 2,504,013

*109-Secretary of State-**State Election Fund*

(WV Code Chapter 3)

Fund 1614 FY 2006 Org 1600

1	Any unexpended balance remaining in the appropriation for
2	Unclassified-Total (fund 1614, activity 096) at the close of the
3	fiscal year 2005 is hereby reappropriated for expenditure during
4	the fiscal year 2006.

DEPARTMENT OF ADMINISTRATION*110-Office of the Secretary-**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2006 Org 0201

1 Tobacco Settlement Fund-Transfer 902 \$25,400,000

2 The above appropriation for Tobacco Settlement Fund-
3 Transfer shall be transferred to the Division of Health (fund
4 5124, org 0506) for expenditure.

111-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2006 Org 0210

1	Personal Services	001	\$10,317,242
2	Annual Increment	004	142,300
3	Employee Benefits	010	3,110,197
4	Unclassified	099	<u>3,955,058</u>
5	Total		\$17,524,797

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

9 There is hereby appropriated from this fund, in addition to
10 the above appropriation, the necessary amount for the expendi-
11 ture of funds other than personal services or employee benefits
12 to enable the division to provide information processing
13 services to user agencies. These services include, but are not
14 limited to, data processing equipment, office automation and
15 telecommunications.

16 Each spending unit operating from the general revenue
17 fund, from special revenue funds or receiving reimbursement
18 for postage from the federal government shall be charged

19 monthly for all postage meter service and shall reimburse the
20 revolving fund monthly for all such amounts.

112-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2006 Org 0222

1	Personal Services	001	\$ 2,586,137
2	Annual Increment	004	58,190
3	Employee Benefits	010	886,773
4	Unclassified	099	<u>974,157</u>
5	Total		\$ 4,505,257

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

113-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2006 Org 0228

1	Unclassified-Total (R)	096	\$ 542,537
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2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 2521, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006, except for fund 2521, activity 096 (fiscal
6 year 2004) which shall expire on June 30, 2005.

DEPARTMENT OF COMMERCE

114-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2006 Org 0305

1	Personal Services	001	\$	343,845
2	Annual Increment	004		7,450
3	Employee Benefits	010		121,372
4	Unclassified	099		<u>257,078</u>
5	Total		\$	729,745

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

(WV Code Chapter 19)

Fund 3082 FY 2006 Org 0305

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

(WV Code Chapter 11)

Fund 3084 FY 2006 Org 0305

1	Unclassified-Total	096	\$	3,602,870
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117-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2006 Org 0306

1	Personal Services	001	\$	42,818
2	Annual Increment	004		465
3	Employee Benefits	010		7,899

4	Unclassified	099	<u>164,425</u>
5	Total		\$ 215,607

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

118-West Virginia Development Office-

Energy Assistance

(WV Code Chapter 5B)

Fund 3144 FY 2006 Org 0307

1	Energy Assistance—Total (R)	647	\$ 300,000
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2 Any unexpended balance remaining in the appropriation for
3 Energy Assistance-Total (fund 3144, activity 647) at the close
4 of the fiscal year 2005 is hereby reappropriated for expenditure
5 during the fiscal year 2006.

119-West Virginia Development Office-

Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2006 Org 0307

1	Unclassified-Total (R)	096	\$ 689,850
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2 Any unexpended balance remaining in the above appropria-
3 tion for Unclassified-Total (fund 3162, activity 096) at the close
4 of the fiscal year 2005 is hereby reappropriated for expenditure
5 during the fiscal year 2006.

120-Division of Labor-

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2006 Org 0308

1	Personal Services	001	\$	990,554
2	Annual Increment	004		14,663
3	Employee Benefits	010		425,622
4	Unclassified	099		<u>356,804</u>
5	Total		\$	1,787,643

*121-Division of Labor-**Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2006 Org 0308

1	Personal Services	001	\$	75,572
2	Annual Increment	004		848
3	Employee Benefits	010		28,125
4	Unclassified	099		<u>70,861</u>
5	Total		\$	175,406

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

(WV Code Chapter 21)

Fund 3191 FY 2006 Org 0308

1	Unclassified-Total	096	\$	108,704
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*123-Division of Labor-**Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2006 Org 0308

1	Unclassified-Total	096	\$	101,135
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124-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2006 Org 0310

1	Wildlife Resources	023	\$	6,274,534
2	Administration	155		1,956,690
3	Capital Improvements and			
4	Land Purchase (R)	248		1,560,000
5	Law Enforcement	806		7,274,534
6	DEP-Compliance Mandate-			
7	Fish Hatchery	668		<u>1,000,000</u>
8	Total			\$ 18,065,758

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

12 Any unexpended balances remaining in the appropriations
13 for Point of Sale Licensing System (fund 3200, activity 043)
14 and Capital Improvements and Land Purchase (fund 3200,
15 activity 248) at the close of the fiscal year 2005 are hereby
16 reappropriated for expenditure during the fiscal year 2006.

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

(WV Code Chapter 20)

Fund 3202 FY 2006 Org 0310

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

(WV Code Chapter 20)

Fund 3203 FY 2006 Org 0310

1	Personal Services	001	\$	387,855
2	Annual Increment	004		4,000
3	Employee Benefits	010		142,044
4	Unclassified	099		<u>443,727</u>
5	Total		\$	977,626

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

(WV Code Chapter 20)

Fund 3205 FY 2006 Org 0310

1	Personal Services	001	\$	234,568
2	Annual Increment	004		6,400
3	Employee Benefits	010		92,089
4	Unclassified	099		<u>165,531</u>
5	Total		\$	498,588

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

(WV Code Chapter 20)

Fund 3253 FY 2006 Org 0310

1	Unclassified-Total	096	\$	185,000
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129-Division of Natural Resources-

Recycling Assistance Fund

(WV Code Chapter 20)

Fund 3254 FY 2006 Org 0310

1	Personal Services	001	\$	377,222
2	Annual Increment	004		4,812
3	Employee Benefits	010		153,477
4	Unclassified (R)	099		<u>2,202,084</u>
5	Total		\$	2,737,595

6 Any unexpended balance remaining in the appropriation for
7 Unclassified (fund 3254, activity 099) at the close of the fiscal
8 year 2005 is hereby reappropriated for expenditure during the
9 fiscal year 2006.

130-Division of Natural Resources-

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2006 Org 0310

1	Unclassified-Total	096	\$	20,000
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131-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2006 Org 0314

1	Personal Services	001	\$	398,850
2	Annual Increment	004		1,450
3	Employee Benefits	010		138,000

4	WV Mining Extension Service	026	150,000
5	Unclassified	099	<u>775,250</u>
6	Total		\$ 1,463,550

DEPARTMENT OF EDUCATION

132-State Board of Education-

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2006 Org 0402

1	Unclassified-Total (R)	096	\$ 477,225
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2 Any unexpended balance remaining in the appropriation for
 3 Unclassified-Total (fund 3937, activity 096) at the close of the
 4 fiscal year 2005 is hereby reappropriated for expenditure during
 5 the fiscal year 2006.

133-State Department of Education-

School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2006 Org 0402

1	Personal Services	001	\$ 661,719
2	Annual Increment	004	7,800
3	Employee Benefits	010	236,120
4	Unclassified	099	<u>266,715</u>
5	Total		\$ 1,172,354

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

*134-State Department of Education-
FFA-FHA Camp and Conference Center
(WV Code Chapter 18)*

Fund 3960 FY 2006 Org 0402

1	Personal Services	001	\$	800,000
2	Annual Increment	004		13,800
3	Employee Benefits	010		284,669
4	Unclassified	099		<u>791,531</u>
5	Total		\$	1,890,000

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 29)

Fund 3508 FY 2006 Org 0431

1	EPSCoR—Total (R)	651	\$	300,000
2	Any unexpended balance remaining in the appropriation for			
3	Unclassified-Total (fund 3508, activity 096) and			
4	EPSCoR—Total (fund 3508, activity 651) at the close of the			
5	fiscal year 2005 is hereby reappropriated for expenditure during			
6	the fiscal year 2006.			

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

(WV Code Chapter 5A)

Fund 3542 FY 2006 Org 0432

1	Unclassified--Total	096	\$	472,500
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*137-State Board of Rehabilitation-**Division of Rehabilitation Services-**West Virginia Rehabilitation Center-**Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2006 Org 0932

1	Unclassified	.....	099	\$	2,620,562
2	Workshop Development	.....	163		450,000
3	Workshop-Supported Employment	....	484		<u>50,000</u>
4	Total	.....		\$	3,120,562

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION**

138-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2006 Org 0312

1	Personal Services	.....	001	\$	558,375
2	Annual Increment	.....	004		3,250
3	Employee Benefits	.....	010		174,210
4	Unclassified	.....	099		<u>1,798,499</u>
5	Total	.....		\$	2,534,334

*139-Division of Environmental Protection-**The Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2006 Org 0313

1	Personal Services	001	\$	97,426
2	Annual Increment	004		950
3	Employee Benefits	010		33,861
4	Unclassified	099		<u>462,263</u>
5	Total		\$	594,500

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

(WV Code Chapter 22)

Fund 3024 FY 2006 Org 0313

1	Unclassified—Total	096	\$	983,129
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*141-Division of Environmental Protection-**Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2006 Org 0313

1	Personal Services	001	\$	1,190,610
2	Annual Increment	004		11,800
3	Employee Benefits	010		407,267
4	Unclassified	099		<u>16,292,387</u>
5	Total		\$	17,902,064

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

(WV Code Chapter 22)

Fund 3322 FY 2006 Org 0313

1	Unclassified-Total	096	\$	239,000
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*143-Division of Environmental Protection-**Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2006 Org 0313

1	Personal Services	001	\$	377,993
2	Annual Increment	004		3,950
3	Employee Benefits	010		130,524
4	Unclassified	099		<u>395,585</u>
5	Total		\$	908,052

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

(WV Code Chapter 22)

Fund 3324 FY 2006 Org 0313

1	Personal Services	001	\$	4,438,835
2	Annual Increment	004		49,687
3	Employee Benefits	010		1,462,749
4	Unclassified	099		<u>2,512,445</u>
5	Total		\$	8,463,716

*145-Division of Environmental Protection-**The Underground Storage Tank**Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2006 Org 0313

1	Personal Services	001	\$	338,076
2	Annual Increment	004		4,600
3	Employee Benefits	010		123,498
4	Unclassified	099		<u>36,006</u>
5	Total		\$	502,180

*146-Division of Environmental Protection-**The Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2006 Org 0313

1	Personal Services	001	\$	509,227
2	Annual Increment	004		8,425
3	Employee Benefits	010		173,871
4	Unclassified	099		<u>843,248</u>
5	Total		\$	1,534,771

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

(WV Code Chapter 22)

Fund 3332 FY 2006 Org 0313

1	Personal Services	001	\$	234,366
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APPROPRIATIONS

[Ch. 16]

2	Annual Increment	004	3,300
3	Employee Benefits	010	78,879
4	Unclassified	099	<u>932,118</u>
5	Total		\$ 1,248,663

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

(WV Code Chapter 22)

Fund 3333 FY 2006 Org 0313

1	Personal Services	001	\$ 1,580,095
2	Annual Increment	004	22,725
3	Employee Benefits	010	587,934
4	Unclassified	099	<u>1,032,679</u>
5	Total		\$ 3,223,433

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

(WV Code Chapter 22)

Fund 3336 FY 2006 Org 0313

1	Personal Services	001	\$ 4,000,910
2	Annual Increment	004	41,330
3	Employee Benefits	010	1,223,507
4	Unclassified	099	<u>1,806,107</u>
5	Total		\$ 7,071,854

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

(WV Code Chapter 22)

Fund 3340 FY 2006 Org 0313

1	Personal Services	001	\$	149,687
2	Annual Increment	004		2,300
3	Employee Benefits	010		54,402
4	Unclassified	099		<u>145,002</u>
5	Total		\$	351,391

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

(WV Code Chapter 22)

Fund 3349 FY 2006 Org 0313

1	Unclassified-Total	096	\$	945,000
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*152-Division of Environmental Protection-**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2006 Org 0313

1	Personal Services	001	\$	726,679
2	Annual Increment	004		7,025
3	Employee Benefits	010		262,717
4	Unclassified	099		<u>341,563</u>
5	Total		\$	1,337,984

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

(WV Code Chapter 22C)

Fund 3371 FY 2006 Org 0315

1	Personal Services	001	\$	150,769
2	Annual Increment	004		2,100
3	Employee Benefits	010		36,226
4	Unclassified	099		<u>33,206</u>
5	Total		\$	222,301

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES**

154-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2006 Org 0505

1	Personal Services	001	\$	234,796
2	Annual Increment	004		5,311
3	Employee Benefits	010		101,658
4	Unclassified	099		<u>102,433</u>
5	Total		\$	444,198

6 The total amount of this appropriation shall be paid from a
 7 special revenue fund out of collections made by the board of
 8 barbers and cosmetologists as provided by law.

155-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2006 Org 0506

1	Unclassified-Total	096	\$	1,170,080
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156-Division of Health-

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2006 Org 0506

1	ABCA Tobacco Retailer Education		
2	Program-Transfer	239	\$ 200,000
3	Institutional Facilities		
4	Operations (R)	335	19,549,408
5	Tobacco Education Program (R)	906	<u>5,650,592</u>
6	Total		\$ 25,400,000

7 Any unexpended balances remaining in the above appropri-
8 ations for Institutional Facilities Operations (fund 5124, activity
9 335) and Tobacco Education Program (fund 5124, activity 906)
10 at the close of the fiscal year 2005 are hereby reappropriated for
11 expenditure during the fiscal year 2006 except for fund 5124,
12 activity 335, (fiscal year 2004) which shall expire on June 30,
13 2005.

14 From the above appropriation for ABCA Tobacco Retailer
15 Education Program-Transfer, \$200,000 shall be transferred to
16 the Alcohol Beverage Control Administration (fund 7352, org
17 0708) for expenditure.

18 The secretary of the department of health and human
19 resources, prior to the beginning of the fiscal year, shall file
20 with the legislative auditor and the department of revenue an
21 expenditure schedule for each formerly separate spending unit
22 which has been consolidated into the above account and which
23 receives a portion of the above appropriation for Institutional
24 Facilities Operations. The secretary shall also, within fifteen
25 days after the close of the six-month period of said fiscal year,
26 file with the legislative auditor and the department of revenue
27 an itemized report of expenditures made during the preceding
28 six-month period.

29 Additional funds have been appropriated in fund 0525,
 30 fiscal year 2006, organization 0506, and fund 5156, fiscal year
 31 2006, organization 0506, for the operation of the institutional
 32 facilities. The secretary of the department of health and human
 33 resources is authorized to utilize up to ten percent of the funds
 34 from the Institutional Facilities Operations line item to facilitate
 35 cost effective and cost saving services at the community level.

36 From the above appropriation to Institutional Facilities
 37 Operations, together with available funds from the division of
 38 health-hospital services revenue account (fund 5156, activity
 39 335) and consolidated medical services fund (fund 0525,
 40 activity 335), on July 1, 2005, the sum of one hundred sixty
 41 thousand dollars shall be transferred to the department of
 42 agriculture-land division as advance payment for the purchase
 43 of food products; actual payments for such purchases shall not
 44 be required until such credits have been completely expended.

157-Division of Health-

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2006 Org 0506

1	Personal Services	001	\$	263,211
2	Annual Increment	004		9,003
3	Employee Benefits	010		117,035
4	Unclassified.	099		<u>96,188</u>
5	Total		\$	485,437

158-Division of Health-

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2006 Org 0506

1	Debt Service (R)	040	\$ 2,420,000
2	Institutional Facilities		
3	Operations (R)	335	38,671,470
4	Medical Services Trust Fund-		
5	Transfer (R)	512	<u>23,300,000</u>
6	Total		\$64,391,470

7 Any unexpended balance remaining in the appropriation for
8 hospital services revenue account at the close of the fiscal year
9 2005 is hereby reappropriated for expenditure during the fiscal
10 year 2006, except for fund 5156, activity 040 (fiscal year 2004)
11 and fund 5156, activity 099 (fiscal year 1987) which shall
12 expire on June 30, 2005.

13 The total amount of this appropriation shall be paid from
14 the hospital services revenue account special fund created by
15 section fifteen-a, article one, chapter sixteen of the code, and
16 shall be used for operating expenses and for improvements in
17 connection with existing facilities and bond payments.

18 The secretary of the department of health and human
19 resources is authorized to utilize up to ten percent of the funds
20 from the appropriation for Institutional Facilities Operations
21 line to facilitate cost effective and cost saving services at the
22 community level.

23 Necessary funds from the above appropriation may be used
24 for medical facilities operations, either in connection with this
25 account or in connection with the line item designated Institu-
26 tional Facilities Operations in the consolidated medical service
27 fund (fund 0525, fiscal year 2006, organization 0506) and the

28 tobacco settlement expenditure fund (fund 5124, fiscal year
29 2006, organization 0506).

30 From the above appropriation to Institutional Facilities
31 Operations, together with available funds from the consolidated
32 medical services fund (fund 0525, activity 335) and the tobacco
33 settlement expenditure fund (fund 5124, activity 335), on July
34 1, 2005, the sum of one hundred sixty thousand dollars shall be
35 transferred to the department of agriculture-land division as
36 advance payment for the purchase of food products; actual
37 payments for such purchases shall not be required until such
38 credits have been completely expended.

159-Division of Health-

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2006 Org 0506

1	Personal Services	001	\$	502,830
2	Annual Increment	004		11,060
3	Employee Benefits	010		206,376
4	Unclassified	099		<u>116,530</u>
5	Total		\$	836,796

160-Division of Health-

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2006 Org 0506

1	Personal Services	001	\$	201,230
2	Annual Increment	004		3,200

Ch. 16]	APPROPRIATIONS	201
3	Employee Benefits	010 75,269
4	Unclassified	099 <u>93,313</u>
5	Total	\$ 373,012

161-Division of Health-

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2006 Org 0506

1	Personal Services	001 \$ 56,071
2	Annual Increment	004 1,455
3	Employee Benefits	010 21,224
4	Unclassified.	099 <u>2,996,096</u>
5	Total	\$ 3,074,846

162-Division of Health-

Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2006 Org 0506

1	Unclassified-Total	096 \$ 20,000
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163-Division of Health-

West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2006 Org 0506

1	Personal Services	001 \$ 499,250
2	Annual Increment	004 4,750

202		APPROPRIATIONS	[Ch. 16
3	Employee Benefits	010	199,835
4	Unclassified	099	<u>19,141,165</u>
5	Total		\$19,845,000

164-Division of Health-

Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2006 Org 0506

1	Unclassified—Total	096	\$ 85,000
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165-West Virginia Health Care Authority—

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2006 Org 0507

1	Personal Services	001	\$ 2,184,704
2	Annual Increment	004	25,000
3	Employee Benefits	010	682,042
4	Hospital Assistance	025	600,000
5	Unclassified	099	<u>3,089,545</u>
6	Total		\$ 6,581,291

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 fund
10 designated health care cost review fund.

166-Division of Human Services-

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2006 Org 0511

1 Unclassified-Total 096 \$153,080,614

2 From the above appropriation, an amount not to exceed two
3 hundred thousand dollars shall be transferred to a special
4 revenue account in the treasury for use by the department of
5 health and human resources for administrative purposes. The
6 remainder of all moneys deposited in the fund shall be trans-
7 ferred to the West Virginia medical services fund (fund 5084).

167-Division of Human Services-

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2006 Org 0511

1 Unclassified-Total (R) 096 \$34,052,180

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 5094, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006, except for fund 5094, activity 096, fiscal
6 years 2002 and 2003 which shall expire on June 30, 2005.

168-Division of Human Services-

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2006 Org 0511

1 Unclassified 099 \$27,877,927

2	Eligibility Expansion	582	1,958,066
3	Public Employees Insurance Reserve Fund-		
4	Transfer	903	<u>6,100,000</u>
5	Total		\$ 35,935,993

6 The above appropriation to Unclassified shall be used to
7 provide state match of Medicaid expenditures as defined and
8 authorized in subsection (c) of Chapter 9-4A-2a. Expenditures
9 from the fund are limited to the following: payment of back-
10 logged billings, funding for services to future federally man-
11 dated population groups and payment of the required state
12 match for medicaid disproportionate share payments. The
13 remainder of all moneys deposited in the fund shall be trans-
14 ferred to the division of human services accounts.

169-Division of Human Services-

James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2006 Org 0511

1	Unclassified-Total	096	\$ 1,606,500
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170-Family Protection Services Board-

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2006 Org 0511

1	Unclassified-Total	096	\$ 588,022
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**DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY**

171-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 2006 Org 0601

1	Unclassified-Total	096	\$	20,000
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*172-State Armory Board-
General Armory Fund
(WV Code Chapter 15)*

Fund 6057 FY 2006 Org 0603

1	Unclassified-Total	096	\$	635,650
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173-West Virginia Division of Corrections-

*Parolee Supervision Fees
(WV Code Chapter 62)*

Fund 6362 FY 2006 Org 0608

1	Personal Services	001	\$	116,774
2	Annual Increment	004		1,651
3	Employee Benefits	010		52,130
4	Unclassified	099		<u>212,684</u>
5	Total		\$	383,239

*174-West Virginia State Police-**Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2006 Org 0612

1	Personal Services	001	\$ 1,091,240
2	Annual Increment	004	18,900
3	Employee Benefits	010	380,812
4	Unclassified	099	345,573
5	BRIM Premium	913	<u>285,071</u>
6	Total		\$ 2,121,596

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.

*175-West Virginia State Police-**Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2006 Org 0612

1	Unclassified	099	\$ 885,531
2	BRIM Premium	913	<u>145,585</u>
3	Total		\$ 1,031,116

4 The total amount of this appropriation shall be paid from
 5 the special revenue fund out of receipts collected pursuant to
 6 sections nine-a and sixteen, article fifteen, chapter eleven of the
 7 code and paid into a revolving fund account in the state
 8 treasury.

*176-West Virginia State Police-**Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2006 Org 0612

1	Unclassified	099	\$	444,980
2	BRIM Premium	913		<u>72,789</u>
3	Total		\$	517,769

*177-West Virginia State Police-**Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2006 Org 0612

1	Unclassified (R)	099	\$	312,002
2	BRIM Premium	913		<u>50,959</u>
3	Total		\$	362,961

4 Any unexpended balances remaining in the appropriations
 5 for Unclassified (fund 6519, activity 099) and Helicopter
 6 Purchase (fund 6519, activity 063) at the close of the fiscal year
 7 2005 are hereby reappropriated for expenditure during the fiscal
 8 year 2006.

*178-West Virginia State Police-**Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2006 Org 0612

1	Unclassified	099	\$	190,602
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2	BRIM Premium	913	<u>17,460</u>
3	Total		\$ 208,062

*179-West Virginia State Police-
Bail Bond Enforcer Fund
(WV Code Chapter 15)*

Fund 6532 FY 2006 Org 0612

1	Unclassified-Total	096	\$ 3,308
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*180-Division of Veterans' Affairs-
Veterans' Facilities Support Fund
(WV Code Chapter 19A)*

Fund 6703 FY 2006 Org 0613

1	Unclassified-Total	096	\$ 500,000
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*181-Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)*

Fund 6675 FY 2006 Org 0615

1	Personal Services	001	\$ 1,213,846
2	Annual Increment	004	16,550
3	Employee Benefits	010	406,374
4	Debt Service	040	9,000,000
5	Unclassified	099	<u>545,235</u>
6	Total		\$ 11,182,005

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

(WV Code Chapter 19A)

Fund 6754 FY 2006 Org 0618

1 Unclassified-Total 096 \$ 466,000

183-Fire Commission-

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2006 Org 0619

1	Personal Services	001	\$ 1,900,000
2	Annual Increment	004	22,000
3	Employee Benefits	010	672,000
4	Unclassified	099	460,062
5	BRIM Premium	913	<u>50,000</u>
6	Total		\$ 3,104,062

7 Any unexpended cash balance remaining in fund 6152 at
8 the close of the fiscal year 2005 is hereby available for expendi-
9 ture as part of the fiscal year 2006 appropriation.

184-Division of Criminal Justice Services-

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2006 Org 0620

1 Unclassified-Total 096 \$ 2,000,000

185-Criminal Justice Services-

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2006 Org 0620

1 Unclassified-Total 096 \$ 1,050,000

DEPARTMENT OF REVENUE

186-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2006 Org 0303

1	Personal Services	001	\$ 1,645,533
2	Annual Increment	004	14,000
3	Employee Benefits	010	496,433
4	Unclassified	099	<u>507,598</u>
5	Total		\$ 2,663,564

187-Tax Division-

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2006 Org 0702

1	Personal Services	001	\$ 17,274
2	Annual Increment	004	175
3	Employee Benefits	010	5,870
4	Unclassified	099	<u>7,797</u>
5	Total		\$ 31,116

188-Tax Division-

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2006 Org 0702

1	Personal Services	001	\$	830,304
2	Annual Increment	004		17,500
3	Employee Benefits	010		313,900
4	Unclassified	099		<u>235,847</u>
5	Total		\$	1,397,551

189-State Budget Office-

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2006 Org 0703

1	Public Employees Insurance Reserve			
2	Fund—Transfer	903	\$	6,100,000
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.			

190-Insurance Commissioner-

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2006 Org 0704

1	Personal Services	001	\$	556,330
2	Annual Increment	004		3,500
3	Employee Benefits	010		152,738
4	Unclassified	099		<u>487,242</u>
5	Total		\$	1,199,810

*191-Insurance Commissioner-**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2006 Org 0704

1	Personal Services	001	\$	331,028
2	Annual Increment	004		3,500
3	Employee Benefits	010		98,192
4	Unclassified	099		<u>97,851</u>
5	Total		\$	530,571

192-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2006 Org 0704

1	Personal Services (R)	001	\$	14,427,807
2	Annual Increment (R)	004		217,365
3	Employee Benefits (R)	010		5,371,483
4	Unclassified (R)	099		<u>5,424,719</u>
5	Total		\$	25,441,374

6 Any unexpended balances remaining in the appropriations
7 for Personal Services (fund 7152, activity 001), Annual
8 Increment (fund 7152, activity 004), Employee Benefits (fund
9 7152, activity 010), and Unclassified (fund 7152, activity
10 099) at the close of the fiscal year 2005 are hereby
11 reappropriated for expenditure during the fiscal year 2006.

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

193-Insurance Commissioner—

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2006 Org 0704

1 Unclassified-Total 096 \$ 500,000,000

194-Insurance Commissioner—

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2006 Org 0704

1 Unclassified-Total 096 \$ 27,000,000

195-Insurance Commissioner—

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2006 Org 0704

1 Unclassified-Total 096 \$ 5,000,000

196-Insurance Commissioner—

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2006 Org 0704

1 Unclassified-Total 096 \$10,000,000

197-Insurance Commissioner—

Private Carrier Guaranty Fund

(WV Code Chapter 23)

Fund 7166 FY 2006 Org 0704

1	Unclassified-Total	096	\$ 1,000,000
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198-Insurance Commissioner—

Assigned Risk Fund

(WV Code Chapter 23)

Fund 7167 FY 2006 Org 0704

1	Unclassified-Total	096	\$ 1,000,000
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199-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2006 Org 0706

1	Personal Services	001	\$ 161,262
2	Annual Increment	004	4,300
3	Employee Benefits	010	62,024
4	Unclassified	099	<u>78,579</u>
5	Total		\$ 306,165

200-Racing Commission-

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2006 Org 0707

1	Medical Expenses-Total	245	\$ 57,000
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2 The total amount of this appropriation shall be paid from
 3 the special revenue fund out of collections of license fees and
 4 fines as provided by law.

5 No expenditures shall be made from this account except for
 6 hospitalization, medical care and/or funeral expenses for
 7 persons contributing to this fund.

201-Racing Commission-

Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2006 Org 0707

1	Personal Services	001	\$	66,444
2	Annual Increment	004		1,000
3	Employee Benefits	010		24,152
4	Unclassified	099		<u>39,716</u>
5	Total		\$	131,312

202-Racing Commission-

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2006 Org 0707

1	Personal Services	001	\$	1,770,000
2	Annual Increment	004		20,250
3	Employee Benefits	010		459,000
4	Unclassified	099		<u>380,728</u>
5	Total		\$	2,629,978

203-Racing Commission-

Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2006 Org 0707

1	Unclassified-Total	096	\$	61,425
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*204-Alcohol Beverage Control Administration-**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2006 Org 0708

1	Personal Services	001	\$	224,718
2	Annual Increment	004		4,000
3	Employee Benefits	010		93,680
4	Unclassified	099		<u>114,939</u>
5	Total		\$	437,337

6 To the extent permitted by law, four classified exempt
7 positions shall be provided from Personal Services line item for
8 field auditors.

205-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2006 Org 0708

1	Personal Services	001	\$	3,585,014
2	Annual Increment	004		79,000
3	Employee Benefits	010		1,341,893
4	Unclassified (R)	099		<u>1,855,070</u>
5	Total		\$	6,860,977

6 Any unexpended balance remaining in Unclassified (fund
7 7352, activity 099) at the close of the fiscal year 2005 is hereby
8 reappropriated for expenditure during the fiscal year 2006.

9 From the above appropriation an amount * of \$500,000
10 shall be used for the Tobacco/Alcohol Education Program.

11 The total amount of this appropriation shall be paid from a
12 special revenue fund out of liquor revenues.

13 The above appropriation includes the salary of the commis-
14 sioner and the salaries, expenses and equipment of administra-
15 tive offices, warehouses and inspectors.

16 There is hereby appropriated from liquor revenues, in
17 addition to the above appropriation, the necessary amount for
18 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

206-Division of Motor Vehicles-

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2006 Org 0802

1	Personal Services	001	\$	502,810
2	Annual Increment	004		6,200
3	Employee Benefits	010		209,824
4	Unclassified	099		<u>907,463</u>
5	Total		\$	1,626,297

207-Division of Motor Vehicles-

Driver Rehabilitation

(WV Code Chapter 17C)

* CLERK'S NOTE: The Governor struck language on line 9.

Fund 8214 FY 2006 Org 0802

1	Unclassified-Total	096	\$	779,555
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*208-Division of Motor Vehicles-**Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 2006 Org 0802

1	Personal Services	001	\$	621,000
2	Annual Increment	004		15,900
3	Employee Benefits	010		184,990
4	Unclassified	099		<u>69,681</u>
5	Total		\$	891,571

*209-Division of Motor Vehicles-**Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 2006 Org 0802

1	Unclassified-Total	096	\$	375,830
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*210-Division of Motor Vehicles-**Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 2006 Org 0802

1	Unclassified-Total	096	\$	15,120
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211-Division of Motor Vehicles-

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2006 Org 0802

1 Unclassified-Total 096 \$ 189,000

212-Division of Highways-

A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2006 Org 0803

1 Unclassified-Total 096 \$ 3,425,625

HIGHER EDUCATION POLICY COMMISSION

213-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 2006 Org 0442

1	Debt Service (R)	040	\$ 4,822,241
2	General Capital Expenditures (R)	306	<u>500,000</u>
3	Total		\$ 5,322,241

4 Any unexpended balances remaining in the appropriations
5 at the close of fiscal year 2005 are hereby reappropriated for
6 expenditure during the fiscal year 2006.

7 The total amount of this appropriation shall be paid from
8 the special capital improvements fund created in section eight,
9 article ten, chapter eighteen-b of the code.

10 The above appropriations, except for debt service, may be
11 transferred to special revenue funds for capital improvement
12 projects at the institutions.

214-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 2006 Org 0442

1	Debt Service (R)	040	\$23,736,048
2	General Capital Expenditures (R)	306	500,000
3	Facilities Planning		
4	and Administration (R)	386	<u>388,258</u>
5	Total		\$ 24,624,306

6 Any unexpended balances remaining in the appropriations
7 at the close of fiscal year 2005 are hereby reappropriated for
8 expenditure during the fiscal year 2006.

9 The total amount of this appropriation shall be paid from
10 the special capital improvement fund created in section eight,
11 article ten, chapter eighteen-b of the code.

12 The above appropriations, except for debt service, may be
13 transferred to special revenue funds for capital improvement
14 projects at the institutions.

215-Higher Education Policy Commission-

1977 State System Registration Fee Refund Revenue Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2006 Org 0442

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2005 is hereby reappropriated for
3 expenditure during the fiscal year 2006.

4 The appropriation shall be paid from available unexpended
5 cash balances and interest earnings accruing to the fund. The
6 appropriation shall be expended at the discretion of the Higher
7 Education Policy Commission and the funds may be allocated
8 to any institution within the system.

9 The total amount of this appropriation shall be paid from
10 the unexpended proceeds of revenue bonds previously issued
11 pursuant to section eight, article ten, chapter eighteen-b of the
12 code, which have since been refunded.

216-Higher Education Policy Commission-

Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2006 Org 0442

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2005 is hereby reappropriated for
3 expenditure during the fiscal year 2006.

4 The appropriation shall be paid from available unexpended
5 cash balances and interest earnings accruing to the fund. The
6 appropriation shall be expended at the discretion of the Higher
7 Education Policy Commission and the funds may be allocated
8 to any institution within the system.

9 The total amount of this appropriation shall be paid from
10 the unexpended proceeds of revenue bonds previously issued
11 pursuant to section eight, article twelve-b, chapter eighteen of
12 the code, which have since been refunded.

217-Health Sciences-

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2006 Org 0463

1 Unclassified-Total (R) 096 \$15,359,466

2 Any unexpended balance remaining in the appropriation at
3 the close of fiscal year 2005 is hereby reappropriated for
4 expenditure during the fiscal year 2006.

218-Higher Education Policy Commission-

Fairmont State College

(WV Code Chapters 18 and 18B)

Fund 4457 FY 2006 Org 0484

1 Any unexpended balance remaining in the appropriation at
2 the close of the fiscal year 2005 is hereby reappropriated for
3 expenditure during the fiscal year 2006.

MISCELLANEOUS BOARDS AND COMMISSIONS

219-Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2006 Org 0322

1	Personal Services	001	\$ 22,312,746
2	Annual Increment	004	326,288
3	Employee Benefits	010	8,118,195
4	Unclassified (R)	099	<u>12,191,943</u>
5	Total		\$42,949,172

6 Any unexpended balances remaining in the appropriations
 7 for Unclassified (fund 3440, activity 099) and Technology
 8 Improvements (fund 3440, activity 599) at the close of the
 9 fiscal year 2005 are hereby reappropriated for expenditure
 10 during the fiscal year 2006.

11 From the above fund, moneys may be expended, transferred
 12 or otherwise disbursed for operating expenditures of the
 13 Worker's Compensation Commission or to comply with any
 14 and all requirements related to SB 1004 regarding transfers of
 15 monies to other funds or accounts established by code or to the
 16 Employers' Mutual Insurance Company created pursuant to
 17 Senate Bill 1004.

220-Workers' Compensation Fund—

Mutualization Transition Fund

(WV Code Chapter 23)

Fund 3462 FY 2006 Org 0322

1	Unclassified-Total	096	\$ 35,000,000
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2 From the above fund, moneys may be expended, transferred
 3 or otherwise disbursed for operating expenditures for the
 4 Worker’s Compensation Commission or to comply with any
 5 and all requirements related to Senate Bill No. 1004, First
 6 Extraordinary Session of 2005, regarding transfers of money to
 7 other funds or accounts established by Code or to the Employ-
 8 ers’ Mutual Insurance Company created pursuant to Senate Bill
 9 No. 1004.

221-Workers’ Compensation Fund-New Fund

(WV Code Chapter 23)

Fund 3463 FY 2006 Org 0322

1	Unclassified-Total	096	\$500,000,000
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2 From the above fund, moneys may be expended, transferred
 3 or otherwise disbursed only for payments of new claims for
 4 which New Fund funds may be expended under Senate Bill No.
 5 1004, First Extraordinary Session of 2005, pursuant to the
 6 requests of the Employers’ Mutual Insurance Company for
 7 payments of the same to the State Treasurer created pursuant to
 8 Senate Bill No. 1004, * ~~and the provisions of West Virginia~~
 9 ~~Code §11B-2-18 shall not operate to permit expenditures in~~
 10 ~~excess of the funds authorized for expenditure herein.~~

222-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2006 Org 0509

1	Personal Services	.....	001	\$	46,024
2	Annual Increment	.....	004		750

* CLERK’S NOTE: The Governor struck language on line 8 through 10.

3	Employee Benefits	010	17,453
4	Unclassified.	099	<u>30,273</u>
5	Total		\$ 94,500

6 The total amount of this appropriation shall be paid from
 7 the special revenue fund out of fees and collections as provided
 8 by article twenty-nine-a, chapter sixteen of the code.

*223-WV State Board of Examiners for Licensed Practical
 Nurses*

(WV Code Chapter 30)

Fund 8517 FY 2006 Org 0906

1	Unclassified-Total	096	\$ 363,090
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*224-WV Board of Examiners for Registered Professional
 Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2006 Org 0907

1	Unclassified-Total	096	\$ 883,619
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225-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2006 Org 0926

1	Personal Services	001	\$ 7,916,582
2	Annual Increment	004	130,000
3	Employee Benefits	010	2,858,493
4	Unclassified	099	2,105,355
5	Weight Enforcement Program	345	4,566,000
6	Debt Payment/Capital Outlay	520	350,000
7	BRIM Premium	913	<u>160,715</u>
8	Total		\$ 18,087,145

9 The total amount of this appropriation except for the PSC
 10 Weight Enforcement appropriation (activity 345) shall be paid
 11 from a special revenue fund out of collection for special license
 12 fees from public service corporations as provided by law. The
 13 amount appropriated to the PSC Weight Enforcement (activity
 14 345) shall be paid from the state road fund as provided by law.

15 The Public Service Commission is authorized to spend up
 16 to \$500,000, from surplus funds in this account, to meet the
 17 expected deficiencies in the Motor Carrier Division account due
 18 to passage of enrolled house bill no. 2715, regular session,
 19 1998.

226-Public Service Commission-

Gas Pipeline Division—

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2006 Org 0926

1	Personal Services	001	\$	152,476
2	Annual Increment	004		5,556
3	Employee Benefits	010		57,669
4	Unclassified	099		<u>80,971</u>
5	Total		\$	296,672

6 The total amount of this appropriation shall be paid from a
 7 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.

227-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2006 Org 0926

1	Personal Services	001	\$ 1,582,433
2	Annual Increment	004	40,000
3	Employee Benefits	010	621,607
4	Unclassified	099	<u>501,067</u>
5	Total		\$ 2,745,107

6 The total amount of this appropriation shall be paid from a
 7 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.

*228-Public Service Commission-**Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2006 Org 0926

1	Personal Services	001	\$ 505,577
2	Annual Increment	004	6,650
3	Employee Benefits	010	157,595
4	Unclassified	099	264,961
5	BRIM Premium	913	<u>3,764</u>
6	Total		\$ 938,547

7 The total amount of this appropriation shall be paid from a
 8 special revenue fund out of collections made by the public
 9 service commission.

229-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2006 Org 0927

1	Personal Services	001	\$	360,695
2	Annual Increment	004		6,500
3	Employee Benefits	010		115,700
4	Unclassified	099		<u>236,526</u>
5	Total		\$	719,421

6 The total amount of this appropriation shall be paid out of
7 collections of license fees as provided by law.

230-WV Board of Examiners for Speech-Language

Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2006 Org 0930

1	Unclassified-Total	096	\$	70,875
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231-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2006 Org 0935

1	Unclassified-Total	096	\$	98,894
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232-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2006 Org 0936

1	Unclassified-Total	096	\$	18,900
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233-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2006 Org 0938

1	Unclassified-Total	096	\$ <u>80,000</u>
2	Total TITLE II, Section 3-		
3	Other Funds		\$ <u><u>1,779,193,025</u></u>

1 **Sec. 4. Appropriations from lottery net profits.**-Net
2 profits of the lottery are to be deposited by the director of the
3 lottery to the following accounts in the amounts indicated. The
4 director of the lottery shall prorate each deposit of net profits in
5 the proportion the appropriation for each account bears to the
6 total of the appropriations for all accounts.

7 After first satisfying the requirements for Fund 2252 and
8 Fund 3963 pursuant to section eighteen, article twenty-two,
9 chapter twenty-nine of the code, the director of the lottery shall
10 make available from the remaining net profits of the lottery any
11 amounts needed to pay debt service for which an appropriation
12 is made for Fund 3167 and Fund 4297, and is authorized to
13 transfer any such amounts to Fund 3167 and Fund 4297 for that
14 purpose. Upon receipt of reimbursement of amounts so trans-
15 ferred, the director of the lottery shall deposit the reimburse-
16 ment amounts to the following accounts as required by this
17 section.

234-Education, Arts, Sciences and Tourism-

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2006 Org 0211

			Lottery
			Funds
	Activity		
1	Debt Service-Total	310	\$ 10,000,000

*235-West Virginia Development Office-**Division of Tourism*

(WV Code Chapter 5B)

Fund 3067 FY 2006 Org 0304

1	Tourism-Telemarketing Center	463	\$	90,000
2	WV Film Office	498		102,515
3	Motor Sports Council	513		90,000
4	Tourism-Advertising (R)	618		3,154,815
5	Tourism-Unclassified	662		<u>4,185,765</u>
6	Total		\$	7,623,095

7 Any unexpended balances remaining in the appropriations
 8 for Tourism-Advertising (fund 3067, activity 618), State Parks
 9 and Recreation Advertising (fund 3067, activity 619), Capitol
 10 Complex-Capital Outlay (fund 3067, activity 417), Tourism-
 11 Special Projects (fund 3067, activity 859), Tourism-Unclassi-
 12 fied (fund 3067, activity 662), Tourism-Unclassified-Lottery
 13 Surplus (fund 3067, activity 773)and Stonewall Jackson State
 14 Park (fund 3067, activity 959) at the close of the fiscal year
 15 2005 are hereby reappropriated for expenditure during the fiscal
 16 year 2006.

236-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2006 Org 0310

1	Gypsy Moth Suppression			
2	Program for State Parks (R)	017	\$	42,997
3	Unclassified (R)	099		2,147,570
4	Pricketts Fort State Park	324		92,874
5	Non-Game Wildlife (R)	527		423,649

6	State Parks and		
7	Recreation Advertising (R)	619	588,206
8	West Virginia Stream		
9	Partners Program (R)	637	<u>77,396</u>
10	Total		\$ 3,372,692

11 Any unexpended balances remaining in the appropriations
 12 for Gypsy Moth Suppression Program for State Parks (fund
 13 3267, activity 017), Unclassified (fund 3267, activity 099),
 14 State Recreation Area Improvements (fund 3267, activity 307),
 15 Capital Outlay-Parks (fund 3267, activity 288), Flood Repara-
 16 tions (fund 3267, activity 400), Non-Game Wildlife (fund 3267,
 17 activity 527, State Parks and Recreation Advertising (fund
 18 3267, activity 619), West Virginia Stream Partners Program
 19 (fund 3267, activity 637), Parks Operations-Unclassified (fund
 20 3267, activity 645), State Parks-Special Projects (fund 3267,
 21 activity 860) and State Parks Repairs, Renovations, Mainte-
 22 nance and Life Safety Repairs (fund 3267, activity 911) at the
 23 close of the fiscal year 2005 are hereby reappropriated for
 24 expenditure during the fiscal year 2006.

237-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2006 Org 0402

1	Unclassified	099	\$ 4,138,000
2	34/1000 Waiver	139	0
3	National Teacher Certification	161	0
4	Technology Repair and		
5	Modernization (R)	298	0
6	Technology Infrastructure Network (R)	351	20,470,000
7	READS Program	365	300,000
8	Early Retirement Notification Incentive	366	0
9	MATH Program	368	400,000
10	Vocational Education		
11	Equipment Replacement	393	819,750

12	Assessment Program	396	6,407,679
13	Teacher Reimbursement	573	0
14	Teacher Relocation	574	10,000
15	National Science Foundation Match/WV		
16	Science	578	0
17	Principals Academy	802	0
18	Educational Program Allowance	996	<u>0</u>
19	Total		\$ 32,545,429

20 Any unexpended balances remaining in the appropriations
 21 for Computer Basic Skills (fund 3951, activity 145),
 22 S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair
 23 and Modernization (fund 3951, activity 298), Technology
 24 Infrastructure Network (fund 3951, activity 351), Technology
 25 and Telecommunications Initiative (fund 3951, activity 596),
 26 Technology Demonstration Project (fund 3951, activity 639)
 27 and Computer Study (fund 3951, activity 998) at the close of
 28 the fiscal year 2005 are hereby reappropriated for expenditure
 29 during the fiscal year 2006.

30 The above appropriation for Technology Infrastructure
 31 Network shall be expended on the following programs and
 32 technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,
 33 Technology Repair and Modernization, Technology and
 34 Telecommunications Initiative and other programs in the field
 35 that will benefit the Counties. ~~*No more than 40% of the total~~
 36 ~~appropriation shall be allotted to Computer Basic Skills and~~
 37 ~~S.U.C.C.E.S.S.~~

238-State Department of Education-

School Building Authority-

Debt Service Fund

* CLERK'S NOTE: The Governor struck language on line 35 through line 37.

(WV Code Chapter 18)

Fund 3963 FY 2006 Org 0402

1 Debt Service-Total 310 \$ 18,000,000

239-Department of Education and the Arts-

Office of the Secretary-

Control Account-

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2006 Org 0431

1	WV Humanities Council	168	\$	350,000
2	Commission for National			
3	Community Service	193		160,050
4	Technical Preparation Program	440		450,000
5	Arts Programs (R)	500		40,000
6	College Readiness (R)	579		200,000
7	LATA Access (R)	580		360,000
8	Energy Express	861		0
9	Special Olympic Games	966		25,000
10	Center for Excellence in Disabilities ...	967		<u>100,000</u>
11	Total		\$	1,685,050

12 Any unexpended balances remaining in the appropriations
13 for Unclassified (fund 3508, activity 099), Arts Programs (fund
14 3508, activity 500), College Readiness (fund 3508, activity
15 579), LATA Access (fund 3508, activity 580) and WV2001
16 Project (fund 3508, activity 836) at the close of fiscal year 2005
17 are hereby reappropriated for expenditure during the fiscal year
18 2006.

19 *From the Technical Preparation Program (activity 440),
 20 \$350,000 shall be allocated to Southern West Virginia Commu-
 21 nity and Technical College for shared facilities at Southern
 22 West Virginia Community College/Boone County Technical
 23 Center/Yeager Vocational School and Shepherd College/James
 24 Rumsey Vocational Center and \$100,000 to Southern West
 25 Virginia Community and Technical College.

240-Division of Culture and History-

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2006 Org 0432

1	Huntington Symphony	027	\$	75,000
2	Martin Luther King, Jr.			
3	Holiday Celebration	031		10,800
4	Fairs and Festivals	122		2,015,000
5	Archeological Curation/Capital			
6	Improvements (R)	246		50,344
7	Historic Preservation Grants (R)	311		450,000
8	West Virginia Public Theater	312		200,000
9	Tri-County Fair Association	343		125,000
10	George Tyler Moore Center for the			
11	Study of the Civil War	397		60,000
12	Theater Arts of West Virginia	464		420,000
13	Grants for Competitive Arts Program (R)	624		810,000
14	Contemporary American			
15	Theater Festival	811		110,000
16	Independence Hall (R)	812		50,000
17	Mountain State Forest Festival	864		70,000
18	Charleston Symphony	659		75,000
19	West Virginia State Fair	657		<u>50,000</u>
20	Total		\$	4,571,144

* CLERK'S NOTE: The Governor struck language on line 19 through line 25.

21 Any unexpended balances remaining in the appropriations
22 for Archeological Curation/Capital Improvements (fund 3534,
23 activity 246), Historic Preservation Grants (fund 3534, activity
24 311), Capital Outlay, Repairs and Equipment (fund 3534,
25 activity 589), Grants for Competitive Arts Program (fund 3534,
26 activity 624), Independence Hall (fund 3534, activity 812) and
27 Project ACCESS (fund 3534, activity 865) at the close of the
28 fiscal year 2005 are hereby reappropriated for expenditure
29 during the fiscal year 2006.

30 Included in the above appropriation for Fairs/Festivals
31 (activity 122), funding shall be provided to the African-Ameri-
32 can Cultural Heritage Festival 5,000, African-American
33 Heritage Family Tree Museum 4,500, African-American
34 Jubilee (Ohio) 5,500, Alderson 4th of July Celebration
35 (Greenbrier) 3,000, Allegheny Echo (Pocahontas) 7,500, Alpine
36 Festival/Leaf Peepers Festival (Tucker) 11,250, American
37 Legion Post 8 - Veterans Day Parade 2,000, Annual Labor Day
38 Observance (Randolph) 2,000, Annual Law Enforcement Day
39 (Lewis) 2,000, Apollo Theater - Summer Program (Berkeley)
40 2,000, Appalachian Autumn Festival (Braxton) 3,500, Appala-
41 chian Mountain Bike Race (Calhoun) 1,500, Apple Butter
42 Festival (Morgan) 6,000, Aracoma Story (Logan) 50,000,
43 Arkansaw Homemaker's Heritage Weekend (Hardy) 3,500,
44 Armed Forces Day-South Charleston 3,000, Arthurdale
45 Heritage (Preston) 4,000, Athens Town Fair (Mercer) 2,000,
46 Augusta Fair (Randolph) 5,000, Barbour County Arts &
47 Humanities Council 1,500, Barbour County Fair 2,500,
48 Barboursville Octoberfest (Cabell) 5,000, Bass Festival
49 (Pleasants) 1,850, Battle of Dry Creek (Greenbrier) 1,500,
50 Battle of Point Pleasant Memorial Committee 5,000, Beckley
51 Main Street (Raleigh) 5,000, Belington VFD Community Fair
52 (Barbour) 1,750, Belle Boyd House (Berkeley) 2,000, Belle Fall
53 Festival (Kanawha) 2,000, Bergoo Down Home Days (Webster)
54 2,500, Berkeley County Youth Fair 3,500, Birch River Days
55 Festival (Nicholas) 2,000, Black Bear 40K Mountain Bike Race

56 1,000, Black Heritage Festival (Harrison) 2,500, Black Walnut
57 Festival (Roane) 3,800, Blue-Gray Reunion (Barbour) 3,500,
58 Boone County Fair 6,500, Boone County Labor Day Celebra-
59 tion 4,000, Bradshaw Fall Festival (McDowell) 2,000,
60 Bramwell Street Fair (Mercer) 1,500, Braxton County Arts and
61 Crafts Fair 500, Braxton County Fairs and Festivals Association
62 9,000, Braxton County Homecoming 500, Brooke County Fair
63 2,500, Bruceton Mills Good Neighbor Days (Preston) 2,000,
64 Buckwheat Festival (Preston) 6,000, Buffalo 4th of July
65 Celebration (Putnam) 500, Buffalo Creek Memorial (Logan)
66 5,000, Burlington Apple Harvest Festival (Mineral) 8,000,
67 Cabell County Fair 10,000, Cabwaylingo Forest Foundation
68 (Wayne) 1,500, Calhoun County Wood Festival 2,000, Cape
69 Coalwood Festival Association (McDowell) 2,500, Capon
70 Bridge Annual VFD Celebration (Hampshire) 1,000, Capon
71 Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie Hall,
72 Inc. (Greenbrier) 70,000, Cass Homecoming (Pocahontas)
73 2,000, Celebration in the Park (Wood) 3,000, Celebration of
74 America (Monongalia) 6,000, Ceredo Historical Society
75 (Wayne) 2,000, Ceredo Landmark Commission (Wayne) 1,500,
76 Ceredo-Kenova Railroad Museum (Wayne) 2,000,
77 Chapmanville Apple Butter Festival (Logan) 1,000,
78 Chapmanville Fire Department 4th of July 3,000, Charles Town
79 Summer Sampler (Jefferson) 1,000, Charleston River Lights
80 Project (Kanawha) 10,000, Cherry River Festival (Nicholas)
81 6,500, Chester Fireworks (Hancock) 1,500, Chief Logan State
82 Park-Civil War Celebration 8,000, Christmas in Shepherdstown
83 (Jefferson) 4,000, Christmas in the Park (Logan) 25,000, Civil
84 War Horse Cavalry Race (Barbour) 1,000, Clay County
85 Agriculture Youth Fair 1,500, Clay County Golden Delicious
86 Festival 5,000, Coal Field Jamboree (Logan) 35,000, Coalton
87 Days Fair (Randolph) 7,000, Collis P. Huntington Railroad
88 Historical Society 10,000, Country Roads Festival (Fayette)
89 2,000, Cowen Railroad Festival (Webster) 3,500, Craigsville
90 Fall Festival 3,500, Cross Lanes Annual Festival (Kanawha)

91 8,000, Doddridge County Fair 5,200, Durbin Days (Pocahontas)
92 2,000, Elbert/Filbert Reunion Festival (McDowell) 1,500,
93 Elizabethtown Festival (Marshall) 4,000, Ellenboro Glass
94 Festival (Ritchie) 3,000, Fairview 4th of July Celebration
95 (Marion) 1,000, Fayette American Legion 4th of July 1,000,
96 Fellowsville Firemen's Festival (Preston) 1,000, First Stage
97 Children's Theater Company (Cabell) 1,000, Flatwood Days
98 (Braxton) 1,000, Flemington Day Fair and Festival (Taylor)
99 3,500, Follansbee Community Days (Brooke) 3,750, Fort
100 Ashby Fort (Mineral) 1,500, Fort Gay Mountain Heritage Days
101 (Wayne) 5,000, Fort Randolph (Mason) 5,000, Frankford
102 Autumnfest (Greenbrier) 3,000, Friends Auxiliary of W.R.
103 Sharpe Hospital 5,000, Frontier Fest/Canaan Valley (Taylor
104 County) 5,000, Fund for the Arts-Wine & All that Jazz Festival
105 2,500, Gassaway Days Celebration (Braxton) 3,500, General
106 Adam Stephen Memorial Foundation 18,525, Gilbert Kiwanis
107 Harvest Festival 1,000, Gilbert Spring Fling (Mingo) 1,000,
108 Gilmer County Farm Show 3,500, Grafton Mother's Day Shrine
109 Committee (Taylor) 7,500, Grafton Railroad Festival (Taylor)
110 1,000, Grant County Arts Council 2,000, Grape Stomping Wine
111 Festival (Nicholas) 2,000, Greater Quinwood Days (Greenbrier)
112 2,000, Green Spring Days (Hampshire) 1,000, Greenbrier
113 Valley Theater 50,000, Guyandotte Civil War Days (Cabell)
114 10,000, Hamlin 4th of July Celebration (Lincoln) 3,500,
115 Hampshire Civil War Celebration Days 1,000, Hampshire
116 County Fair 6,000, Hampshire County French & Indian War
117 Celebration 1,000, Hampshire Herbs & Arts Festival 1,000,
118 Hampshire Heritage Days 2,000, Hardy County Commission -
119 4th of July 10,000, Harts Community Celebration (Lincoln)
120 1,000, Heritage Craft Center of the Eastern Panhandle 7,000,
121 Heritage Craft Festival (Monroe) 1,000, Heritage Days Festival
122 (Roane) 1,500, Hicks Festival (Tucker) 2,000, Hilltop Festival
123 (Huntington) 500, Hinton Railroad Days (Summers) 3,000,
124 Historic Fayette Theater (Fayette) 5,500, Holly River Festival
125 (Webster) 1,500, Hundred 4th of July (Wetzel) 7,250, Hunting-

126 ton Outdoor Theater (Cabell) 1,000, Iaeger Lions Club Annual
 127 Car Show (McDowell) 1,500, Iaeger Town Fair (McDowell)
 128 1,500, Indian Mound Cemetery (Hampshire) 2,000, Interna-
 129 tional Ramp Cook-Off (Randolph) 2,000, Irish Heritage
 130 Festival of WV (Raleigh) 6,000, Irish Spring Festival (Lewis)
 131 1,000, Italian Heritage Festival - Clarksburg 25,000,
 132 Jacksonburg Homecoming (Wetzel) 1,000, Jane Lew Arts and
 133 Crafts Fair (Lewis) 1,000, Jefferson Co. Black History Preser-
 134 vation Society 5,000, Jefferson Co. Historical Landmark
 135 Commission 8,000, Jersey Mountain Ruritan Pioneer Days
 136 (Hampshire) 1,000, John Henry Days Festival (Monroe) 4,000,
 137 Johnstown Community Fair (Harrison) 2,500, Junior Heifer
 138 Preview Show (Lewis) 2,000, Kanawha Coal Riverfest - St.
 139 Albans July 5,000, Kay Ford Reunion (Kanawha) 2,500,
 140 Kenova Fall Festival (Wayne) 5,000, Kermit Fall Festival
 141 (Mingo) 3,000, Keyser Old Fashioned 4th of July Celebration
 142 1,000, King Coal Festival (Mingo) 3,500, Kingwood Downtown
 143 Street Fair and Heritage Days 2,000, Lady of Agriculture
 144 (Preston) 1,000, Lamb and Steer Show 9,000, Last Blast of
 145 Summer (McDowell) 5,000, Laurel Mt. Re-enactment Commit-
 146 tee (Barbour) 3,250, Levels VFD Lawn Association (Hamp-
 147 shire) 1,000, Lewis County Fair Association 3,500, Lewisburg
 148 Shanghai (Greenbrier) 2,000, Lincoln County Fall Festival
 149 6,000, Lincoln County Winterfest 5,000, Lincoln District Fair
 150 (Marion) 2,500, Lindside 4th of July (Monroe) 500, Little Birch
 151 Days Celebration (Braxton) 500, Little Levels Heritage Festival
 152 2,000, Logan County Arts and Crafts Fair 4,000, Lost Creek
 153 Community Festival 6,000, Maddie Carroll House (Cabell)
 154 7,500, Mannington District Fair (Marion) 6,000, Maple Syrup
 155 Festival (Randolph) 1,000, Marmet Annual Labor Day Celebra-
 156 tion (Kanawha) 2,000, Marshall County Antique Power Show
 157 2,500, Marshall County Fair 4,500, Marshall County Historical
 158 Society 8,500, Marshall County Riverfront Festival 2,500,
 159 Mason County Fair 5,000, Mason Dixon Festival (Monongalia)
 160 7,000, Matewan-Magnolia Fair (Mingo) 4,000, McARTS-

161 McDowell County 20,000, McCoy Theater (Hardy) 20,000,
162 McDowell County Fair 2,500, McGrew House History Day
163 2,000, McNeill's Rangers (Mineral) 8,000, Meadow Bridge
164 Hometown Festival (Fayette) 1,250, Meadow River Days
165 Festival 3,000, Mid-State Archers Amateur Shoot (Braxton)
166 1,500, Mineral County Fair 1,750, Molasses Festival (Calhoun)
167 2,000, Moncove Lake Festival (Monroe) 2,000, Monroe County
168 Farmer's Day - Union 2,000, Monroe County Harvest Festival
169 2,000, Mothers' Day Festival (Randolph) 2,500, Moundsville
170 July 4th Celebration (Marshall) 5,000, Moundsville Bass
171 Festival 4,000, Mount Liberty Fall Festival (Barbour) 2,500,
172 Mountain Festival (Mercer) 4,625, Mountain Heritage Arts and
173 Crafts Festival 2,000, Mountain State Apple Harvest Festival
174 (Berkeley) 7,500, Mountaineer Boys' State (Lewis) 10,000,
175 Mountaineer Hot Air Balloon Festival 4,000, Mud River
176 Festival (Lincoln) 8,000, Northern Preston Mule Pull and
177 Farmers Days 4,000, Mullens Dogwood Festival (Wyoming)
178 6,000, Multi-Cultural Festival of West Virginia 20,000,
179 Museum in the Community (Putnam) 45,000, Music Hall of
180 Fame (Marion) 5,000, New Cumberland 4th of July (Hancock)
181 2,000, New River Bridge Day Festival (Fayette) 5,000, New-
182 burg Volunteer Fireman's Field Day (Preston) 1,000, Newell
183 Annual Clay Festival (Hancock) 3,000, Nicholas County Potato
184 Festival 3,500, Nicholas Old Main Foundation (Nicholas)
185 2,000, Norman Dillon Farm Museum (Berkeley) 10,000, North
186 Preston Farmers Club - Civil War Times 1,000, North River
187 Valley Festival (Hampshire) 1,000, Oak Leaf Festival (Fayette)
188 4,000, Oceana Heritage Festival (Wyoming) 6,000, Oglebay
189 City Park - Festival of Lights (Ohio) 80,000, Oglebay Festival
190 (Ohio) 5,000, Ohio County Fair 8,500, Old Central City Fair
191 (Huntington) 5,000, Old Opera House Theater Company
192 (Jefferson) 15,000, Old Tyme Christmas (Jefferson) 2,325,
193 Paden City Labor Day Festival (Wetzel) 6,500, Panther Fall
194 Festival (McDowell) 4,000, Parkersburg Arts Center 20,000,
195 Parkersburg Homecoming (Wood) 12,000, Paw Paw District

196 Fair (Marion) 3,500, Pax Reunion Committee (Fayette) 5,000,
197 Pendleton County 4-H Weekend 2,000, Pendleton County
198 Committee for Arts 15,000, Pennsboro Country Road Festival
199 2,000, Petersburg Fourth of July Celebration 20,000,
200 Peterstown 4th of July Horse Show (Grant) 1,000, Piedmont-
201 Annual Back Street Festival 4,000, Pinch Reunion (Kanawha)
202 1,500, Pine Bluff Fall Festival 1,000, Pine Grove 4th of July
203 Festival (Wetzel) 5,000, Pineville Festival (Wyoming) 6,000,
204 Pleasants County Agriculture Youth Fair 5,000, Poca Heritage
205 Days (Putnam) 3,000, Pocahontas County Pioneer Days 7,000,
206 Pocahontas Historic Opera House 6,000, Point Pleasant Artist
207 Series 5,000, Point Pleasant Stern Wheel Regatta River 5,000,
208 Potomac Highlands Maple Festival (Grant) 6,000, Princeton
209 Civil War Heritage Days (Mercer) 1,000, Princeton Town Fair
210 (Mercer) 5,000, Putnam County Fair 5,000, Quartets on
211 Parade(Wardensville)4,000, Raleigh County All Wars Museum
212 10,000, Randolph County Community Arts Council 3,000,
213 Ravenswood Octoberfest 5,000, Reedsville VFD Fair (Preston)
214 2,000, Rhododendron Girls' State (Ohio) 10,000, Ripley 4th of
215 July (Jackson) 15,000, Ritchie County Pioneer Days 1,000,
216 Ritter Park Days (Cabell) 3,000, River Heritage Days - Speed
217 Boat Race (Wetzel) 5,000, River Heritage Days Festival
218 (Wetzel) 6,000, Roane County 4-H and FFA Youth Livestock
219 Program 2,000, Ronceverte River Festival (Greenbrier) 3,000,
220 Rowlesburg Labor Day Festival (Preston) 1,000, Rupert
221 Country Fling (Greenbrier) 3,000, Salem Apple Butter Festival
222 (Harrison) 4,000, Scottish Heritage Society/N.Central WV
223 Central 5,000, Sistersville 4th of July Fireworks(Wetzel) 5,500,
224 Smoke on the Water (Kanawha) 2,000, Smoke on the Water
225 (Wetzel) 3,000, Soldiers' Memorial Theater (Raleigh) 10,000,
226 Southern WV Veterans' Museum (Summers) 4,500, Spring
227 Mountain Festival (Grant) 3,650, Springfield Peach Festival
228 (Hampshire) 1,200, St. Albans City of Lights - December
229 5,000, Stoco Reunion (Raleigh) 2,500, Stonewall Jackson
230 Heritage Arts and Crafts 6,000, Storytelling Festival (Lewis)

231 500, Strawberry Festival (Upshur) 20,000, Summer Fest of
232 Panther (McDowell) 1,500, Summers County Historic Land-
233 mark Commission 5,000, Summers County Railroad Days
234 Festival 2,500, Sumner-Ramer Heritage, Inc (Berkeley) 3,000,
235 Sylvester July 4th Celebration (Boone) 2,500, Taylor County
236 Fair 2,500, Terra Alta VFD 4th of July Celebration (Preston)
237 1,000, Thornton Pumpkin Festival (Taylor) 1,000, Those Who
238 Served War Museum (Mercer) 4,000, Three Rivers Avian
239 Center (Summers) 15,000, Three Rivers Coal Festival (Marion)
240 7,750, Thunder on the Tygart - Mothers' Day Celebration
241 15,000, Treasure Mountain Festival (Pendleton) 2,500, Tri-
242 County Fair (Grant) 10,000, Tucker County Arts Festival and
243 Celebration 18,000, Tucker County Fair 4,750, Tug Valley Arts
244 Council (Mingo) 5,000, Tunnelton Depot Days (Preston) 1,000,
245 Tunnelton Fire Department Carnival (Preston) 750, Tunnelton
246 Historical Society (Preston) 2,000, Turkey Festival (Hardy)
247 3,000, Tyler County Fair 5,200, Tyler County Fourth of July
248 500, Uniquely West Virginia Festival (Morgan) 2,000, Upper
249 Ohio Valley Italian Festival (Ohio) 7,000, Upper West Fork
250 Blue Grass Festival (Calhoun) 500, Upshur County Fair 7,000,
251 Valley District Fair- Reedsville (Preston) 2,500, War Home-
252 coming Fall Festival 1,500, Wardensville Fall Festival 5,000,
253 Wayne County Fair 5,000, Wayne County Fall Festival 5,000,
254 Webster County Woodchopping Festival 4,500, Webster Wild
255 Water Weekend 2,000, Weirton July 4th Celebration (Hancock)
256 3,000, Wellsburg 4th of July Celebration (Brooke) 3,000,
257 Wellsburg Apple Festival of Brooke County 4,000, West
258 Virginia Autumn Festival (Burnsville) 3,000, West Virginia
259 Blackberry Festival 5,000, West Virginia Coal Festival (Boone)
260 7,000, West Virginia Days - Hinton (Summers) 2,000, West
261 Virginia Fair and Exposition (Wood) 8,100, West Virginia
262 Highland Games & Celtic Festival 3,000, West Virginia Honey
263 Festival (Wood) 2,000, West Virginia Museum of Glass
264 (Lewis) 5,000, West Virginia Oil and Gas Festival (Tyler)
265 11,000, West Virginia Polled Hereford Assoc. 1,500, West

266 Virginia Poultry Festival (Hardy) 5,000, West Virginia Pump-
 267 kin Festival (Cabell) 5,000, West Virginia Roundhouse Rail
 268 Days (Berkeley) 25,000, West Virginia State Folk Festival
 269 4,500, West Virginia Water Festival - City of Hinton 16,000,
 270 West Virginia Wine & Jazz Festival (Monongalia) 9,000, West
 271 Virginia Wine and Arts Festival (Berkeley) 5,000, Weston Carp
 272 Festival & Fishing Tournament 4,000, Weston VFD 4th of July
 273 Firemen Festival (Lewis) 2,000, Wetzel County Autumnfest
 274 5,500, Wetzel County Town and Country Days 17,000,
 275 Wheeling Celtic Festival (Ohio) 2,000, Wheeling City of Lights
 276 8,000, Wheeling Sterwheel Regatta 10,000, Whipple Commu-
 277 nity Action (Fayette) 2,500, Whitesville - Big Coal River
 278 Festival (Boone) 4,000, Widen Days Festival (Calhoun) 2,000,
 279 Wileyville Homecoming (Wetzel) 4,000, Winter Festival of the
 280 Waters (Berkeley) 5,000, Wirt County Fair 2,500, Wirt County
 281 Pioneer Days 2,000, YMCA Camp Horseshoe 105,000, Youth
 282 Museum of Southern WV (Raleigh) 12,000, Youth Stockman
 283 Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House (Wayne)
 284 4,500.

285 The Fairs & Festival awards shall be funded in addition to,
 286 and not in lieu of, individual grant allocations derived from the
 287 Arts Council and the Cultural Grant Program allocations.

241-Library Commission-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2006 Org 0433

1	Books and Films	179	\$	500,000
2	Services to Libraries	180		500,000
3	Grants to Public Libraries	182		7,348,884
4	Digital Resources	309		219,992
5	Libraries-Special Projects	625		500,000

6	Infomine Network	884	<u>1,135,884</u>
7	Total		\$ 10,204,760

*242-Educational Broadcasting Authority-**Lottery Education Fund*

(WV Code Chapter 10)

Fund 3587 FY 2006 Org 0439

1	Mountain Stage	249	\$ 200,000
2	Star Schools	509	<u>208,538</u>
3	Total		\$ 408,538

4 Any unexpended balance remaining in the above appropria-
5 tion for Digital Conversion (fund 3587, activity 247) at the
6 close of the fiscal year 2004 is hereby reappropriated for
7 expenditure during the fiscal year 2005 with the exception of
8 fund 3587, fiscal year 2001, organization 0439, activity 247
9 which shall expire on June 30, 2005.

*243-Bureau of Senior Services-**Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2006 Org 0508

1	Local Programs Service Delivery Costs	200	\$ 2,475,250
2	In-Home Services for Senior Citizens ..	224	1,000,000
3	Nutrition Services for the Elderly	337	1,000,000
4	Senior Citizen Centers and Programs (R)	462	2,600,000
5	Direct Services	481	2,800,000
6	Transfer to Division of Human Services		
7	for Health Care and Title XIX Waiver		
8	for Senior Citizens	539	13,000,000

9	Senior Services Medicaid Transfer	871	10,300,000
10	Legislative Initiatives		
11	for the Elderly	904	5,200,000
12	Long Term Care Ombudsman	905	<u>321,325</u>
13	Total		\$ 38,696,575

14 Any unexpended balances remaining in the appropriation
 15 for Senior Citizen Centers and Programs (fund 5405, activity
 16 462) at the close of the fiscal year 2005 is hereby
 17 reappropriated for expenditure during the fiscal year 2006.

18 The above appropriation for Transfer to Division of Human
 19 Services for Health Care and Title XIX Waiver for Senior
 20 Citizens along with the federal moneys generated thereby shall
 21 be used for reimbursement for services provided under the
 22 program. Further, the program shall be preserved within the
 23 aggregate of these funds.

244-Higher Education Policy Commission-

Lottery Education-

Higher Education Policy Commission-

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2006 Org 0441

1	Marshall Medical School-		
2	RHI Program and Site Support (R) .	033	\$ 440,358
3	WVU Health Sciences		
4	RHI Program and Site Support (R) .	035	1,215,640
5	RHI Program and Site Support -		
6	District Consortia (R)	036	2,410,172
7	RHI Program and Site Support -		
8	RHEP Program Administration (R)	037	183,058

9	RHI Program and Site Support -		
10	Grad Med Ed and Fiscal		
11	Oversight (R)	038	99,387
12	Unclassified (R)	099	2,251,708
13	Higher Education Grant Program (R) . .	164	21,451,925
14	Tuition Contract Program (R)	165	705,387
15	Minority Doctoral Fellowship (R)	166	150,000
16	Underwood—Smith Scholarship		
17	Program-Student Awards (R)	167	141,142
18	School of Osteopathic Medicine (R) . . .	172	6,330,742
19	Health Sciences Scholarship (R)	176	148,767
20	School of Osteopathic Medicine BRIM		
21	Subsidy (R)	403	136,248
22	Higher Education-Special Projects (R) .	488	0
23	Rural Health Initiative—Medical Schools		
24	Support (R)	581	460,352
25	Vice Chancellor for Health Sciences—		
26	Rural Health Residency Program (R)	601	261,967
27	MA Public Health Program and		
28	Health Science Technology (R) . . .	623	57,642
29	HEAPS Grant Program (R)	867	5,000,422
30	WV Engineering, Science, and		
31	Technology Scholarship Program (R)	868	470,473
32	Health Sciences Career		
33	Opportunities Program (R)	869	58,108
34	HSTA Program (R)	870	<u>1,017,341</u>
35	Total		<u>\$ 42,990,839</u>

36 Any unexpended balances remaining in the appropriations
37 at the close of fiscal year 2005 are hereby reappropriated for
38 expenditure during the fiscal year 2006, with the exception of
39 fund 4455, fiscal year 2003, organization 0484, activity 404
40 which shall expire on June 30, 2005.

41 Total TITLE II, Section 4-Lottery Revenue \$170,098,122

1 **Sec. 5. Appropriations from state excess lottery revenue**
 2 **fund.**- In accordance with section eighteen-a, article twenty-
 3 two, chapter twenty nine of the code, the following appropria-
 4 tions shall be deposited and disbursed by the director of the
 5 lottery to the following accounts in this section in the amounts
 6 indicated.

245-Lottery Commission-

Refundable Credit

Fund 7207 FY 2006 Org 0705

	Activity	Lottery Funds
1 Unclassified-Total-Transfer	402	\$ 5,000,000

2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the General Revenue Fund
 4 to provide reimbursement for the refundable credit allowable
 5 under chapter eleven, article twenty-one, section twenty-one of
 6 the code. The amount of the required transfer shall be deter-
 7 mined solely by the state tax commissioner and shall be
 8 completed by the director of the lottery upon the commis-
 9 sioner’s request.

246-Lottery Commission-

General Purpose Account

Fund 7206 FY 2006 Org 0705

1 Unclassified-Total-Transfer	402	\$ 65,000,000
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2 The above appropriation for Unclassified-Total-Transfer
 3 (activity 402) shall be transferred to the General Revenue Fund
 4 as determined by the director of the lottery.

*247-Education Improvement Fund*Fund 4295 FY 2006 Org 0441

1 Unclassified-Total-Transfer (R) 402 \$27,000,000

2 The above appropriation for Unclassified-Total-Transfer
3 (activity 402) shall be transferred to the PROMISE Scholarship
4 Fund (fund 4296, org 0441) established by chapter eighteen-c,
5 article seven, section seven.

6 Since creating the PROMISE Scholarship Program in 2001,
7 the Legislature has directed that at a minimum, the administra-
8 tion of the Program maintain the financial stability of the fund
9 and provide for the award of scholarships within the limits of
10 available appropriations. *W. Va. Code* §18C-7-6. In 2001 as
11 well, The Legislature set the maximum available appropriations
12 for the fiscal year ending June 30, 2004, **and thereafter**, to be
13 \$27 million. *W. Va. Code* §29-22-18a. In June, 2004, the
14 PROMISE Scholarship Board advised the Legislature that the
15 Program needed \$3 million more than the \$27 million that had
16 been appropriated for the fiscal year ending June 30, 2005, and
17 that it expected that funding requirements for the fiscal year
18 ending June 30, 2006, would be approximately \$38 million. The
19 Board now advises that it has obligated an aggregate award of
20 scholarships for the fiscal year ending June 30, 2006, in the
21 amount of \$37,921,651, and that its expected appropriation
22 needs for the next year will be \$43 million.

23 The Legislature finds that it crafted the PROMISE Scholar-
24 ship Program to control its costs and avoid the mistakes of other
25 states that enacted similar legislation only to discover that its
26 costs could not be controlled and obligations created were
27 beyond the ability of those states to pay. The Legislature
28 explicitly set a finite amount of available appropriations and
29 directed the administrators of the Program to provide for the
30 award of scholarships within the limits of available appropria-
31 tions.

*248-Economic Development Authority-**Economic Development Project Fund*Fund 3167 FY 2006 Org 0307

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 as
5 reimbursement of amounts transferred to the economic develop-
6 ment project fund pursuant to section four of this title and
7 subsection (f), section eighteen, article twenty-two, chapter
8 twenty-nine of the code.

*249-School Building Authority*Fund 3514 FY 2006 Org 0402

1 Unclassified-Total-Transfer 402 \$ 19,000,000

*250-West Virginia Infrastructure Council*Fund 3390 FY 2006 Org 0316

1 Unclassified-Total-Transfer (R) 402 \$ 40,000,000

2 Any unexpended balance remaining in the appropriation at
3 the close of the fiscal year 2005 is hereby reappropriated for
4 expenditure during the fiscal year 2006.

5 The above appropriation for Unclassified-Total-Trans-
6 fer(activity 402) shall be transferred to the West Virginia
7 Infrastructure Fund (fund 3384, org 0316) created by chapter
8 thirty-one, article fifteen-a, section nine of the code.

251-Higher Education Improvement Fund

Fund 4297 FY 2006 Org 0441

1 Unclassified-Total (R) 096 \$ 10,000,000

2 Any unexpended balance remaining in the appropriation at
3 the close of the fiscal year 2005 is hereby reappropriated for
4 expenditure during the fiscal year 2006 with the exception of
5 fund 4297, fiscal year 2002, organization 0441, activity 096 and
6 fund 4297, fiscal year 2003, organization 0441, activity 096
7 which shall expire on June 30, 2005.

252-State Park Improvement Fund

Fund 3277 FY 2006 Org 0310

1 Unclassified-Total (R) 096 \$ 5,000,000

2 Any unexpended balance remaining in the appropriation at
3 the close of the fiscal year 2005 is hereby reappropriated for
4 expenditure during the fiscal year 2006.

253-Lottery Commission-

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2006 Org 0705

1 Unclassified-Total-Transfer 402 \$12,900,000

2 The above appropriation for Unclassified-Total-Transfer
3 (activity 402) shall be transferred to the General Revenue Fund
4 only after all funding required by chapter twenty-nine, article
5 twenty-two, section eighteen-a of the code has been satisfied as
6 determined by the director of the lottery.

254—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2006 Org 0100

1 Any unexpended balance remaining in the appropriation for
2 Publication of Papers and Transition Expenses—Lottery
3 Surplus (fund 1046, activity 066) at the close of the fiscal year
4 2005 is hereby reappropriated for expenditure during the fiscal
5 year 2006.

*255-Division of Health—**Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2006 Org 0506

1 Any unexpended balance remaining in the appropriation for
2 Chief Medical Examiner—Capital Improvements—Lottery
3 Surplus (fund 5219, activity 051) at the close of the fiscal year
4 2005 is hereby reappropriated for expenditure during the fiscal
5 year 2006.

256-West Virginia State Police

(WV Code Chapter 15)

Fund 6394 FY 2006 Org 0612

1 Any unexpended balance remaining in the appropriation for
2 Helicopter Purchase (fund 6394, activity 063) at the close of
3 fiscal year 2005 is hereby reappropriated for expenditure during
4 the fiscal year 2006.

257—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2006 Org 0702

1 Any unexpended balance remaining in the appropriation for
2 Remittance Processor—Lottery Surplus (fund 7082, activity
3 054) at the close of the fiscal year 2005 is hereby
4 reappropriated for expenditure during the fiscal year 2006.

258-Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2006 Org 2300

1 Any unexpended balance remaining in the appropriation at
2 the close of fiscal year 2005 is hereby reappropriated for
3 expenditure during the fiscal year 2006.

4 The above appropriation for Tax Reduction and Federal
5 Funding Increased Compliance (TRAFFIC)-Total (fund 1735,
6 activity 620) is intended for possible general state tax reduc-
7 tions or the offsetting of any reductions in federal funding for
8 state programs. It is not intended as a general appropriation for
9 expenditure by the Legislature.

10 Total TITLE II, Section 5-Excess

11 Lottery Funds \$ 202,900,000

1 **Sec. 6. Appropriations of federal funds.**-In accordance
2 with article eleven, chapter four of the code, from federal funds
3 there are hereby appropriated conditionally upon the fulfillment
4 of the provisions set forth in article two, eleven-b of the code
5 the following amounts, as itemized, for expenditure during the
6 fiscal year two thousand six.

LEGISLATIVE*259-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2006 Org 2300

	Activity	Federal Funds
1 Unclassified-Total	096	\$ 1,268,906

JUDICIAL*260-Supreme Court—**Consolidated Federal Funds*Fund 8867 FY 2006 Org 2400

1 Unclassified-Total	096	\$ 1,150,000
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EXECUTIVE*261-Governor's Office-**Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Fund 8792 FY 2006 Org 0100

1 Unclassified-Total	096	\$ 450,000
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*262-Governor's Office-**Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2006 Org 0100

1 Unclassified-Total 096 \$ 7,811,976

263-Governor's Office-

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2006 Org 0100

1 Unclassified-Total 096 \$ 5,431,509

264-Auditor's Office-

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2006 Org 1200

1 Unclassified-Total 096 \$ 14,000,942

265-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2006 Org 1400

1 Unclassified-Total 096 \$ 4,246,459

266-Department of Agriculture-

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2006 Org 1400

1 Unclassified-Total 096 \$ 818,829

267-Department of Agriculture-

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2006 Org 1400

1 Unclassified-Total 096 \$ 341,174

268-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2006 Org 1600

1 Unclassified-Total 096 \$14,500,000

DEPARTMENT OF ADMINISTRATION

269-West Virginia Prosecuting Attorney's Institute

(WV Code Chapter 7)

Fund 8834 FY 2006 Org 0228

1 Unclassified-Total 096 \$ 199,468

270-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2006 Org 0230

1 Unclassified-Total 096 \$ 33,817,646

DEPARTMENT OF COMMERCE

271-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2006 Org 0305

1 Unclassified-Total 096 \$ 3,210,064

272-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2006 Org 0306

1 Unclassified-Total 096 \$ 300,000

273-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2006 Org 0307

1 Unclassified-Total 096 \$ 10,590,512

274-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2006 Org 0308

1 Unclassified-Total 096 \$ 540,822

275-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2006 Org 0310

1 Unclassified-Total 096 \$ 8,769,201

276-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2006 Org 0314

1 Unclassified-Total 096 \$ 1,330,765

DEPARTMENT OF EDUCATION

277-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2006 Org 0402

1 Unclassified-Total 096 \$230,000,000

278-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2006 Org 0402

1 Unclassified-Total 096 \$ 90,000,000

279-State Board of Education-

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2006 Org 0402

1 Unclassified-Total 096 \$ 30,000,000

280-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2006 Org 0402

1 Unclassified-Total 096 \$97,000,000

281-State Department of Education-

Education Grant

Fund 8748 FY 2006 Org 0402

1 Unclassified-Total 096 \$10,000,000

DEPARTMENT OF EDUCATION AND THE ARTS

282-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2006 Org 0431

1 Unclassified-Total 096 \$ 325,000

283-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2006 Org 0432

1 Unclassified-Total 096 \$ 2,000,000

284-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2006 Org 0433

1 Unclassified-Total 096 \$ 1,932,637

285-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2006 Org 0439

1 Unclassified-Total 096 \$ 1,500,000

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

(WV Code Chapter 18)

Fund 8734 FY 2006 Org 0932

1 Unclassified-Total 096 \$ 49,128,380

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION***287-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2006 Org 0313

1 Unclassified-Total 096 \$ 98,015,470

**DEPARTMENT OF HEALTH AND
HUMAN RESOURCES***288-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 7,308,797

289-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 85,787,737

290-Division of Health-

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 16,000,000

291-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2006 Org 0507

1 Unclassified-Total 096 \$ 200,000

292-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2006 Org 0510

1 Unclassified-Total 096 \$ 510,467

293-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2006 Org 0511

1 Unclassified-Total 096 \$2,131,700,685

**DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY**

294-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2006 Org 0601

1 Unclassified-Total 096 \$10,000,000

295-Adjutant General-State Militia

(WV Code Chapter 15)

Fund 8726 FY 2006 Org 0603

1 Unclassified-Total 096 \$95,600,000

296-Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2006 Org 0606

1 Unclassified-Total 096 \$32,016,368

297-Division of Corrections

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

Fund 8836 FY 2006 Org 0608

1 Unclassified-Total 096 \$ 650,000

298-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2006 Org 0612

1 Unclassified-Total 096 \$ 1,105,392

299-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2006 Org 0613

1 Unclassified-Total 096 \$ 10,000,000

300-Division of Veterans' Affairs-

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2006 Org 0618

1 Unclassified-Total 096 \$ 1,753,467

301-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2006 Org 0620

1 Unclassified-Total 096 \$ 14,927,396

302-Division of Juvenile Services

(WV Code Chapter 49)

Fund 8855 FY 2006 Org 0621

1 Unclassified-Total 096 \$ 331,000

DEPARTMENT OF REVENUE

303-Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2006 Org 0702

1 Unclassified-Total 096 \$ 25,000

304-Insurance Commission

(WV Code Chapter 33)

Fund 8883 FY 2006 Org 0704

1 Unclassified-Total 096 \$ 950,000

DEPARTMENT OF TRANSPORTATION

305-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2006 Org 0802

1 Unclassified-Total 096 \$ 9,819,900

306-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2006 Org 0805

1 Unclassified-Total 096 \$ 13,559,897

307-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2006 Org 0806

1 Unclassified-Total 096 \$ 0

308-Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2006 Org 0807

1 Unclassified-Total 096 \$ 100,000

BUREAU OF EMPLOYMENT PROGRAMS

309-Bureau of Employment Programs

(WV Code Chapter 21A)

Fund 8835 FY 2006 Org 0323

1	Unclassified	099	\$	512,657
2	Reed Act 2002—Unemployment			
3	Compensation	622		2,374,000
4	Reed Act 2002—Employment Services	630		<u>1,371,000</u>
5	Total		\$	4,257,657

6 Pursuant to the requirements of 42 U.S.C. 1103, Section
7 903 of the Social Security Act, as amended, and the provisions
8 of section nine, article nine, chapter twenty-one-a of the code
9 of West Virginia, one thousand nine hundred thirty-one, as
10 amended, the above appropriation to Unclassified shall be used

11 by the bureau of employment programs for the specific purpose
 12 of administration of the state's unemployment insurance
 13 program or job service activities, subject to each and every
 14 restriction, limitation or obligation imposed on the use of the
 15 funds by those federal and state statutes.

BUREAU OF SENIOR SERVICES

310-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2006 Org 0508

1	Unclassified-Total	096	\$	14,550,000
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MISCELLANEOUS BOARDS AND COMMISSIONS

311-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2006 Org 0913

1	Unclassified-Total	096	\$	100,000
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312-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2006 Org 0926

1	Unclassified-Total	096	\$	1,514,718
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313-Public Service Commission-

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2006 Org 0926

1 Unclassified-Total 096 \$ 270,918

314-WV Statewide Addressing and Mapping Board

(WV Code Chapter 24E)

Fund 8868 FY 2006 Org 0940

1 Unclassified-Total 096 \$ 100,000

315-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2006 Org 0941

1 Unclassified-Total 096 \$ 600,000

316-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2006 Org 0942

1 Unclassified-Total 096 \$ 30,000

2 Total TITLE II, Section

3 6-Federal Funds \$3,172,449,159

1 **Sec. 7. Appropriations from federal block grants.**-The
2 following items are hereby appropriated from federal block
3 grants to be available for expenditure during the fiscal year
4 2006.

317-Governor's Office-

Office of Economic Opportunity

Community Services

Fund 8799 FY 2006 Org 0100

1 Unclassified-Total 096 \$ 9,500,000

318-West Virginia Development Office-

Community Development

Fund 8746 FY 2006 Org 0307

1 Unclassified-Total 096 \$ 28,330,852

319-West Virginia Development Office-

Workforce Investment Act

Fund 8848 FY 2006 Org 0307

1 Unclassified-Total 096 \$ 39,700,000

320-Division of Health-

Maternal and Child Health

Fund 8750 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 10,902,891

321-Division of Health-

Preventive Health

Fund 8753 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 2,241,834

322-Division of Health-

Substance Abuse Prevention and Treatment

Fund 8793 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 11,563,804

323-Division of Health-

Community Mental Health Services

Fund 8794 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 3,318,933

324-Division of Health-

Abstinence Education Program

Fund 8825 FY 2006 Org 0506

1 Unclassified-Total 096 \$ 977,197

325-Division of Human Services-

Energy Assistance

Fund 8755 FY 2006 Org 0511

1 Unclassified-Total 096 \$ 25,000,000

326-Division of Human Services-

Social Services

Fund 8757 FY 2006 Org 0511

1 Unclassified-Total 096 \$ 15,000,000

327-Division of Human Services-

Temporary Assistance Needy Families

Fund 8816 FY 2006 Org 0511

1 Unclassified-Total 096 \$ 150,000,000

328-Division of Human Services-

Child Care and Development

Fund 8817 FY 2006 Org 0511

1 Unclassified-Total 096 \$ 40,000,000

329-Division of Criminal Justice Services-

Juvenile Accountability Incentive

Fund 8829 FY 2006 Org 0620

1 Unclassified-Total 096 \$ 572,263

330-Division of Criminal Justice Services-

Local Law Enforcement

Fund 8833 FY 2006 Org 0620

1 Unclassified-Total 096 \$ 947,069

2 Total TITLE II, Section 7-Federal

3 Block Grants \$ 338,054,843

1 **Sec. 8. Awards for claims against the state.**—There are
2 hereby appropriated for fiscal year 2006, from the fund as
3 designated, in the amounts as specified, general revenue funds
4 in the amount of \$1,062,195, special revenue fund in the

5 amount of \$175,223, state road funds in the amount of
6 \$205,455, and non-general revenue funds in the amount of
7 \$603,266 for payment of claims against the state.

1 **Sec. 9. Special revenue appropriations.**-There are hereby
2 appropriated for expenditure during the fiscal year two thou-
3 sand six appropriations made by general law from special
4 revenue which are not paid into the state fund as general
5 revenue under the provisions of section two, article two, chapter
6 twelve of the code: *Provided*, That none of the money so
7 appropriated by this section shall be available for expenditure
8 except in compliance with and in conformity to the provisions
9 of articles two and three, chapter twelve and article two, chapter
10 eleven-b of the code, with due consideration to the digest of the
11 budget bill prepared pursuant to article one, chapter four, unless
12 the spending unit has filed with the director of the budget and
13 the legislative auditor prior to the beginning of each fiscal year:

14 (a) An estimate of the amount and sources of all revenues
15 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.**-Be-
2 quests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year two
4 thousand six, for the purpose of making studies and recommen-
5 dations relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a
8 separate account therein designated state improvement fund.

9 There are hereby appropriated all moneys so deposited
10 during the fiscal year two thousand six to be expended as
11 authorized by the governor, for such studies and recommenda-

12 tions which may encompass any problems of organization,
13 procedures, systems, functions, powers or duties of a state
14 spending unit in the executive branch, or the betterment of the
15 economic, social, educational, health and general welfare of the
16 state or its citizens.

1 **Sec. 11. Specific funds and collection accounts.**-A fund or
2 collection account which by law is dedicated to a specific use
3 is hereby appropriated in sufficient amount to meet all lawful
4 demands upon the fund or collection account and shall be
5 expended according to the provisions of article three, chapter
6 twelve of the code.

1 **Sec. 12. Appropriations for refunding erroneous pay-**
2 **ment.**-Money that has been erroneously paid into the state
3 treasury is hereby appropriated out of the fund into which it was
4 paid, for refund to the proper person.

5 When the officer authorized by law to collect money for the
6 state finds that a sum has been erroneously paid, he or she shall
7 issue his or her requisition upon the auditor for the refunding of
8 the proper amount. The auditor shall issue his or her warrant to
9 the treasurer and the treasurer shall pay the warrant out of the
10 fund into which the amount was 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 fund
5 which is under the supervision and control of the municipal
6 bond commission as provided by section twenty-b, article
7 eighteen, chapter thirty-one of the code, or in the funds of the
8 municipal bond commission because of the failure of any state
9 agency for either general obligation or revenue bonds or any
10 local taxing district for general obligation bonds to remit funds
11 necessary for the payment of interest and sinking fund require-

12 ments. The governor is authorized to transfer from time to time
13 such amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state of
16 West Virginia through the governor from the first remittance
17 collected from the West Virginia housing development fund or
18 from any state agency or local taxing district for which the
19 governor advanced funds, with interest at the rate carried by the
20 bonds for security or payment of which the advance was made.

1 **Sec. 14. Appropriations for local governments.**-There are
2 hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations and
5 which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 15. Total appropriations.**-Where only a total sum is
2 appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits, current
4 expenses, repairs and alterations, equipment and capital
5 outlay, where not otherwise specifically provided and except
6 as otherwise provided in TITLE I-GENERAL PROVISIONS,
7 Sec. 3.

1 **Sec. 16. General school fund.**-The balance of the proceeds
2 of the general school fund remaining after the payment of the
3 appropriations made by this act is appropriated for expenditure
4 in accordance with section sixteen, article nine-a, chapter
5 eighteen of the code.

1 *~~Sec. 17. Reimbursement limits.~~ Reimbursements to the
 2 state attorney general may not exceed the following limits in
 3 the aggregate for all funds and activities subordinate to the
 4 identified organizations: Division of Corrections (org 0608)
 5 \$213,000; Higher Education Policy Commission (org 0441,
 6 0442, 0477) \$304,000; Department of Health and Human
 7 Resources (0500) \$1,402,000; Division of Juvenile Services
 8 (0621) \$122,000; Division of Forestry (0305) \$14,000; Division
 9 of Natural Resources (0310) \$119,000; Division of Tourism
 10 (0304) \$7,000; Parole Board (0605) \$10,000; State Police
 11 (0612) \$345,000; Division of Rehabilitation (0932) \$71,000;
 12 Tax Division (0702) \$327,000; Workers' Compensation
 13 Commission (0322) \$3,261,000; and Division of Labor (0308)
 14 \$73,000. With respect to the spending units identified in this
 15 section, the State Auditor shall approve no expense-to-expense
 16 transfer, intergovernmental transfer, invoice or other payment
 17 or reimbursement to the attorney general in excess of the above
 18 limits.

TITLE III-ADMINISTRATION.

TITLE III-ADMINISTRATION.

- §1. Appropriations conditional.
- §2. Legislative intent.
- §3. Constitutionality.

1 **Section 1. Appropriations conditional.**-The expenditure of
 2 the appropriations made by this act, except those appropriations
 3 made to the legislative and judicial branches of the state
 4 government, are conditioned upon the compliance by the
 5 spending unit with the requirements of article two, chapter
 6 eleven-b of the code.

7 Where spending units or parts of spending units have been
 8 absorbed by or combined with other spending units, it is the

* CLERK'S NOTE: The Governor struck language on line 1 through line 18.

9 intent of this act that appropriations and reappropriations shall
10 be to the succeeding or later spending unit created, unless
11 otherwise indicated.

1 **Sec. 2. Legislative intent.**-It is the intent of the Legislature
2 that the duly appointed members of the conference committee
3 on this bill may formulate and set forth in a budget digest
4 recommendations for the expenditure of money appropriated by
5 this bill after its enactment. It is the further intent of the
6 Legislature that the recommendations set forth in the budget
7 digest are an expression of legislative intent, do not have the
8 force and effect of law, and may not be construed to alter the
9 lawful enactment of this bill.

1 **Sec. 3. Constitutionality.**-If any part of this act is declared
2 unconstitutional by a court of competent jurisdiction, its
3 decision shall not affect any portion of this act which remains,
4 but the remaining portion shall be in full force and effect as if
5 the portion declared unconstitutional had never been a part of
6 the act.

CHAPTER 17

(H. B. 3181 — By Delegates Michael, Doyle, R.M. Thompson,
Stalnaker, Williams, Proudfoot, Browning, Houston,
Cann, Frederick and Ashley)

[Passed March 30, 2005; in effect from passage.]
[Approved by the Governor on March 31, 2005.]

AN ACT making a supplementary appropriation from the balance of
moneys remaining unappropriated for the fiscal year ending the
thirtieth day of June, two thousand five, to a new item of appro-

priation designated to the bureau of commerce - economic development authority - economic development project bridge loan fund, fund 3169, fiscal year 2005, organization 0307, supplementing and amending chapter thirteen, Acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the bureau of commerce - economic development authority - economic development project bridge loan fund, fund 3169, fiscal year 2005, organization 0307, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, Acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof the following:

1	TITLE II — APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	BUREAU OF COMMERCE		
4	<i>178a—Economic Development Authority—</i>		
5	<i>Economic Development Project Bridge Loan Fund</i>		
6	(WV Code Chapter 29)		
7	Fund <u>3169</u> FY <u>2005</u> Org <u>0307</u>		
8		Act-	Other
9		ivity	Funds
10	1	Unclassified - Total	096 \$ 1,000,000

11 The purpose of this supplementary appropriation bill is to
12 supplement this account in the budget act for fiscal year ending
13 the thirtieth day of June, two thousand five, by providing for a
14 new item of appropriation to be established therein to appropri-
15 ate other funds for the designated spending unit for expenditure
16 during the fiscal year two thousand five.

CHAPTER 18

**(S. B. 752 — By Senators Helmick, Sharpe, Chafin, Plymale,
Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger,
Minear, Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

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 the thirtieth day of June, two thousand five, to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2005, organization 0313, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established the availability of federal funds for a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
 2 thirtieth day of June, two thousand five, to fund 8708, fiscal
 3 year 2005, organization 0313, be supplemented and amended
 4 by increasing the total appropriation as follows:

5 TITLE II—APPROPRIATIONS.

6 **Sec. 6. Appropriations of federal funds.**

7 **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

8 *294—Division of Environmental Protection*

9 (WV Code Chapter 22)

10 Fund 8708 FY 2005 Org 0313

11 12	Act- ivity	Federal Funds
13	1 Unclassified - Total 096	\$ 10,000,000

14 The purpose of this supplementary appropriation bill is to
 15 supplement and increase items of appropriation in the aforesaid
 16 account for the designated spending unit for expenditure during
 17 the fiscal year two thousand five.

CHAPTER 19

**(S. B. 739 — By Senators Helmick, Sharpe, Chafin, Plymale,
 Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger,
 Minear, Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed April 7, 2005; in effect from passage.]
 [Approved by the Governor on April 21, 2005.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Health and Human Resources - Division of Health - Hepatitis B Vaccine, fund 5183, fiscal year 2005, organization 0506, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources - Division of Health - Hepatitis B Vaccine, fund 5183, fiscal year 2005, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, two thousand five, to fund 5183, fiscal
3 year 2005, organization 0506, be supplemented and amended
4 by increasing the total appropriation as follows:

5 **TITLE II—APPROPRIATIONS.**

6 **Sec. 3. Appropriations from other funds.**

7 **DEPARTMENT OF HEALTH**
8 **AND HUMAN RESOURCES**

9 *129—Division of Health—*

10 *Hepatitis B Vaccine*

11 (WV Code Chapter 16)

12 Fund 5183 FY 2005 Org 0506

278	APPROPRIATIONS	[Ch. 20
13		Act-
14		Other
		Funds
15	4 Unclassified	099 \$ 550,000

16 The purpose of this supplementary appropriation bill is to
17 supplement and increase an item of appropriation in the
18 aforesaid account for the designated spending unit for expendi-
19 ture during the fiscal year two thousand five.

CHAPTER 20

**(S. B. 734 — By Senators Helmick, Sharpe, Edgell, Love, Bailey,
Bowman, McCabe, Minear, Boley, Facemyer, Yoder and Guillis)**

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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 the thirtieth day of June, two thousand five, to the West Virginia State Mapping and Addressing Board, fund 8868, fiscal year 2005, organization 0940, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established the availability of federal funds for a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for fiscal year ending the
2 thirtieth day of June, two thousand five, to fund 8868, fiscal
3 year 2005, organization 0940, be supplemented and amended
4 by increasing the total appropriation as follows:

5 TITLE II—APPROPRIATIONS.

6 Sec. 6. Appropriations of federal funds.

7 MISCELLANEOUS BOARDS AND COMMISSIONS

8 299—*WV State Mapping and Addressing Board*

9 (WV Code Chapter 24E)

10 Fund 8868 FY 2005 Org 0940

11	Act-	Federal
12	ivity	Funds
13 1	Unclassified 099	\$ 35,000

14 The purpose of this supplementary appropriation bill is to
15 supplement and increase items of appropriation in the aforesaid
16 account for the designated spending unit for expenditure during
17 the fiscal year two thousand five.

CHAPTER 21

**(H. B. 3363 — By Delegates Michael, Doyle, Stalnaker, Williams,
Proudfoot, Cann, Frederick, Palumbo, Anderson and Ashley)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT supplementing, amending, reducing and adding a new item to the existing appropriations from the state fund, general revenue, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2005, organization 0608, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2005, organization 0608, be amended and reduced in the existing line item as follows:

1	TITLE II — APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF MILITARY AFFAIRS		
4	AND PUBLIC SAFETY		
5	<i>56—Division of Corrections—</i>		
6	<i>Correctional Units</i>		
7	(WV Code Chapters 25, 28, 49 and 62)		
8	Fund <u>0450</u> FY <u>2005</u> Org <u>0608</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	14 Martinsburg Correctional Center . . .	663 \$	325,000

13 And that the total appropriations from the state fund,
 14 general revenue, to the Department of Military Affairs and
 15 Public Safety - Division of Corrections - correctional units,
 16 fund 0450, fiscal year 2005, organization 0608, be amended and
 17 increased by adding a new item of appropriation as follows:

18 TITLE II — APPROPRIATIONS.

19 Section 1. Appropriations from general revenue.

20 DEPARTMENT OF MILITARY AFFAIRS
 21 AND PUBLIC SAFETY

22 56—*Division of Corrections*—

23 *Correctional Units*

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

25 Fund 0450 FY 2005 Org 0608

26				General
27			Act-	Revenue
28			ivity	Fund
29	23a	Capital Outlay	511 \$	325,000

30 The purpose of this supplementary appropriation bill is to
 31 supplement, amend, reduce, and add a new item to existing
 32 appropriations in the aforesaid account for the designated
 33 spending unit. The funds are for expenditure during the fiscal
 34 year two thousand five with no new money being appropriated.

CHAPTER 22

(S. B. 732 — By Senators Helmick, Sharpe, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Minear,
Boley, Facemyer, Yoder and Guills)

[Passed April 7, 2005; in effect from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT making a supplementary appropriation in the State Fund, General Revenue, to the Department of Transportation - Aeronautics Commission, fund 0582, fiscal year 2005, organization 0807, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for fiscal year ending the
2 thirtieth day of June, two thousand five, to fund 0582, fiscal
3 year 2005, organization 0807, be supplemented and amended to
4 read as follows:

5 **TITLE II—APPROPRIATIONS.**

6 **Section 1. Appropriations from general revenue.**

7 **DEPARTMENT OF TRANSPORTATION**

8 72—*Aeronautics Commission*

9 (WV Code Chapter 29)

10 Fund 0582 FY 2005 Org 0807

				General
				Revenue
			Act-	Fund
			ivity	
14	1	Unclassified (R)	099	\$ 1,209,436
15	2	Civil Air Patrol	234	<u>111,384</u>
16	3	Total		\$ 1,320,820

17 Any unexpended balance remaining in the appropriations
 18 for unclassified (fund 0582, activity 099) at the close of the
 19 fiscal year two thousand four is hereby reappropriated for
 20 expenditure during the fiscal year two thousand five, with the
 21 exception of fund 0582, fiscal year 2004, activity 099 (\$35,606)
 22 which shall expire on the thirtieth day of June, two thousand
 23 four.

24 The purpose of this bill is to supplement this account in the
 25 budget act for the fiscal year ending the thirtieth day of June,
 26 two thousand five, by decreasing and increasing items of
 27 appropriation with no additional funds being appropriated.

CHAPTER 23

**(S. B. 733 — By Senators Helmick, Sharpe, Edgell, Love, Bailey,
Bowman, McCabe, Minear, Boley, Facemyer, Yoder and Guills)**

[Passed April 7, 2005; in effect from passage.]

[Approved by the Governor on April 21, 2005.]

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 the thirtieth day of June, two thousand five, to a new item of appropriation designated to

the Department of Transportation, Aeronautics Commission, fund 8831, fiscal year 2005, organization 0807, supplementing and amending chapter thirteen, Acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The Governor has established the availability of federal funds for a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

1 That chapter thirteen, Acts of the Legislature, regular
2 session, two thousand four, known as the Budget Bill, be
3 supplemented and amended by adding to Title II, section six
4 thereof the following:

5 TITLE II—APPROPRIATIONS.

6 **Sec. 6. Appropriations of federal funds.**

7 **DEPARTMENT OF TRANSPORTATION**

8 *286a—Aeronautics Commission*

9 (WV Code Chapter 29)

10 Fund 8831 FY 2005 Org 0807

11		Act-	Federal
12		ivity	Funds
13	1 Unclassified - Total	096	\$ 4,000

14 The purpose of this supplementary appropriation bill is to
15 supplement this account in the budget act for fiscal year ending
16 the thirtieth day of June, two thousand five, by providing for a

17 new item of appropriation to be established therein to appropri-
18 ate federal funds for the designated spending unit for expendi-
19 ture during the fiscal year two thousand five.

CHAPTER 24

**(S. B. 269 — By Senators Helmick, Sharpe, Prezioso, Edgell,
Love, Bailey, Bowman, McCabe, Unger, Minear, Boley,
Facemyer, Yoder, Guills and Sprouse)**

[Passed March 4, 2005; in effect from passage.]

[Approved by the Governor on March 15, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2005, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated the ninth day of February, two thousand five, which included the statement of the State Road Fund setting forth therein the cash balances and investments as of the first day of July, two thousand four, and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand five.

WHEREAS, It thus appears from the Governor's executive budget document there now remains an unappropriated balance in the state Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; 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 2005, organization 0803, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 2. Appropriations from State Road Fund.**

3 **DEPARTMENT OF TRANSPORTATION**

4 *92—Division of Highways*

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2005 Org 0803

7				State
8			Act-	Road
9			ivity	Fund

10	5	Bridge Repair and Replacement . . .	273	\$ 10,000,000
11	8	General Operations	277	1,500,000
12	11	Appalachian Programs	280	40,000,000
13	13	Highway Litter Control	282	87,000

14 And that the items of the total appropriations from the
15 State Road Fund, fund 9017, fiscal year 2005, organization
16 0803, be amended and increased in the line items as follows:

17 TITLE II—APPROPRIATIONS.

18 **Sec. 2. Appropriations from State Road Fund.**

19 **DEPARTMENT OF TRANSPORTATION**

20 *92—Division of Highways*

21 (WV Code Chapters 17 and 17C)

22 Fund 9017 FY 2005 Org 0803

23			State
24		Act-	Road
25		ivity	Fund

26 10 Other Federal Aid Construction . . . 279 \$ 40,000,000

27 12 Nonfederal Aid Construction 281 15,000,000

28 The purpose of this supplementary appropriation bill is to
 29 supplement, amend, reduce and increase existing items in the
 30 aforesaid account for the designated spending unit for expendi-
 31 ture during the fiscal year ending the thirtieth day of June, two
 32 thousand five.

CHAPTER 25

**(S. B. 751 — By Senators Helmick, Sharpe, Chafin, Plymale,
 Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger,
 Minear, Boley, Facemyer, Yoder, Guills and Sprouse)**

[Passed April 8, 2005; in effect from passage.]
 [Approved by the Governor on April 22, 2005.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Transportation - Division of Motor Vehicles, fund 9007, fiscal year 2005, organization 0802, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the
2 thirtieth day of June, two thousand five, to fund 9007, fiscal
3 year 2005, organization 0802, be supplemented and amended to
4 read as follows:

5 TITLE II—APPROPRIATIONS.

6 **Sec. 2. Appropriations from State Road Fund.**

7 **DEPARTMENT OF TRANSPORTATION**

8 *91—Division of Motor Vehicles*

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

10 Fund 9007 FY 2005 Org 0802

		Act-	State
		ivity	Road
			Fund
14	1 Personal Services	001	\$ 13,232,017
15	2 Annual Increment	004	206,350
16	3 Employee Benefits	010	5,679,059
17	4 Unclassified	099	19,876,868
18	5 Jefferson County Regional Office . .	613	<u>0</u>
19	6 Total		\$ 38,994,294

20 The purpose of this bill is to supplement this account in the
21 budget act for the fiscal year ending the thirtieth day of June,
22 two thousand five, by decreasing and increasing items of
23 appropriation with no additional funds being appropriated.

CHAPTER 26

**(S. B. 731 — By Senators Helmick, Sharpe, Prezioso,
Edgell, Love, Bailey, Bowman, McCabe, Minear,
Boley, Facemyer, Yoder and Guills)**

[Passed April 7, 2005; in effect from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Transportation - Division of Public Transit, fund 8745, fiscal year 2005, organization 0805, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

- 1 That the total appropriation for the fiscal year ending the
- 2 thirtieth day of June, two thousand five, to fund 8745, fiscal
- 3 year 2005, organization 0805, be supplemented and amended
- 4 by increasing the total appropriation as follows:

5 TITLE II—APPROPRIATIONS.

6 **Sec. 6. Appropriations of federal funds.**

7 **DEPARTMENT OF TRANSPORTATION**

8 *285—Division of Public Transit*

9 (WV Code Chapter 17)

10 Fund 8745 FY 2005 Org 0805

11	Act-	Federal
12	ivity	Funds
13	1 Unclassified - Total	096 \$ 1,612,202

14 The purpose of this supplementary appropriation bill is to
 15 supplement and increase items of appropriation in the aforesaid
 16 account for the designated spending unit for expenditure during
 17 fiscal year two thousand five.



CHAPTER 27

(S. B. 122 — By Senators Minard and McCabe)

[Passed April 5, 2005; in effect ninety days from passage.]
 [Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-5 of said code; and to amend and reenact §31A-4-1 and §31A-4-5 of said code, all relating to the ability of a state-chartered bank to organize as a limited liability company.

Be it enacted by the Legislature of West Virginia:

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-5 of said code be amended

and reenacted; and that §31A-4-1 and §31A-4-5 of said code be amended and reenacted, all to read as follows:

Article

1. **General Provisions and Definitions.**
2. **Division of Banking.**
4. **Banking Institutions and Services Generally.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-2. Definitions.

1 As used in this chapter, unless the context in which used
2 plainly requires a different meaning:

3 (a) The word “action”, in the sense of a judicial proceeding,
4 means any proceeding in a court of competent jurisdiction in
5 which rights are adjudicated and determined and shall embrace
6 and include recoupment, counterclaim, setoff and other related,
7 similar and summary proceedings;

8 (b) The words “bank” and “banking institution” mean a
9 corporation, limited liability company or association heretofore
10 or hereafter chartered to conduct a banking business under the
11 laws of the United States or any state, territory, district or
12 possession thereof, which is authorized in West Virginia to
13 accept deposits that the depositor has a legal right to withdraw
14 on demand and is authorized to engage in the business of
15 commercial lending, and meets the criteria set forth in Section
16 2(c) of the Bank Holding Company Act, as amended, 12 U. S.
17 C. §1841(c), and shall embrace and include a savings bank,
18 savings and loan association, trust company or an institution
19 combining banking and trust company facilities, functions and
20 services so chartered or authorized to conduct such business in
21 this state;

22 (c) The words “bankers’ bank” mean a banking institution,
23 insured by the Federal Deposit Insurance Corporation, the stock

24 of which is owned exclusively by banks and other depository
25 institutions, and such banking institution and all subsidiaries
26 thereof are engaged exclusively in providing services for banks
27 and other depository institutions and their officers, directors and
28 employees;

29 (d) The term “banking business” means the functions,
30 services and activities contained, detailed and embraced in
31 sections thirteen and fourteen, article four of this chapter and as
32 elsewhere defined by law;

33 (e) The word “Board” means the West Virginia Board of
34 Banking and Financial Institutions;

35 (f) The words “branch bank” mean an office or other place
36 at which a bank performs any or all banking business. For
37 purposes of this chapter, a branch bank does not include:

38 (1) A bank’s principal place of business;

39 (2) Any customer bank communication terminals installed
40 and operated pursuant to section twelve-b, article eight of this
41 chapter; and

42 (3) Any loan origination office authorized by section
43 twelve-c, article eight of this chapter;

44 (g) The words “Commissioner” or “Commissioner of
45 Banking” mean the Commissioner of Banking of West Vir-
46 ginia;

47 (h) The word “community” means a city, town or other
48 incorporated area or, where not so incorporated, a trading area;

49 (i) The word “department” or “division” means the Division
50 of Banking of West Virginia;

51 (j) The words "Deputy Commissioner" or "Deputy Com-
52 missioner of Banking" mean the Deputy Commissioner of
53 Banking of West Virginia;

54 (k) The word "fiduciary" means any trustee, agent, execu-
55 tor, administrator, curator, committee, guardian or conservator,
56 special commissioner, receiver, trustee in bankruptcy, assignee
57 for creditors or any holder of a similar position of trust or
58 responsibility;

59 (l) The words "financial institutions" mean banks, building
60 and loan associations, industrial banks, industrial loan compa-
61 nies, supervised lenders, credit unions and all other similar
62 institutions, whether persons, firms or corporations, which are
63 by law under the jurisdiction and supervision of the Commis-
64 sioner of Banking;

65 (m) The word "officer", when referring to any financial
66 institution, means any person designated as such in the bylaws
67 and includes, whether or not so designated, any executive
68 officer, the chairman of the board of directors, the chairman of
69 the executive committee and any trust officer, assistant vice
70 president, assistant treasurer, assistant secretary, assistant trust
71 officer, assistant cashier, assistant comptroller or any other
72 person who performs the duties appropriate to those offices and
73 the term "executive officer" as herein used, when referring to
74 banking institutions, means an officer of a bank whose duties
75 involve regular, active and substantial participation in the daily
76 operations of such institution and who, by virtue of his or her
77 position, has both a voice in the formulation of the policy of the
78 bank and responsibility for implementation of the policy, such
79 responsibility of and functions performed by the individual, and
80 not his or her title or office, being determinative of whether he
81 or she is an "executive officer";

82 (n) The words "out-of-state bank" or "out-of-state banking
83 institution" mean a bank chartered under the laws of a state or

84 United States territory, possession or district, other than West
85 Virginia, or organized under federal law and having its main
86 office located in a state, United States territory, possession or
87 district, other than West Virginia;

88 (o) The words “person” or “persons” mean any individual,
89 partnership, society, association, firm, institution, company,
90 public or private corporation, state, governmental agency,
91 bureau, department, division or instrumentality, political
92 subdivision, county commission, municipality, trust, syndicate,
93 estate or any other legal entity whatsoever, formed, created or
94 existing under the laws of this state or any other jurisdiction;

95 (p) The words “safe-deposit box” mean a safe-deposit box,
96 vault or other safe-deposit receptacle maintained by a lessor
97 bank and the rules relating thereto apply to property or docu-
98 ments kept therein in the bank’s vault under the joint control of
99 lessor and lessee;

100 (q) The words “state bank” or “state banking institution”
101 mean, unless the context requires otherwise, a bank chartered
102 under the laws of West Virginia, as distinguished from either an
103 out-of-state bank or a national banking association and is also
104 referred to as a “West Virginia State Bank” or “West Virginia
105 State Banking Institution”; and

106 (r) The words “trust business” mean the functions, services
107 and activities contained, detailed and embraced in section
108 fourteen, article four of this chapter and as elsewhere defined
109 by law and as may be included within the meaning of the term
110 “banking business”.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

1 (a) No person shall engage or continue in the business of a
2 financial institution in this state without a license or certificate
3 to do so issued in accordance with this section, or other
4 applicable law, which license or certificate remains
5 unsuspended, unexpired and unrevoked except that a corpora-
6 tion which proposes to apply for such license or certificate may
7 secure its charter, adopt bylaws, elect its directors and officers
8 and perfect its organization.

9 (b) No person shall operate an office in West Virginia
10 which regularly makes consumer loans in this state other than
11 first mortgage loans unless they are a financial institution,
12 licensed pawnbroker or a federally insured depository institu-
13 tion authorized and qualified to do business in this state. The
14 purchase of consumer paper does not constitute the making of
15 consumer loans for the purposes of this subsection, unless the
16 purchase is made by a business affiliated with the credit
17 provider pursuant to a standing arrangement.

18 (c) Application for such license or certificate shall be upon
19 such forms and contain such information as the Commissioner
20 may prescribe. In connection with such applications every
21 corporate financial institution shall file a certified copy of its
22 charter and bylaws, a statement as to the amount of capital that
23 has been subscribed and paid in and a statement of its financial
24 condition duly verified under oath by its president or vice
25 president and its cashier or secretary as the case may be and
26 every financial institution other than a corporation shall file a
27 verified statement of its financial condition.

28 (d) If the application be that of a West Virginia state
29 banking institution, the Commissioner of Banking shall
30 examine the information, documents and statements submitted
31 and, if he or she finds that such banking institution has adopted
32 bylaws which provide practical, safe, just and equitable rules
33 and methods for the management of its business and it has

34 complied in all respects with the provisions of this chapter and
35 other applicable laws, he or she shall issue to it a certificate or
36 license permitting it to engage in business. If the application be
37 that of a financial institution other than a banking institution,
38 the Commissioner of Banking shall examine the information,
39 documents and statements submitted and, if he or she finds that
40 such financial institution has adequate resources for the
41 proposed business and has provided practical, safe, just and
42 equitable rules and methods for the management of its business,
43 and it has complied in all respects with the provisions of this
44 chapter and other applicable laws, and that the public conve-
45 nience and advantage will be promoted by the issuance of a
46 certificate or license thereto, he or she shall issue to it a
47 certificate or license permitting it to engage in business. Such
48 certificate or license shall be preserved and the original or copy
49 thereof displayed in all the places of business of such banking
50 or other financial institution located in this state.

51 (e) In addition to the requirements of subsections (b) and
52 (c) of this section, every foreign corporation applying for a
53 license or certificate to engage in the business of a financial
54 institution in this state, other than an out-of-state banking
55 institution, shall file with the Commissioner of Banking a copy
56 of the bylaws under which it operates, together with a cite to the
57 statutes of the jurisdiction where it is organized which pertain
58 to its organization and powers and the conduct of its business.
59 The commissioner shall examine the information, documents
60 and statements submitted by such foreign corporation and if he
61 or she finds that they provide practical, safe, just and equitable
62 rules and methods for the management of the business of the
63 corporation, that it has adequate resources for the proposed
64 business and it has complied in all respects with the provisions
65 of this chapter and other applicable laws and that the public
66 convenience and advantage will be promoted by the issuance of
67 a license or certificate thereto, he or she shall issue to such
68 corporation a certificate or license permitting it to engage in

69 business in this state, which certificate or license shall authorize
70 such corporation to engage in the business of the type of
71 financial institution specified therein, until the thirtieth day of
72 the following June. Thereafter a new certificate or license shall
73 be secured annually by any such foreign corporation, except
74 where annual renewal of the license or certificate is specifically
75 not required for the type of institution involved. The fee for the
76 original and each additional license or certificate issued to a
77 foreign corporation shall be one hundred dollars, unless
78 otherwise provided by statute. A verified statement of the
79 financial condition of every such foreign corporation shall be
80 filed with the Commissioner before the issuance of each annual
81 certificate or license. Such certificate or license shall be
82 preserved and the original or copy thereof displayed in the West
83 Virginia place of business of such corporation.

84 (f) Unless the institution is a federally insured depository
85 institution or it is otherwise provided for by statute, a new
86 certificate or license shall be secured annually by all domestic
87 state financial institutions and the fee for the original and each
88 additional license or certificate shall be one hundred dollars.

89 (g) No amendment of the charter or bylaws of any domestic
90 or foreign corporation, other than an out-of-state banking
91 institution, engaging in business in this state as a financial
92 institution shall become effective until the proposed change
93 shall have been submitted to and approved by the Commis-
94 sioner of Banking; but, if the Commissioner does not disap-
95 prove such proposed change within twenty days after it is
96 received by him or her, it shall be deemed to have been ap-
97 proved.

98 (h) Unless specifically provided for by this chapter, nothing
99 contained in this code shall authorize any person to engage in
100 the banking business in this state except corporations chartered
101 to conduct a banking business under the laws of West Virginia

102 and which hold a license or certificate to do so issued under this
103 section, limited liability companies organized to conduct a
104 banking business under the laws of West Virginia and which
105 hold a license or certificate to do so under this section or
106 associations authorized to conduct a banking business in West
107 Virginia under the laws of the United States and having their
108 principal place of business in this state.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia Board of Banking and Financial Institutions.

§31A-4-5. Requirements and procedure for incorporation of state banks.

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia Board of Banking and Financial Institutions.

1 (a) The general corporation laws of the state, including the
2 provisions of chapter thirty-one-d of this code, shall govern
3 banking institutions and the chartering thereof, except as
4 otherwise provided in or where inconsistent with the provisions
5 of this chapter, when the banking institutions are chartered as
6 business corporations.

7 (b) The provisions of the Uniform Limited Liability
8 Company Act, chapter thirty-one-b of this code shall govern
9 banking institutions and the organizing thereof, except as
10 otherwise provided in or where inconsistent with the provisions
11 of this chapter when the banking institutions are chartered as
12 limited liability companies. Any reference in this chapter to
13 "directors" of a bank, in the case of limited liability company
14 banks, refers to the bank's members if the bank is a mem-
15 ber-managed company or to the bank's managers if it is a
16 manager-managed company.

17 (c) No charter shall issue in this state for any banking
18 institution unless the application therefor shall have been
19 submitted to and approved by the West Virginia Board of
20 Banking and Financial Institutions: *Provided*, That the Board
21 may not approve the application to charter any banking institu-
22 tion unless the proposed banking institution does business
23 within this state and is subject to the supervision of the Com-
24 missioner of Banking.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 (a) A state bank may be organized by five or more incorpo-
2 rators, a majority of whom shall be residents of the State of
3 West Virginia. Such banking institution shall have as a part of
4 its corporate name or title one or more of the following words
5 indicative of the business which it is authorized to conduct,
6 namely, "bank", "banking company", "banking association",
7 "trust company", "banking and trust company" or "bank and
8 trust company".

9 The incorporators shall file with the board an agreement of
10 incorporation, in duplicate, following generally the form
11 prescribed by the Secretary of State for chartering corporations
12 under the provisions of article one, chapter thirty-one of this
13 code. The information set forth in the agreement shall include
14 the following:

15 (1) The name of the proposed bank;

16 (2) The community and county in which the bank is to be
17 located, together with the post office address of the place of
18 business of the bank;

19 (3) Whether such bank proposes also to engage in the trust
20 business;

21 (4) The name, residence and occupation of each incorpora-
22 tor, and the amount of capital stock subscribed and paid for by
23 each;

24 (5) The names of the persons who are to serve as officers
25 and directors of the banking institution and the official position
26 proposed to be held by each; and

27 (6) The total authorized capital stock of the institution.

28 The agreement of incorporation shall be signed and
29 acknowledged by each of the incorporators and, when filed with
30 the Board, shall be accompanied by the statutory corporation
31 charter fees and an examination and investigation fee of five
32 thousand dollars payable to the Board. However, if the
33 agreement is for the incorporation of a bank to be organized
34 solely for the purpose of facilitating the acquisition of another
35 bank, the examination and investigation fee is five hundred
36 dollars payable to the Board. When transmitting the agreement
37 to the Board, the incorporators shall designate by name and
38 give the address of the attorney, agent or other responsible party
39 with whom the Board may communicate, on whom the Board
40 may call for further information and to whom the Board may
41 officially report as to action on the agreement so filed with him
42 or her. The agreement shall constitute and may be considered
43 and treated by the Board as an application for the Board's
44 approval to incorporate and organize a banking institution in
45 this state.

46 (b) Notwithstanding the provisions of subsection (a) of this
47 section, a person may apply to the Commissioner to obtain a
48 certificate of authority to organize and operate as a bank under
49 this chapter as a limited liability company, if that limited
50 liability company is formed to have perpetual existence,
51 centralized management, limited liability, free transferability of
52 interests and the Federal Deposit Insurance Corporation has

53 ruled that a bank so organized will be eligible for federal
54 deposit insurance.

55 (c) An existing bank structured as a corporation may apply
56 to the Commissioner to reorganize and operate as a limited
57 liability company.

CHAPTER 28

**(S. B. 413 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 21, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2005.]

AN ACT to amend and reenact §31A-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8C-1, §31A-8C-2, §31A-8C-3 and §31A-8C-5 of said code, all relating generally to financially related activities of state-chartered banking institutions; reorganizing the approval process for engaging in financially related activities; clarifying the definition of financially related activities; creating a notice and approval process to engage in financially related activities; requiring annual reporting to the Legislature; allowing banks to make equity investments in entities providing financially related activities on the same terms as national banks; and restating the purpose and interpretation of the article.

Be it enacted by the Legislature of West Virginia:

That §31A-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8C-1, §31A-8C-2, §31A-8C-3 and §31A-8C-5 of said code be amended and reenacted, all to read as follows:

Article**3. Board of Banking and Financial Institutions.****8C. Provision of Financially Related Services by Banks and Bank Holding Companies.****ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.****§31A-3-2. General powers and duties.**

1 (a) In addition to other powers conferred by this chapter,
2 the Board has the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any provision
5 of this article in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code;

7 (3) Advise the Commissioner in all matters within his or
8 her jurisdiction;

9 (4) Study the organization, programs and services of
10 financial institutions and the laws relating thereto in this state
11 and in other jurisdictions and to report and recommend to the
12 Governor and the Legislature all such changes and amendments
13 in laws, policies and procedures relating thereto as it considers
14 proper;

15 (5) Grant permission and authority to a financial institution:

16 (A) To participate in a public agency hereafter created
17 under the laws of this state or of the United States, the purpose
18 of which is to afford advantages or safeguards to financial
19 institutions or to depositors therein and to comply with all
20 lawful requirements and conditions imposed upon those
21 participants; and

22 (B) To pay interest on demand deposits of the United States
23 or any agency thereof, if the payment of interest is permitted
24 under any applicable federal law, rule or regulation; and

25 (6) Seek judicial enforcement to compel compliance with
26 any of its orders and to seek and obtain civil penalties as set
27 forth under this chapter.

28 (b) The Board also has the power, by entering appropriate
29 orders, to:

30 (1) Restrict the withdrawal of deposits from any financial
31 institution when, in the judgment of the Board, extraordinary
32 circumstances make the restrictions necessary for the protection
33 of creditors of and depositors in the affected institution;

34 (2) Compel the holder of shares in any corporate financial
35 institution to refrain from voting the shares on any matter when,
36 in the judgment of the Board, the order is necessary to protect
37 the institution against reckless, incompetent or careless man-
38 agement, to safeguard funds of depositors in the institution or
39 to prevent willful violation of any applicable law or of any rule
40 and regulation or order issued thereunder. In such a case the
41 shares of the holder may not be counted in determining the
42 existence of a quorum or a percentage of the outstanding shares
43 necessary to take any corporate action;

44 (3) Approve or disapprove applications to incorporate and
45 organize state banking institutions in accordance with the
46 provisions of sections six and seven, article four of this chapter;

47 (4) Approve or disapprove applications to incorporate and
48 organize state-chartered bankers' banks in accordance with the
49 provisions of sections six and seven, article four of this chapter;

50 (5) Exempt a bankers' bank from any provision of this
51 chapter if the Board finds that the provision is inconsistent with

52 the purpose for which a bankers' bank is incorporated and
53 organized and that the welfare of the public or any banking
54 institution or other financial institution would not be jeopard-
55 ized thereby;

56 (6) Revoke the certificate of authority, permit, certificate or
57 license of any state banking institution to engage in business in
58 this state if that institution fails or refuses to comply with any
59 order of the Commissioner entered pursuant to the provisions
60 of paragraph (A) or (B), subdivision (15), subsection (c),
61 section four, article two of this chapter, or at the Board's
62 election to direct the Commissioner to apply to any court
63 having jurisdiction for a prohibitory or mandatory injunction or
64 other appropriate remedy to compel obedience to such order;

65 (7) Suspend or remove a director, officer or employee of
66 any financial institution who is or becomes ineligible to hold
67 that position under any provision of law or rule and regulation
68 or order, or who willfully disregards or fails to comply with any
69 order of the Board or Commissioner made and entered in
70 accordance with the provisions of this chapter or who is
71 dishonest or grossly incompetent in the conduct of financial
72 institution business and prohibit that director, officer or
73 employee from participating in the affairs of any other financial
74 institution until further order of the Board;

75 (8) To receive from state banking institutions applications
76 to establish branch banks by the purchase of the business and
77 assets and assumption of the liabilities of, or merger or consoli-
78 dation with, another banking institution or by the construction,
79 lease or acquisition of branch bank facilities in an unbanked
80 area; examine and investigate such applications, to hold
81 hearings thereon and to approve or disapprove such applica-
82 tions, all in accordance with section twelve, article eight of this
83 chapter;

84 (9) Approve or disapprove the application of any state bank
85 to purchase the business and assets and assume the liabilities of,
86 or merge or consolidate with, another state banking institution
87 in accordance with the provisions of section seven, article seven
88 of this chapter;

89 (10) Approve or disapprove the application of any state
90 bank to purchase the business and assets and assume the
91 liabilities of a national banking association, or merge or
92 consolidate with a national banking association to form a
93 resulting state bank in accordance with the provisions of section
94 seven, article seven of this chapter; and

95 (11) In addition to any authority granted pursuant to section
96 twelve, article eight of this chapter, incident to the approval of
97 an application pursuant to subdivisions (7) or (8) of this
98 subsection, permit the bank the application of which is so
99 approved to operate its banking business under its name from
100 the premises of the bank the business and assets of which have
101 been purchased and the liabilities of which have been assumed
102 by such applicant bank or with which the applicant bank has
103 merged or consolidated: *Provided*, That this permission may be
104 granted only if the Board has made the findings required by
105 subsection (f), section three of this article and such applicant
106 bank has no common directors or officers nor common owner-
107 ship of stock exceeding ten percent of total outstanding voting
108 stock with the bank whose business and assets are being
109 purchased and liabilities assumed, or with whom the applicant
110 bank is being merged; and

111 (12) To receive an appeal from any party who is adversely
112 affected by an order of the Commissioner issued pursuant to
113 section twelve-d, article eight of this chapter and hold hearings
114 in accordance with the provisions of article five, chapter
115 twenty-nine-a of this code.

116 (c) A provision of this section may not be construed to
117 alter, reduce or modify the rights of shareholders, or obligations
118 of a banking institution in regard to its shareholders, as set forth
119 in section one hundred seventeen, article one, chapter thirty-one
120 of this code and section seven, article seven of this chapter, and
121 other applicable provisions of this code.

122 (d) Any order entered by the West Virginia Board of
123 Banking and Financial Institutions pursuant to this section is a
124 matter of public record.

**ARTICLE 8C. PROVISION OF FINANCIALLY RELATED SERVICES BY
BANKS AND BANK HOLDING COMPANIES.**

§31A-8C-1. Financially related defined.

§31A-8C-2. Banks and bank holding companies permitted to offer financially
related services.

§31A-8C-3. Limitation on permitted investment in entities offering financially
related services.

§31A-8C-5. Construction, conflicting provisions.

§31A-8C-1. Financially related defined.

1 The term “financially related” includes:

2 (a) All products, services and activities offered or engaged
3 in by national banks or by any federally chartered thrift
4 institution or West Virginia state or federally chartered credit
5 union or a bank chartered by any other state; except those
6 excluded by subsection (f) of this section;

7 (b) Equity investments in real estate development activities,
8 products and services;

9 (c) Securities underwriting and brokerage activities,
10 products and services, except those excluded by subsection (f)
11 of this section;

12 (d) Financial consulting activities, products and services;
13 and

14 (e) Any and all other activities, products and services
15 engaged in or offered by other providers of financial products
16 or services which may be deemed by the Commissioner of
17 Banking pursuant to this article to be financially related, except
18 those excluded by subsection (f) of this section.

19 (f) The term "financially related" excludes products,
20 services or activities offered or engaged in by any real estate
21 agent, agency or broker, which products, services or activities
22 are regulated by the state Real Estate Commission pursuant to
23 chapter forty-seven of this code except for such activities,
24 products and services permitted, engaged in or offered by a
25 West Virginia state-chartered banking institution prior to the
26 effective date of this section or permitted pursuant to subdivi-
27 sion (b) of this section.

§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.

1 (a) Subject to the prior approval of the Commissioner of
2 Banking, any West Virginia state-chartered banking institution
3 or any bank holding company headquartered in this state may,
4 either through equity investment in other entities or through a
5 wholly owned subsidiary or subsidiaries, or by contract or
6 agreement with others to provide such products or services,
7 engage in any activity, exercise any power or offer any product
8 or service that is financially related. A state-chartered banking
9 institution may engage in a financially related activity directly
10 and not through an operating subsidiary, financial subsidiary or
11 affiliate if it is permissible for a national bank to engage in the
12 financially related activity directly. The Commissioner shall
13 grant or deny any request under this section within sixty days
14 of receipt unless additional information is required.

15 (b) In determining whether an activity is financially
16 related, the Commissioner shall consider:

17 (1) The ability of financial institutions to exercise any
18 additional powers in a safe and sound manner;

19 (2) The authority of national banks, federal thrifts, federal
20 credit unions and other financial service providers operating
21 pursuant to federal law or regulation and the laws of other states
22 to provide the financially related service; and

23 (3) Any specific limitations on financial institution
24 operations or powers contained in this chapter.

25 (c) If a state-chartered banking institution or bank holding
26 company must make prior application to a federal bank
27 regulatory agency for approval to engage in a financially related
28 activity, the banking institution or bank holding company shall
29 file with the Commissioner a copy of the application submitted
30 to the federal agency.

31 (d) The Commissioner shall include a list of every
32 financially related activity authorized pursuant to this section
33 during the previous twelve months in his or her annual report to
34 the Legislature.

**§31A-8C-3. Limitation on permitted investment in entities offer-
ing financially related services.**

1 No West Virginia state-chartered banking institution or
2 bank holding company may invest or otherwise expend more,
3 in the aggregate of the amount of its capital and surplus, on a
4 consolidated basis, in the conduct of financially-related
5 activities than would be allowed to a national bank.

§31A-8C-5. Construction, conflicting provisions.

1 This article shall be construed liberally to permit banks and
2 bank holding companies to offer financially related products
3 and services and to enable West Virginia state-chartered
4 banking institutions and bank holding companies to compete
5 fairly with other financial institutions and other entities
6 providing financial services under the laws of the United States
7 or any other state. No other provision of this code shall be
8 deemed to prohibit such activity: *Provided*, That in the provi-
9 sion of such products and services, banks and bank holding
10 companies are subject to the same state and federal regulation
11 and licensing requirements as are other providers of such
12 products and services.

CHAPTER 29

(S. B. 278 — By Senators Minard, Jenkins and Love)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §31A-4-10 of the Code of West Virginia, 1931, as amended, relating to lists of stockholders of banking institutions and bank holding companies; defining bank holding company for the purpose of said section; and requiring certain bank holding companies to submit annually lists of stockholders.

Be it enacted by the Legislature of West Virginia:

That §31A-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**§31A-4-10. List of stockholders.**

1 For the purposes of this section, “bank holding company”
2 means any company which has control over any West Virginia
3 state chartered bank, including financial holding companies as
4 defined by the Bank Holding Company Act, 12 U. S. C.
5 §1841(p).

6 “Control” shall be construed consistently with section 2(a)
7 of the Bank Holding Company Act, 12 U. S. C. §1841(a).

8 In addition to the requirements of chapter thirty-one-d of
9 this code, the President, or other Executive Officer of every
10 state banking institution and every bank holding company with
11 a controlling interest in a state banking institution shall cause to
12 be kept at all times a full and correct list of the names and post
13 office addresses of the stockholders of the banking institution
14 or bank holding company who directly or indirectly own,
15 control or hold with power to vote five percent or more of the
16 outstanding shares of that institution, and the number of shares
17 owned by each, in the office where its business is transacted.
18 This list shall be open to inspection by all of the stockholders
19 of the banking institution or bank holding company, and the
20 officers authorized by law to assess taxes, during business hours
21 of each day, except Sundays and holidays. A copy of this list
22 shall be made on the first Monday in July of each year and
23 verified by the oath of the President or other executive officer
24 and immediately transmitted by mail to the Commissioner of
25 Banking at his or her office. A bank holding company may
26 comply with the reporting requirement of this section by
27 simultaneously filing with the Commissioner a copy of the
28 annual report it files with its federal reserve bank.

CHAPTER 30

(Com. Sub. for H. B. 2789 — By Delegates Ron Thompson, H. White,
Perry, Hrutkay, Iaquina, Carmichael and Canterbury)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §31A-8A-8 of the Code of West Virginia, 1931, as amended, relating to the assessment date for bank holding companies.

Beit enacted by the Legislature of West Virginia:

That §31A-8A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

1 In order to carry out the purposes of this article, the
2 Commissioner may:

3 (1) Propose rules and issue orders;

4 (2) Enter into cooperative, coordinating or information-
5 sharing agreements with any other bank supervisory agency or
6 any organization affiliated with or representing one or more
7 bank supervisory agencies;

8 (3) Accept any report of examination or investigation by
9 another bank supervisory agency having concurrent jurisdiction

10 over a West Virginia bank or a bank holding company that
11 controls a West Virginia state bank in lieu of conducting the
12 Commissioner's own examination or investigation of the bank
13 holding company or bank;

14 (4) Enter into contracts with any bank supervisory agency
15 having concurrent jurisdiction over a West Virginia state bank
16 or a bank holding company that controls a West Virginia state
17 bank to engage the services of the agency's examiners at a
18 reasonable rate of compensation, or to provide the services of
19 the Commissioner's examiners to any bank supervisory agency
20 at a reasonable rate of compensation: *Provided*, That any
21 contract for examiners shall be excluded from the requirements
22 of article three, chapter five-a of this code;

23 (5) Enter into joint examinations or joint enforcement
24 actions with any other bank supervisory agency having concur-
25 rent jurisdiction over any West Virginia state bank or any bank
26 holding company that controls a West Virginia state bank:
27 *Provided*, That the Commissioner may take any such action
28 independently if he or she determines that the action is neces-
29 sary to carry out the responsibilities set forth in this article to
30 enforce compliance with the laws of this state: *Provided*,
31 *however*, That in the case of an out-of-state bank holding
32 company, the Commissioner shall recognize the authority of the
33 home state regulator over corporate governance matters and the
34 primary responsibility of the home state regulator with respect
35 to safety and soundness matters; and

36 (6) Assess supervisory and examination fees that shall be
37 payable by any bank holding company operating a bank or bank
38 branch in West Virginia in connection with the Commissioner's
39 performance of his or her duties under this article. The Com-
40 missioner shall charge and collect from each bank holding
41 company and pay into a special revenue account in the State
42 Treasury for the Department of Banking an annual assessment

43 payable on the fifteenth day of January computed on total
44 deposits in this state of the bank holding company as of the
45 thirtieth day of June of the previous year as is set out in section
46 eight, article two of this chapter. The payment of the assessment
47 fee shall be accompanied by the report prescribed by the
48 Commissioner under subsection (a), section seven of this
49 article. Examination fees may be shared with other bank
50 supervisory agencies or organizations affiliated with or repre-
51 senting one or more bank supervisory agencies in accordance
52 with agreements between them and the Commissioner.

CHAPTER 31

(S. B. 229 — By Senators Minard, Jenkins and Sharpe)

[Passed March 23, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 6, 2005.]

AN ACT to repeal §31A-2-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31C-1-7 of said code, relating to reports of financial institutions to the Division of Banking; removing the annual deposit and loan reporting requirement for banking institutions; and modifying the annual deposit and loan reporting requirement and its submission date for credit unions.

Be it enacted by the Legislature of West Virginia:

That §31A-2-11 of the Code of West Virginia, 1931, as amended, be repealed; and that §31C-1-7 of said code be amended and reenacted to read as follows:

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-7. Reports.

1 (a) Credit unions shall report to the Commissioner semian-
2 nually during January and July of each calendar year on a date
3 set by the Commissioner for the business periods ending the
4 thirtieth day of June and the thirty-first day of December
5 respectively on forms supplied by the Commissioner for that
6 purpose. Additional reports may also be required.

7 (b) A charge of one hundred dollars shall be levied for each
8 day a credit union fails to provide a required report unless it is
9 excused for cause by the Commissioner or courts.

10 (c) The fiscal year of each credit union incorporated under
11 this chapter shall end on the last day of December.

12 (d) In addition to other reports that may be required under
13 this chapter, every credit union with a main office or branch
14 located in this state shall file with the Commissioner on or
15 before the first day of September of each year the amount of
16 deposits and shares held by each office in this state (excluding
17 automated teller machines) as of the immediately preceding
18 thirtieth day of June.

CHAPTER 32

(S. B. 659 — By Senator Minard)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §32A-2-1 of the Code of West Virginia, 1931, as amended, relating to the definition of “money transmission”.

Be it enacted by the Legislature of West Virginia:

That §32A-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

1 (1) "Commissioner" means the Commissioner of Banking
2 of this state.

3 (2) "Check" or "payment instrument" means any check,
4 traveler's check, draft, money order or other instrument for the
5 transmission or payment of money whether or not the instru-
6 ment is negotiable. The term does not include a credit card
7 voucher, a letter of credit or any instrument that is redeemable
8 by the issuer in goods or services.

9 (3) "Currency" means a medium of exchange authorized or
10 adopted by a domestic or foreign government.

11 (4) "Currency exchange" means the conversion of the
12 currency of one government into the currency of another
13 government, but does not include the issuance and sale of
14 travelers checks denominated in a foreign currency. Transac-
15 tions involving the electronic transmission of funds by licensed
16 money transmitters which may permit, but do not require, the
17 recipient to obtain the funds in a foreign currency outside of
18 West Virginia are not currency exchange transactions: *Pro-*
19 *vided*, That they are not reportable as currency exchange
20 transactions under federal laws and regulations.

21 (5) "Currency exchange, transportation, transmission
22 business" means a person who is engaging in currency ex-
23 change, currency transportation or currency transmission as a
24 service or for profit.

25 (6) “Currency transmission” or “money transmission”
26 means engaging in the business of selling or issuing checks or
27 the business of receiving currency or the payment of money by
28 any means for the purpose of transmitting, either prior to or
29 after receipt, that currency, payment of money or its equivalent
30 by wire, facsimile or other electronic means, or through the use
31 of a financial institution, financial intermediary, the federal
32 reserve system or other funds transfer network. It includes the
33 transmission of funds through the issuance and sale of stored
34 value cards which are intended for general acceptance and used
35 in commercial or consumer transactions.

36 (7) “Currency transportation” means knowingly engaging
37 in the business of physically transporting currency from one
38 location to another in a manner other than by a licensed
39 armored car service exempted under section three of this article.

40 (8) “Licensee” means a person licensed by the Commis-
41 sioner under this article.

42 (9) “Money order” means any instrument for the transmis-
43 sion or payment of money in relation to which the purchaser or
44 remitter appoints or purports to appoint the seller thereof as his
45 or her agent for the receipt, transmission or handling of money,
46 whether the instrument is signed by the seller, the purchaser or
47 remitter or some other person.

48 (10) “Person” means any individual, partnership, associa-
49 tion, joint stock association, limited liability company, trust or
50 corporation.

51 (11) “Principal” means a licensee’s owner, president, senior
52 officer responsible for the licensee’s business, chief financial
53 officer or any other person who performs similar functions or
54 who otherwise controls the conduct of the affairs of a licensee.
55 A person controlling ten percent or more of the voting stock of
56 any corporate applicant is a principal under this provision.

57 (12) "Securities" means all bonds, debentures or other
58 evidences of indebtedness: (a) Issued by the United States of
59 America or any agency thereof, or guaranteed by the United
60 States of America, or for which the credit of the United States
61 of America or any agency thereof is pledged for the payment of
62 the principal and interest thereof; and/or (b) which are direct
63 general obligations of this state, or any other state if uncondi-
64 tionally guaranteed as to the principal and interest by the other
65 state and if the other state has the power to levy taxes for the
66 payment of the principal and interest thereof and is not in
67 default in the payment of any part of the principal or interest
68 owing by it upon any part of its funded indebtedness; and/or (c)
69 which are general obligations of any county, school district or
70 municipality in this state, issued pursuant to law and payable
71 from ad valorem taxes levied on all of the taxable property
72 located therein, if the county, school district or municipality is
73 not in default in the payment of any part of the principal or
74 interest on any debt evidenced by its bonds, debentures or other
75 evidences of indebtedness.

CHAPTER 33

**(Com. Sub. for S. B. 198 — By Senators Fanning, Hunter,
Jenkins, Oliverio, McKenzie, Yoder, Unger and Barnes)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3-16c, relating to establishing safety standards for bed and breakfast establishments; providing findings relating to the need for special fire code

standards for bed and breakfasts; defining the term “bed and breakfast establishment”; providing exemption from certain fire code standards; establishing fire safety standards for bed and breakfasts; authorizing the Fire Commission to promulgate rules; authorizing variance from certain requirements; and authorizing Division of Culture and History to provide recommendations regarding historical preservation of structures.

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 §29-3-16c, to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

1 (a) *Findings.* — Bed and breakfast establishments provide
2 a unique and important contribution to the state, allowing
3 visitors the opportunity to enjoy many of the aspects of our
4 communities and state not available at hotels and motels and
5 often provide vacationers access to overnight accommodation
6 in areas of this state that would not otherwise be available.
7 These operations continue to grow in number and importance
8 in our state’s economy and must be promoted and encouraged
9 by state and local government. Most of these facilities are older
10 residences being converted to this use, and in many cases have
11 architectural and historical significance, and, as with most small
12 businesses, are begun with limited capital available for invest-
13 ment. Any fire safety code standards applicable to these
14 facilities must be sensitive to this distinction and avoid placing
15 a large financial burden on persons operating or planning to
16 operate these facilities. Further, the personal safety of those
17 who live in and visit these facilities is of paramount importance
18 and requires that consideration be made to assure that adequate

19 safety requirements are placed on these facilities to provide for
20 the safety of visitors, residents and, in an emergency, respond-
21 ing firefighters and rescue workers.

22 (b) *Definition.* — For the purposes of this section, the term
23 “bed and breakfast establishment” means a building occupied
24 as a one-family dwelling unit that provides sleeping accommo-
25 dations and breakfast to transient guests for a single fee and
26 does not offer more than six guest rooms to no more than
27 twelve guests.

28 (c) *Fire code standards.* — Notwithstanding any provision
29 of this code to the contrary, every bed and breakfast establish-
30 ment shall be exempt from provisions of fire safety code
31 requirements which are contrary to the following standards:

32 (1) Each bed and breakfast shall have operational smoke
33 alarms in all common areas, guest rooms and hallways and heat
34 detectors as otherwise required by this code or rule of the Fire
35 Commission. Battery-powered smoke alarms shall be permitted
36 where the establishment has demonstrated that the testing,
37 maintenance and battery replacement procedures will ensure
38 reliable power to the smoke alarms. Notwithstanding any
39 provision of this code to the contrary, no smoking will be
40 allowed inside a bed and breakfast establishment.

41 (2) Each bed and breakfast shall have operational hard-
42 wired, battery-powered or plug-in emergency lighting that
43 indicate available means of egress. Battery-powered or plug-in
44 emergency lighting devices shall be permitted where the
45 establishment has demonstrated that the testing, maintenance
46 and battery replacement procedures will ensure reliable power
47 to the emergency lighting devices.

48 (3) Each guest floor shall have a primary and a secondary
49 means of egress. A door leading directly from a guestroom
50 outside the building with access to grade, or a stairway which

51 is covered or enclosed, or a covered balcony or deck with a
52 stairway to grade are acceptable secondary means of egress. A
53 bed and breakfast with third-floor guest rooms must have an
54 accessible second stairway leading from the third floor to grade.
55 Any bed and breakfast establishment with a sprinkler system
56 which otherwise meets the requirements of this section and the
57 state fire safety and building codes is exempt from the require-
58 ment of a secondary means of egress. A bed and breakfast
59 establishment which offers three or fewer guest rooms on the
60 first or second floor only, and accommodates no more than six
61 guest occupants at one time, is exempted from the secondary
62 means of egress requirement;

63 (4) The state Fire Commission shall permit bed and
64 breakfast establishments that cannot readily comply with the
65 requirements of a legislative rule, which may mandate the
66 installation of a secondary means of escape or a sprinkler
67 system, one year per floor of the establishment to comply with
68 the requirements.

69 (5) All other provisions of the state fire safety code not
70 inconsistent with this section and rules promulgated pursuant to
71 subsection (d) of this section are applicable to bed and breakfast
72 establishments.

73 (d) *Legislative rules.* — The state Fire Commission shall
74 promulgate or amend an existing legislative rule, in accordance
75 with the provisions of article three, chapter twenty-nine-a of
76 this code, to effectuate the provisions of this section. The rule
77 shall include a mechanism for the Fire Commission to grant
78 individual variances to bed and breakfast establishments which
79 cannot otherwise meet provisions of the state fire safety code
80 due to the historic and architectural significance of the estab-
81 lishment with due consideration of the economic limitations
82 inherent in the operation of this type of small business.

83 (e) *Historic preservation review.* — The owner of a bed and
84 breakfast may request the historical preservation section of the
85 Division of Culture and History, pursuant to section eight,
86 article one of this chapter, to consult with the owner and
87 provide a recommendation to the Fire Commission regarding
88 the historic character of the structures used or proposed to be
89 used as a bed and breakfast and any objections or concerns
90 regarding any renovations or other changes required by the Fire
91 Commission or Fire Marshal. If an appeal regarding a decision
92 made by the Fire Marshal is made to the Commission as
93 provided by section eighteen of this article, the Commission
94 shall consider the recommendation of the historical preservation
95 section when making a determination regarding the variance as
96 provided for in subsection (d) of this section.

CHAPTER 34

**(S. B. 513 — By Senators McCabe, Plymale, Jenkins, Foster, Sprouse,
Harrison, Sharpe, Dempsey, Barnes and Unger)**

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to the Capital Company Act; eliminating the total tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand five; and modifying the time period in which the authority may allocate tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand four.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars. The
3 total amount of tax credits authorized for a single economic
4 development and technology advancement center may not
5 exceed one million dollars. Capitalization of the company or
6 center may be increased pursuant to rule of the authority.

7 (b)(1) The total credits authorized by the authority for all
8 companies and centers may not exceed a total of ten million
9 dollars each fiscal year: *Provided*, That for the fiscal year
10 beginning on the first day of July, one thousand nine hundred
11 ninety-nine, the total credits authorized for all companies may
12 not exceed a total of six million dollars: *Provided, however*,
13 That for the fiscal year beginning on the first day of July, two
14 thousand, the total credits authorized for all companies may not
15 exceed a total of four million dollars: *Provided further*, That
16 for the fiscal year beginning on the first day of July, two
17 thousand one, the total credits authorized for all companies may
18 not exceed a total of four million dollars: *And provided further*,
19 That for the fiscal year beginning on the first day of July, two
20 thousand two, the total credits authorized for all companies may
21 not exceed a total of three million dollars: *And provided*
22 *further*, That for the fiscal year beginning on the first day of
23 July, two thousand three, the total credits authorized for all
24 companies may not exceed a total of three million dollars: *And*
25 *provided further*, That for the fiscal year beginning on the first
26 day of July, two thousand four, the total credits authorized for
27 all companies may not exceed a total of one million dollars:
28 *And provided further*, That for the fiscal year beginning on the
29 first day of July, two thousand five, there shall be no credits

30 authorized: *And provided further*, That the capital base of any
31 qualified company other than an economic development and
32 technology advancement center qualified under the provisions
33 of article twelve-a, chapter eighteen-b of this code shall be
34 invested in accordance with the provisions of this article. The
35 authority shall allocate these credits to qualified companies and
36 centers in the order that the companies are qualified.

37 (2) Not more than two million dollars of the credits allowed
38 under subdivision (1) of this subsection may be allocated by the
39 authority during each fiscal year to one or more small business
40 investment companies described in this subdivision: *Provided*,
41 That for the fiscal year beginning on the first day of July, two
42 thousand four, and for the fiscal year beginning on th first day
43 of July, two thousand five, no credits authorized by this section
44 may be allocated by the authority to one or more small business
45 investment companies. After a portion of the credits are
46 allocated to small business investment companies as provided
47 in this section, not more than one million dollars of the credits
48 allowed under subdivision (1) of this subsection may be
49 allocated by the authority during each fiscal year to one or more
50 economic development and technology advancement centers
51 qualified by the authority under article twelve-a, chapter
52 eighteen-b of this code: *Provided, however*, That for the fiscal
53 year beginning on the first day of July, two thousand four, all of
54 the credits allowed under subdivision (1) of this subsection
55 shall be allocated only to one or more qualified economic
56 development and technology advancement centers: *Provided*
57 *further*, That for the fiscal year beginning on the first day of
58 July, two thousand five, no credits allowed under subdivision
59 (1) of this subsection shall be allocated to any qualified
60 economic development and technology advancement center.
61 The remainder of the tax credits allowed during the fiscal year
62 shall be allocated by the authority under the provisions of
63 section four, article two of this chapter: *And provided further*,
64 That for the fiscal year beginning on the first day of July, two

65 thousand four, and for the fiscal year beginning on the first day
66 of July, two thousand five, no credits authorized by this section
67 may be allocated by the authority to a taxpayer pursuant to the
68 provisions of section four, article two of this chapter. The
69 portion of the tax credits allowed for small business investment
70 companies described in this subdivision shall be allowed only
71 if allocated by the authority during the first ninety days of the
72 fiscal year and may only be allocated to companies that: (A)
73 Were organized on or after the first day of January, one
74 thousand nine hundred ninety-nine; (B) are licensed by the
75 small business administration as a small business investment
76 company under the small business investment act; and (C) have
77 certified in writing to the authority on the application for credits
78 under this act that the company will diligently seek to obtain
79 and thereafter diligently seek to invest leverage available to the
80 small business investment companies under the small business
81 investment act. These credits shall be allocated by the authority
82 in the order that the companies are qualified. The portion of the
83 tax credits allowed for economic development and technology
84 advancement centers described in article twelve-a, chapter
85 eighteen-b of this code shall be similarly allowed only if
86 allocated by the authority during the first ninety days of the
87 fiscal year: *And provided further*, That solely for the fiscal year
88 beginning on the first day of July, two thousand four, the
89 authority may allocate the tax credits allowed for economic
90 development and technology advancement centers at any time
91 during the fiscal year. Any credits which have not been
92 allocated to qualified companies meeting the requirements of
93 this subdivision relating to small business investment compa-
94 nies or to qualified economic development and technology
95 advancement centers during the first ninety days of the fiscal
96 year shall be made available and allocated by the authority
97 under the provisions of section four, article two of this chapter:
98 *And provided further*, That for the fiscal year beginning on the
99 first day of July, two thousand four, and for the fiscal year
100 beginning on the first day of July, two thousand five, no credits

101 authorized by this section may be allocated by the authority to
102 a taxpayer pursuant to the provisions of section four, article two
103 of this chapter.

104 (3) Notwithstanding any provision of this code or legisla-
105 tive rule promulgated thereunder to the contrary, for the fiscal
106 year beginning on the first day of July, two thousand four, and
107 for the fiscal year beginning on the first day of July, two
108 thousand five, the authority has the sole discretion to allocate or
109 refuse to allocate tax credits authorized under this section to
110 any qualified economic development and technology advance-
111 ment center upon its determination of the extent to which the
112 center will fulfill the purposes of this article. The determination
113 shall be based upon the application of the center, the extent to
114 which the company or center fulfilled those purposes in prior
115 years after receiving tax credits authorized under this section,
116 the extent to which the center is expected to stimulate economic
117 development and high technology research in the chemical
118 industry and such other similarly related criteria as the authority
119 may establish by vote of the majority of authority.

120 (c) Any investor, including an individual, partnership,
121 limited liability company, corporation or other entity who
122 makes a capital investment in a qualified West Virginia capital
123 company, is entitled to a tax credit equal to fifty percent of the
124 investment, except as otherwise provided in this section or in
125 this article: *Provided*, That the tax credit available to investors
126 who make a capital investment in an economic development
127 and technology advancement center shall be one hundred
128 percent of the investment. The credit allowed by this article
129 shall be taken after all other credits allowed by chapter eleven
130 of this code. It shall be taken against the same taxes and in the
131 same order as set forth in subsections (c) through (i), inclusive,
132 section five, article thirteen-c, chapter eleven of this code. The
133 credit for investments by a partnership, limited liability
134 company, a corporation electing to be treated as a subchapter S

135 corporation or any other entity which is treated as a pass
136 through entity under federal and state income tax laws may be
137 divided pursuant to election of the entity's partners, members,
138 shareholders or owners.

139 (d) The tax credit allowed under this section is to be
140 credited against the taxpayer's tax liability for the taxable year
141 in which the investment in a qualified West Virginia capital
142 company or economic development and technology advance-
143 ment center is made. If the amount of the tax credit exceeds the
144 taxpayer's tax liability for the taxable year, the amount of the
145 credit which exceeds the tax liability for the taxable year may
146 be carried to succeeding taxable years until used in full or until
147 forfeited: *Provided*, That: (i) Tax credits may not be carried
148 forward beyond fifteen years; and (ii) tax credits may not be
149 carried back to prior taxable years. Any tax credit remaining
150 after the fifteenth taxable year is forfeited.

151 (e) The tax credit provided in this section is available only
152 to those taxpayers whose investment in a qualified West
153 Virginia capital company or economic development and
154 technology advancement center occurs after the first day of
155 July, one thousand nine hundred eighty-six.

156 (f) The tax credit allowed under this section may not be
157 used against any liability the taxpayer may have for interest,
158 penalties or additions to tax.

159 (g) Notwithstanding any provision in this code to the
160 contrary, the tax commissioner shall publish in the state register
161 the name and address of every taxpayer and the amount, by
162 category, of any credit asserted under this article. The catego-
163 ries by dollar amount of credit received are as follows:

164 (1) More than \$1.00, but not more than \$50,000;

165 (2) More than \$50,000, but not more than \$100,000;

- 166 (3) More than \$100,000, but not more than \$250,000;
- 167 (4) More than \$250,000, but not more than \$500,000;
- 168 (5) More than \$500,000, but not more than \$1,000,000; and
- 169 (6) More than \$1,000,000.

CHAPTER 35

(H. B. 3306 — By Delegate Michael)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §15-2C-6 of the Code of West Virginia, 1931, as amended, relating to fees charged for requests for information from the central abuse registry; providing that fees charged for requests for information from the central abuse registry may be used for criminal record keeping; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §15-2C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-6. Fees.

- 1 The criminal identification bureau may charge, and any
- 2 requester shall pay a user charge of ten dollars for each request
- 3 for information made by a requester to the central abuse

4 registry. In order to expedite requests by requesters, the
5 criminal identification bureau may establish a procedure
6 permitting service providers to deposit funds with the bureau in
7 anticipation of requests. Fees pursuant to this section shall be
8 paid into a special account in the State Treasury to be expended
9 for registry purposes and criminal record keeping: *Provided,*
10 That for and after the fiscal year ending the thirtieth day of
11 June, one thousand nine hundred ninety-eight, all expenditures
12 shall be made in accordance with appropriation by the Legisla-
13 ture. Amounts collected which are found from time to time to
14 exceed the funds needed for central abuse registry and criminal
15 record keeping purposes may be transferred to other accounts
16 or funds and redesignated for other purposes by appropriation
17 of the Legislature. For purposes of this section, the term
18 “criminal record keeping” means the compiling of fingerprints,
19 photographs, criminal disposition reports, uniform crime report
20 statistics and other relevant data regarding the arrest, convic-
21 tion, incarceration and post-conviction status of criminal
22 violators and sex offenders. “Criminal record keeping” does not
23 include the creation of any data.

CHAPTER 36

(Com. Sub. for H. B. 2229 — By Delegates Hamilton,
Wakim, Hrutkay and Yost)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §48-27-403 of the Code of West Virginia, 1931, as amended, and to amend and reenact §49-5-7 and §49-5-8 of said code, all relating to custody of juveniles who

are respondents in an emergency protective order by law-enforcement officials.

Be it enacted by the Legislature of West Virginia:

That §48-27-403 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5-7 and §49-5-8 of said Code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

49. Child Welfare.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

1 (a) Upon the filing of a verified petition under this article,
2 the magistrate court may enter an emergency protective order
3 as it may deem necessary to protect the petitioner or minor
4 children from domestic violence and, upon good cause shown,
5 may do so ex parte without the necessity of bond being given
6 by the petitioner. Clear and convincing evidence of immediate
7 and present danger of abuse to the petitioner or minor children
8 shall constitute good cause for the issuance of an emergency
9 protective order pursuant to this section. If the respondent is not
10 present at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the efforts
12 which have been made to give notice to the respondent or just
13 cause why notice should not be required. Copies of medical
14 reports or records may be admitted into evidence to the same
15 extent as though the original thereof. The custodian of such
16 records shall not be required to be present to authenticate such
17 records for any proceeding held pursuant to this subsection. If

18 the magistrate court determines to enter an emergency protec-
19 tive order, the order shall prohibit the respondent from possess-
20 ing firearms.

21 (b) Following the proceeding, the magistrate court shall
22 order a copy of the petition to be served immediately upon the
23 respondent, together with a copy of any emergency protective
24 order entered pursuant to the proceedings, a notice of the final
25 hearing before the family court and a statement of the right of
26 the respondent to appear and participate in the final hearing, as
27 provided in subsection (d) of this section. Copies of any order
28 entered under the provisions of this section, a notice of the final
29 hearing before the family court and a statement of the right of
30 the petitioner to appear and participate in the final hearing, as
31 provided in subsection (d) of this section, shall also be deliv-
32 ered to the petitioner. Copies of any order entered shall also be
33 delivered to any law-enforcement agency having jurisdiction to
34 enforce the order, including municipal police, the county
35 sheriff's office and local office of the State Police, within
36 twenty-four hours of the entry of the order. An emergency
37 protective order is effective until modified by order of the
38 family court upon hearing as provided in subsection (d) of this
39 section. The order is in full force and effect in every county in
40 this state.

41 (c) Subsequent to the entry of the emergency protective
42 order, service on the respondent and the delivery to the peti-
43 tioner and law-enforcement officers, the court file shall be
44 transferred to the office of the clerk of the circuit court for use
45 by the family court.

46 (d) The family court shall schedule a final hearing on each
47 petition in which an emergency protective order has been
48 entered by a magistrate. The hearing shall be scheduled not
49 later than ten days following the entry of the order by the
50 magistrate. The notice of the final hearing shall be served on the

51 respondent and delivered to the petitioner, as provided in
52 subsection (b) of this section, and must set forth the hearing
53 date, time and place and include a statement of the right of the
54 parties to appear and participate in the final hearing. The notice
55 must also provide that the petitioner's failure to appear will
56 result in a dismissal of the petition and that the respondent's
57 failure to appear may result in the entry of a protective order
58 against him or her for a period of ninety or one hundred eighty
59 days, as determined by the court. The notice must also include
60 the name, mailing address, physical location and telephone
61 number of the family court having jurisdiction over the pro-
62 ceedings. To facilitate the preparation of the notice of final
63 hearing required by the provisions of this subsection, the family
64 court must provide the magistrate court with a day and time in
65 which final hearings may be scheduled before the family court
66 within the time required by law.

67 (e) Upon final hearing the petitioner must prove, by a
68 preponderance of the evidence, the allegation of domestic
69 violence or that he or she reported or witnessed domestic
70 violence against another and has, as a result, been abused,
71 threatened, harassed or has been the subject of other actions to
72 attempt to intimidate him or her, or such petition shall be
73 dismissed by the family court. If the respondent has not been
74 served with notice of the emergency protective order, the
75 hearing may be continued to permit service to be effected. The
76 failure to obtain service upon the respondent does not constitute
77 a basis to dismiss the petition. Copies of medical reports may
78 be admitted into evidence to the same extent as though the
79 original thereof, upon proper authentication, by the custodian
80 of such records.

81 (f) No person requested by a party to be present during a
82 hearing held under the provisions of this article shall be
83 precluded from being present unless such person is to be a
84 witness in the proceeding and a motion for sequestration has

85 been made and such motion has been granted. A person found
86 by the court to be disruptive may be precluded from being
87 present.

88 (g) Upon hearing, the family court may dismiss the petition
89 or enter a protective order for a period of ninety days or, in the
90 discretion of the court, for a period of one hundred eighty days.
91 The hearing may be continued on motion of the respondent, at
92 the convenience of the court. Otherwise, the hearing may be
93 continued by the court no more than seven days. If a hearing is
94 continued, the family court may modify the emergency protec-
95 tive order as it deems necessary.

96 (h) Notwithstanding any other provision of this code to the
97 contrary, a petition filed pursuant to this section that results in
98 the issuance of an emergency protective order naming a
99 juvenile as the respondent, shall be treated as a petition autho-
100 rized by section seven, article five, chapter forty-nine of this
101 code, alleging the juvenile is a juvenile delinquent: *Provided,*
102 That the magistrate court shall notify the prosecuting attorney
103 in the county where the emergency protective order is issued
104 within twenty-four hours of the issuance of the emergency
105 protective order and the prosecuting attorney may file an
106 amended verified petition to comply with the provisions of
107 subsection (a) of section seven, article five, chapter forty-nine
108 of this code within two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents;
subpoena.

§49-5-8. Taking a juvenile into custody.

**§49-5-7. Institution of proceedings by petition; notice to juvenile
and parents; subpoena.**

1 (a)(1) A petition alleging that a juvenile is a status offender
2 or a juvenile delinquent may be filed by a person who has
3 knowledge of or information concerning the facts alleged. The
4 petition shall be verified by the petitioner, shall set forth the
5 name and address of the juvenile's parents, guardians or
6 custodians, if known to the petitioner, and shall be filed in the
7 circuit court in the county where the alleged status offense or
8 act of delinquency occurred: *Provided*, That any proceeding
9 under this chapter may be removed, for good cause shown, in
10 accordance with the provisions of section one, article nine,
11 chapter fifty-six of this code. The petition shall contain specific
12 allegations of the conduct and facts upon which the petition is
13 based, including the approximate time and place of the alleged
14 conduct; a statement of the right to have counsel appointed and
15 consult with counsel at every stage of the proceedings; and the
16 relief sought.

17 (2) Upon the filing of the petition, the court shall set a time
18 and place for a preliminary hearing as provided in section nine
19 of this article and may appoint counsel. A copy of the petition
20 and summons may be served upon the respondent juvenile by
21 first class mail or personal service of process. If a juvenile does
22 not appear in response to a summons served by mail, no further
23 proceeding may be held until the juvenile is served a copy of
24 the petition and summons by personal service of process. If a
25 juvenile fails to appear in response to a summons served in
26 person upon him or her, an order of arrest may be issued by the
27 court for that reason alone.

28 (b) The parents, guardians or custodians shall be named in
29 the petition as respondents and shall be served with notice of
30 the proceedings in the same manner as provided in subsection
31 (a) of this section for service upon the juvenile and required to
32 appear with the juvenile at the time and place set for the
33 proceedings unless such respondent cannot be found after

34 diligent search. If any such respondent cannot be found after
35 diligent search, the court may proceed without further require-
36 ment of notice: *Provided*, That the court may order service by
37 first class mail to the last known address of such respondent.
38 The respondent shall be afforded fifteen days after the date of
39 mailing to appear or answer.

40 (c) The court or referee may order the issuance of a
41 subpoena against the person having custody and control of the
42 juvenile ordering him or her to bring the juvenile before the
43 court or referee.

44 (d) When any case of a juvenile charged with the commis-
45 sion of a crime is certified or transferred to the circuit court, the
46 court or referee shall forthwith cause the juvenile and his or her
47 parents, guardians or custodians to be served with a petition as
48 provided in subsections (a) and (b) of this section. In the event
49 the juvenile is in custody, the petition shall be served upon the
50 juvenile within ninety-six hours of the time custody began and
51 if the petition is not served within that time, the juvenile shall
52 be released forthwith.

53 (e) The clerk of the court shall promptly notify the local
54 office of the Department of Health and Human Resources of all
55 proceedings under this article, which shall then be responsible
56 for convening and directing the multidisciplinary treatment
57 planning process in accordance with the provisions of section
58 three, article five-d of this chapter: *Provided*, That in status
59 offense or delinquency cases where a case manager has not
60 been assigned, the juvenile probation officer shall be responsi-
61 ble for notifying the local office of the Department of Health
62 and Human Services which will assign a case manager who will
63 initiate assessment and be responsible for convening and
64 directing the multidisciplinary treatment planning process.

65 (f) Notwithstanding any other provision of this code to the
66 contrary, a petition filed pursuant to section four hundred-three,
67 article twenty-seven, chapter forty-eight of this code, that
68 results in the issuance of an emergency protective order naming
69 a juvenile as the respondent, shall be treated as a petition
70 authorized by this section, alleging the juvenile is a juvenile
71 delinquent: *Provided*, That the magistrate court shall notify the
72 prosecuting attorney in the county where the emergency
73 protective order is issued within twenty-four hours of the
74 issuance of the emergency protective order and the prosecuting
75 attorney may file an amended verified petition to comply with
76 the provisions of subsection (a) of this section within two
77 judicial days.

§49-5-8. Taking a juvenile into custody.

1 (a) In proceedings formally instituted by the filing of a
2 juvenile petition, the circuit court, a juvenile referee or a
3 magistrate may issue an order directing that a juvenile be taken
4 into custody before adjudication only upon a showing of
5 probable cause to believe that one of the following conditions
6 exists: (1) The petition shows that grounds exist for the arrest
7 of an adult in identical circumstances; (2) the health, safety and
8 welfare of the juvenile demand such custody; (3) the juvenile
9 is a fugitive from a lawful custody or commitment order of a
10 juvenile court; or (4) the juvenile is alleged to be a juvenile
11 delinquent with a record of willful failure to appear at juvenile
12 proceedings and custody is necessary to assure his or her
13 presence before the court. A detention hearing pursuant to
14 section eight-a of this article shall be held by the judge, juvenile
15 referee or magistrate authorized to conduct such hearings
16 without unnecessary delay and in no event may any delay
17 exceed the next day.

18 (b) Absent a court order, a juvenile may be taken into
19 custody by a law-enforcement official only if one of the

20 following conditions exists: (1) Grounds exist for the arrest of
21 an adult in identical circumstances; (2) emergency conditions
22 exist which, in the judgment of the officer, pose imminent
23 danger to the health, safety and welfare of the juvenile; (3) the
24 official has reasonable grounds to believe that the juvenile has
25 left the care of his or her parents, guardian or custodian without
26 the consent of such person, and the health, safety and welfare
27 of the juvenile is endangered; (4) the juvenile is a fugitive from
28 a lawful custody or commitment order of a juvenile court; (5)
29 the official has reasonable grounds to believe the juvenile to
30 have been driving a motor vehicle with any amount of alcohol
31 in his or her blood; or (6) the juvenile is the named respondent
32 in an emergency protective order issued pursuant to section four
33 hundred three, article twenty-seven, chapter forty-eight of this
34 code and the individual filing the petition for the emergency
35 protective order is the juvenile's parent, guardian, or custodian.

36 (c) Upon taking a juvenile into custody, with or without a
37 court order, the official shall:

38 (1) Immediately notify the juvenile's parent, guardian,
39 custodian or, if the parent, guardian or custodian cannot be
40 located, a close relative;

41 (2) Release the juvenile into the custody of his or her
42 parent, guardian or custodian unless:

43 (A) Circumstances present an immediate threat of serious
44 bodily harm to the juvenile if released;

45 (B) No responsible adult can be found into whose custody
46 the juvenile can be delivered: *Provided*, That each day the
47 juvenile is detained, a written record must be made of all
48 attempts to locate such a responsible adult; or

49 (C) The juvenile has been taken into custody for an alleged
50 act of delinquency for which secure detention is permissible.

51 (3) If the juvenile is an alleged status offender or has been
52 taken into custody pursuant to subdivision (6) of subsection (b),
53 immediately notify the Department of Health and Human
54 Resources, and, if the circumstances of either paragraph (A) or
55 (B), subdivision (2) of this subsection exist and the require-
56 ments therein are met, the official may detain the juvenile, but
57 only in a nonsecure or staff-secure facility;

58 (4) Take the juvenile without unnecessary delay before a
59 juvenile referee or judge of the circuit court for a detention
60 hearing pursuant to section eight-a of this article: *Provided*,
61 That if no judge or juvenile referee is then available in the
62 county, the official shall take the juvenile without unnecessary
63 delay before any magistrate then available in the county for the
64 sole purpose of conducting such a detention hearing. In no
65 event may any delay in presenting the juvenile for a detention
66 hearing exceed the next day after he or she is taken into
67 custody.

68 (d) In the event that a juvenile is delivered into the custody
69 of a sheriff or director of a detention facility, the sheriff or
70 director shall immediately notify the court or juvenile referee.
71 The sheriff or director shall immediately provide to every
72 juvenile who is delivered into his or her custody a written
73 statement explaining the juvenile's right to a prompt detention
74 hearing, his or her right to counsel, including appointed counsel
75 if he or she cannot afford counsel, and his or her privilege
76 against self-incrimination. In all cases when a juvenile is
77 delivered into a sheriff's or detention center director's custody,
78 that official shall release the juvenile to his or her parent,
79 guardian or custodian by the end of the next day unless the
80 juvenile has been placed in detention after a hearing conducted
81 pursuant to section eight-a of this article.

CHAPTER 37

(Com. Sub. for S. B. 414 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §17C-15-46 of the Code of West Virginia, 1931, as amended, relating to the use of child safety booster seats for children under eight years of age unless the child is at least four feet nine inches tall or taller.

Be it enacted by the Legislature of West Virginia:

That §17C-15-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-46. Child passenger safety devices required; child safety seats and booster seats.

1 Every driver who transports a child under the age of eight
2 years in a passenger automobile, van or pickup truck other than
3 one operated for hire shall, while the motor vehicle is in motion
4 and operated on a street or highway of this state, provide for the
5 protection of the child by properly placing, maintaining and
6 securing the child in a child passenger safety device system
7 meeting applicable federal motor vehicle safety standards:
8 *Provided*, That if a child is under the age of eight years and at
9 least four feet nine inches tall, a safety belt shall be sufficient
10 to meet the requirements of this section.

11 Any person who violates any provision of this section is
12 guilty of a misdemeanor and, upon conviction thereof, shall be
13 fined not less than ten dollars nor more than twenty dollars.

14 A violation of this section does not by virtue of the viola-
15 tion constitute evidence of negligence or contributory negli-
16 gence or comparative negligence in any civil action or proceed-
17 ing for damages.

18 If any provision of this section or the application thereof to
19 any person or circumstance is held invalid, the invalidity may
20 not affect other provisions or applications of this section and to
21 this end the subsections of this section are declared to be
22 severable.

23 If all seat belts in a vehicle are being used at the time of
24 examination by a law officer and the vehicle contains more
25 passengers than the total number of seat belts or other safety
26 devices as installed in compliance with federal motor vehicle
27 safety standards, the driver may not be considered in violation
28 of this section.

CHAPTER 38

**(S. B. 584 — By Senators Kessler, Dempsey, Foster, Hunter,
Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem,
Harrison, Lanham, McKenzie and Weeks)**

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §48-11-106a; to amend

said code by adding thereto a new section, designated §48-14-107; and to amend said code by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all relating to modification of child support orders; allowing the Bureau for Child Support Enforcement to assist a party seeking the recalculation of support and modification of a child support order due to a substantial change in circumstances; providing request for assistance; notice and filing procedures; granting subpoena powers; providing circumstances under which application may be refused; requiring certain information be provided; opportunity to meet with parties prior to filing of petition for a proposed order; providing for the submission and consideration of proposed modified child support orders to the family court; establishing filing, related notice and review procedures for petitions for modification; and providing that a party may file a request for modification if Bureau for Child Support Enforcement rejects request for assistance.

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 §48-11-106a; that said code be amended by adding thereto a new section, designated §48-14-107; and that said code be amended by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all to read as follows:

Article

- 11. Support of Children.**
- 14. Remedies for the Enforcement of Support Obligations.**
- 18. Bureau for Child Support Enforcement.**

ARTICLE 11. SUPPORT OF CHILDREN.

**§48-11-106a. Modification of support order with the assistance of
Bureau for Child Support Enforcement.**

1 In addition to any other procedure which may exist by law,
2 any party seeking the recalculation of support and modification
3 under a child support order due to a substantial change in
4 circumstances pursuant to the provisions of section one hundred
5 six of this article may seek and obtain the assistance of the
6 Bureau of Child Support Enforcement, pursuant to the proce-
7 dures established under the provisions of sections two hundred
8 one through two hundred six, inclusive, article eighteen of this
9 chapter, in the preparation, assessment and presentation of an
10 appropriate petition for modification of a support order,
11 including the identification and narrowing of issues associated
12 with a requested recalculation of support prior to filing the
13 petition and the preparation and presentation of an appropriate
14 petition and proposed order for modification for consideration
15 by the family court.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS.**

**§48-14-107. Modification of support order with the assistance of
Bureau for Child Support Enforcement.**

1 In addition to any other procedure which may exist by law,
2 any party seeking the recalculation of support and modification
3 under a child support order due to a substantial change in
4 circumstances pursuant to the provisions of section one hundred
5 six of this article may seek and obtain the assistance of the
6 Bureau of Child Support Enforcement, pursuant to the proce-
7 dures established under the provisions of sections two hundred
8 one through two hundred six, inclusive, article eighteen of this
9 chapter, in the preparation, assessment and presentation of an
10 appropriate petition for modification of a support order,
11 including the identification and narrowing of issues associated
12 with a requested recalculation of support prior to filing the
13 petition and the preparation and presentation of an appropriate
14 petition and proposed order for modification for consideration
15 by the family court.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-201. General provisions related to requests for assistance, recalculation of support amounts, preparation of petition and proposed orders.

§48-18-202. Request for assistance by party.

§48-18-203. Bureau processing of request for assistance or recalculation.

§48-18-204. Request for meeting with the Bureau.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

§48-18-206. Family court action on petition and proposed order prepared by Bureau for Child Support Enforcement.

§48-18-201. General provisions related to requests for assistance, recalculation of support amounts, preparation of petition and proposed orders.

1 (a) An obligor or an obligee under a child support order
2 may seek and obtain the assistance of the Bureau for Child
3 Support Enforcement to perform a recalculation of the support
4 amount and prepare and present a petition seeking modification
5 of a child support order and the presentation of a proposed
6 order modifying support to the family court.

7 (b) A request for services authorized by this section shall
8 constitute an application for services from the Bureau for Child
9 Support Enforcement.

10 (c) The duties and actions directed or authorized when a
11 request is made pursuant to this section shall be exercised by
12 the employees and agents of the Bureau for Child Support
13 Enforcement under the supervision and direction of Bureau for
14 Child Support Enforcement attorneys as part of, and in addition
15 to, their duties as set out in section one hundred three, article
16 nineteen of this chapter.

17 (d) In performing its duties under this section, the Bureau
18 for Child Support Enforcement is authorized to issue subpoenas
19 and subpoenas duces tecum, pursuant to the provisions of
20 section one hundred twenty-three of this article, to require an

21 obligor or obligee to produce and permit inspection and
22 copying of designated books, papers, documents or tangible
23 things pursuant to Rule 45 of the Rules of Civil Procedure or
24 section one hundred twenty-three of this article.

25 (e) When the Bureau for Child Support Enforcement is
26 authorized or required by this section to notify or give notice to
27 a party, the notice shall be given in the same manner as required
28 for service of a petition for modification of support filed with
29 the family court.

30 (f) The procedures and forms used shall provide that one
31 party may request that their residential address and the address
32 and identity of the employer not be revealed to another party.

33 (g) The Bureau for Child Support Enforcement may refuse
34 to accept a request or take action on a request for assistance if
35 it determines there are existing ongoing proceedings which
36 would create a conflict, or if it determines that the request was
37 not in good faith based on the allegations made, a history of
38 multiple such requests or other information. If the Bureau for
39 Child Support Enforcement makes a determination to refuse the
40 request for assistance, it shall notify the party making the
41 request for assistance and, if the responding party has already
42 been notified of the request, the responding party.

43 (h) The Bureau for Child Support Enforcement shall
44 prepare an explanation of the process and procedures it will use
45 to process the request for assistance under this section. The
46 explanation shall be made available generally to the public,
47 given to every person who makes a request and included with
48 the notice to the responding party.

§48-18-202. Request for assistance by party.

1 To make a request for assistance under this article, a party
2 shall submit the request in writing to the Bureau for Child

3 Support Enforcement on a form provided by the Bureau. The
4 written request form shall include all of the requesting party's
5 information known to the party that is relevant to determine the
6 child support amount. The request shall be accompanied by:

7 (1) A copy of the order being modified or, in the discretion
8 of the Bureau, information sufficient to permit the Bureau to
9 retrieve or identify the order;

10 (2) A form containing a statement of all of the requesting
11 party's information known to the party that is relevant to
12 determining the amount of child support, including a general
13 statement or argument advancing the reason the request is being
14 made;

15 (3) Copies of documentation reasonably available to the
16 requesting party setting forth all of the requesting party's
17 information that is relevant to determine the amount of child
18 support;

19 (4) A statement setting forth the relevant information
20 pertaining to the responding party's earnings and child support
21 that is known or believed to be true by the requesting party;

22 (5) Copies of any relevant documentation which the
23 requesting party may have in its possession which would be
24 relevant to determining the responding party's child support
25 obligations; and

26 (6) A statement of all other known proceedings, pending
27 court proceedings or other pending requests for assistance
28 involving the parties or related to the child or children whose
29 support is being reevaluated.

**§48-18-203. Bureau processing of request for assistance or recal-
culation.**

1 (a) Upon receipt of a request from a party pursuant to
2 section two hundred two of this article, the Bureau for Child
3 Support Enforcement shall notify the responding party that a
4 request for assistance in the recalculation of the support amount
5 and the related preparation and presentation of a petition or
6 proposed order to modify an existing child support order has
7 been submitted to the Bureau for Child Support Enforcement.

8 (b) As a part of the notification provided under subsection
9 (a) of this section, notification provided by the Bureau for Child
10 Support Enforcement to the responding party shall include the
11 following:

12 (1) A blank information statement form and an explanation
13 of the form;

14 (2) A statement advising the responding party that if the
15 responding party does not fill out and return the information
16 statement with accompanying documentation, that the informa-
17 tion contained on the requesting party's information statement
18 and any attached documentation may be used to prepare a
19 petition and proposed order to modify the parties' existing child
20 support obligations and filed with the family court, if the
21 submitted information shows a substantial change in the
22 parties' circumstances;

23 (3) A copy of the information statement supplied by the
24 requesting party in support of its request;

25 (4) A request that the responding party submit a statement
26 and supply a copy of any information or documentation which
27 the responding party may have which would challenge, contra-
28 dict or supplement the information which has been previously
29 submitted by the requesting party to allow the Bureau for Child
30 Support Enforcement to more accurately recalculate any
31 modified child support obligations of the parties;

32 (5) An explanation that the Bureau for Child Support
33 Enforcement may refuse to accept a request or take action on a
34 request if it determines there are existing ongoing proceedings
35 which would create a conflict;

36 (6) A request that the responding party provide a list of all
37 other known proceedings, pending court proceedings or other
38 requests for recalculation or modification of the parties'
39 respective child support obligations; and

40 (7) An explanation of the process to be followed by the
41 Bureau for Child Support Enforcement in providing the
42 requested assistance, recalculation of the parties' modified child
43 support obligations, including the preparation of a petition, and
44 proposed order to modify the parties' existing child support
45 obligations, when appropriate.

46 (c) The Bureau for Child Support Enforcement may issue
47 a subpoena or subpoena duces tecum, pursuant to the provisions
48 of section one hundred twenty-three of this article, to require
49 the responding party to produce and permit inspection and
50 copying of designated books, papers, documents or tangible
51 things which are relevant to determine child support.

52 (d) The Bureau for Child Support Enforcement may issue
53 a subpoena, pursuant to the provisions of section one hundred
54 twenty-three of this article, to produce and permit inspection
55 and copying of designated books, papers, documents or tangible
56 things relevant to the determination of child support to persons
57 other than the parties to the support order.

58 (e) The Bureau for Child Support Enforcement may use
59 other information and other communications or procedures
60 available to the Bureau for Child Support Enforcement to
61 gather information relevant to the determination of child
62 support.

§48-18-204. Request for meeting with the Bureau.

1 (a) Either party may ask for an in-person meeting with the
2 Bureau prior to the preparation or presentation of any petition
3 to seek a modification of a child support order or any proposed
4 modification order to the family court. As a part of the initial
5 contact and notice to the parties after its receipt of an assistance
6 request under this article, the Bureau for Child Support En-
7 forcement shall inform the parties of their right to meet with the
8 Bureau for Child Support Enforcement to discuss the circum-
9 stances and any relevant factors pertaining to the parties' child
10 support obligations. If either party asks for a meeting, the
11 responding party shall be notified that a meeting has been
12 requested. The parties shall not meet with the Bureau at the
13 same time except as allowed in the discretion of the Bureau.
14 No party may be required to meet with the Bureau.

15 (b) A party may modify an information statement or
16 provide additional documents at the meeting or at any time
17 before the Bureau sends its proposed order to the family court.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

1 (a) If the Bureau determines that no credible information
2 exists to establish finding of a substantial change in circum-
3 stances as required by section one hundred five, article eleven
4 of this chapter or section one hundred six, article fourteen of
5 this chapter, the Bureau for Child Support Enforcement shall
6 notify the parties of that fact and notify the parties that the
7 Bureau for Child Support Enforcement will not be preparing a
8 petition or proposed order seeking modification of the parties'
9 child support obligation. Under those circumstances, if the
10 parties disagree with the Bureau for Child Support Enforce-
11 ment's assessment and wish to independently file a petition for
12 modification, the parties may still seek modification of child

13 support by filing a petition for modification of an order for
14 support with the family court under the provisions of section
15 one hundred five or one hundred six, article eleven of this
16 chapter or under the provisions of section one hundred six,
17 article fourteen of this chapter.

18 (b) If the Bureau for Child Support Enforcement determines
19 that there has been a substantial change of circumstances as
20 required by section one hundred five, article eleven of this
21 chapter or by section one hundred six, article fourteen of this
22 chapter, then the Bureau for Child Support Enforcement shall
23 prepare a petition and proposed order modifying the child
24 support order to be filed with the clerk of the family court.

25 (c) Any such petition filed by the Bureau for Child Support
26 Enforcement, filed pursuant to this article, shall include the
27 following:

28 (1) A copy of the proposed order;

29 (2) A print-out of the child support guidelines calculations;

30 (3) A notice of the Bureau's action;

31 (4) The documents and statements relied upon;

32 (5) Any statement of findings or justification the Bureau is
33 required or determines to include; and

34 (6) A form and instructions for filing an objection to the
35 proposed order, should a party wish to do so, which form shall
36 require a statement of the ground or grounds for filing the
37 objection.

38 (d) The Bureau for Child Support Enforcement's proposed
39 order shall be based on the child support guidelines: *Provided*,
40 That the Bureau may disregard the child support guidelines or

41 adjust the amount as allowed by section seven hundred two,
42 article thirteen of this chapter in the following instances:

43 (1) When the previous child support order disregarded the
44 child support guidelines; the grounds for the disregarding or
45 adjusting the guidelines are stated in the worksheet or previous
46 order or are agreed upon by the parties or are otherwise clear;
47 and those grounds continue to exist and can be applied to the
48 current circumstances; or

49 (2) If new grounds for the disregard or adjustment are fully
50 explained in the proposed order.

**§48-18-206. Family court action on petition and proposed order
prepared by Bureau for Child Support Enforcement.**

1 (a) Upon receipt of petition for modification and proposed
2 order prepared by the Bureau for Child Support Enforcement in
3 accordance with the provisions of this article, the circuit clerk
4 shall serve a copy of the petition and the proposed order upon
5 all parties to the proceeding by personal service or by United
6 States certified mail, return receipt requested, and direct the
7 parties to file any objections to the proposed modified child
8 support order within twenty days of the date of receiving such
9 notice.

10 (b) Within five days of the filing of a petition for modifica-
11 tion and proposed order, the circuit clerk shall notify the family
12 court.

13 (c) If no party files timely objection to the proposed order
14 or timely requests a hearing on the petition after receiving such
15 notice, then the family court may proceed to review the petition
16 and proposed order sua sponte and may issue the proposed
17 order. If the family court receives no objection, but the family

18 court concludes that the proposed order should not be entered
19 or should be changed, it shall set the matter for hearing.

20 (d) If the family court receives an objection to the petition
21 or proposed order, the family court shall set a date and time for
22 hearing.

23 (e) At any hearing on the proposed order, the family court
24 shall treat the proposed order as a motion for modification
25 made by the party requesting the Bureau to initiate the modifi-
26 cation. The actions of the family court at a hearing shall be de
27 novo and shall not be an appeal from the Bureau's recom-
28 mended order. The family court shall notify the parties of the
29 hearing and of the parties' rights and the procedures to be
30 followed.

31 (f) The fees to be assessed for filing and service of the
32 petition and the disbursement of the fee for petitions filed
33 pursuant to this section shall be the same as the fee charged by
34 the clerk for petitioning for an expedited modification of a child
35 support order, as set forth in section eleven, article one, chapter
36 fifty-nine of this code.

CHAPTER 39

**(H. B. 3094 — By Delegates Staton, Mahan,
Brown, Webster and Amores)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §48-14-419 of the Code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109

and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 of said code, all relating to child support enforcement; repealing authority of the West Virginia Support Enforcement Commission to promulgate rules; repealing certain duties of the commission; repealing authority of Bureau for Child Support Enforcement to contract for certain services; repealing authority of commission to adopt form to identify support payments; increasing the number of members on the Commission; altering the organization of certain Bureau employees; removing commission authority to promulgate fee rules; authorizing the Commissioner of the Bureau for Child Support Enforcement to cooperate with other states in the enforcement of child support; moving certain rule-making authority from the Commission to the Commissioner; removing commission authority to require certain bonding requirements of Bureau employees; moving authority from Commission to the Commissioner relating to collecting child support from state and federal taxes; revising requirements relating to withholding child support payments from the Bureau of Employment Programs; and removing geographic delineations for certain Bureau attorneys.

Be it enacted by the Legislature of West Virginia:

That §48-14-419 of the Code of West Virginia, 1931, as amended, be repealed; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 of said code, all to read as follows:

Article

- 17. West Virginia Support Enforcement Commission.**
- 18. Bureau for Child Support Enforcement.**
- 19. Bureau for Child Support Enforcement Attorney.**

ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.**§48-17-101. Creation of Support Enforcement Commission; number of members.**

1 The West Virginia Support Enforcement Commission,
2 consisting of eight members, is hereby created in the Depart-
3 ment of Health and Human Resources and may use the adminis-
4 trative support and services of that department. The Commis-
5 sion is not subject to control, supervision or direction by the
6 Department of Health and Human Resources, but is an inde-
7 pendent, self-sustaining commission that shall have the powers
8 and duties specified in this chapter.

9 The Commission is a part-time commission whose mem-
10 bers perform such duties as specified in this chapter. The
11 ministerial duties of the Commission shall be administered and
12 carried out by the Commissioner of the Bureau for Child
13 Support Enforcement, with the assistance of such staff of the
14 Department of Health and Human Resources as the Secretary
15 may assign.

16 Each member of the Commission shall devote the time
17 necessary to carry out the duties and obligations of the office
18 and the seven members appointed by the Governor may pursue
19 and engage in another business, occupation or gainful employ-
20 ment that is not in conflict with the duties of the Commission.

21 While the Commission is self-sustaining and independent,
22 it, its members, its employees and the Commissioner are subject
23 to article nine-a of chapter six, chapter six-b, chapter twenty-
24 nine-a and chapter twenty-nine-b of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-103. Organization and employees.

§48-18-108. Fees.

§48-18-112. Cooperation with other states in the enforcement of child support.

§48-18-113. Disbursements of amounts collected as support.

§48-18-117. Obtaining support from federal tax refunds.

§48-18-118. Obtaining support from state income tax refunds.

§48-18-119. Obtaining support from unemployment compensation benefits.

§48-18-121. Providing information to consumer reporting agencies; requesting consumer credit reports for child support purposes.

§48-18-103. Organization and employees.

1 (a) The Commissioner shall organize the work of the
2 Bureau in such offices or other organizational units as he or she
3 may determine to be necessary for effective and efficient
4 operation.

5 (b) The Commissioner shall employ a sufficient number of
6 employees in the position of Bureau for Child Support Enforce-
7 ment attorney so as to provide for the effective and efficient
8 operation of the Bureau for Child Support Enforcement. The
9 Bureau for Child Support Enforcement attorneys shall be
10 distributed geographically as determined by the Commissioner.

11 (c) The Secretary may transfer employees and resources of
12 the Department to the Bureau for Child Support Enforcement
13 as may be necessary to fulfill the duties and responsibilities of
14 the Bureau under this chapter: *Provided*, That the Secretary
15 may not transfer employees of other divisions and agencies
16 within the Department to the Bureau for Child Support Enforce-
17 ment without a prior finding that the office or position held by
18 the employee may be eliminated and until the office or position
19 is, in fact, eliminated.

20 (d) The Commissioner, if he or she deems such action
21 necessary, may hire legal counsel for the Division, notwith-
22 standing the provisions of section two, article three, chapter five
23 of this code or any other code provision to the contrary, or may
24 request the Attorney General to appoint counsel who shall
25 perform such duties as may be required by the Bureau. The
26 Attorney General, in pursuance of such request, may select and
27 appoint counsel to serve during the will and pleasure of the

28 Attorney General, and shall be paid out of any funds allocated
29 and appropriated to the Child Support Enforcement Fund.

30 (e) The Commissioner may employ such staff or employees
31 as may be necessary to administer and enforce this chapter.

§48-18-108. Fees.

1 (a) When the Bureau for Child Support Enforcement
2 provides child support collection services either to a public
3 assistance recipient or to a party who does not receive public
4 assistance, the Bureau for Child Support Enforcement shall,
5 upon written notice to the obligor, charge a monthly collection
6 fee equivalent to the full monthly cost of the services, in
7 addition to the amount of child support which was ordered by
8 the court. The fee shall be deposited in the Child Support
9 Enforcement Fund. The service fee assessed may not exceed ten
10 percent of the monthly court-ordered child support and may not
11 be assessed against any obligor who is current in payment of
12 the monthly court-ordered child support payments: *Provided,*
13 That this fee may not be assessed when the obligor is also a
14 recipient of public assistance.

15 (b) Except for those persons applying for services provided
16 by the Bureau for Child Support Enforcement who are applying
17 for or receiving public assistance from the Division of Human
18 Services or persons for whom fees are waived pursuant to a
19 legislative rule promulgated pursuant to this section, all
20 applicants shall pay an application fee of twenty-five dollars.

21 (c) Fees imposed by state and federal tax agencies for
22 collection of overdue support shall be imposed on the person
23 for whom these services are provided. Upon written notice to
24 the obligee, the Bureau for Child Support Enforcement shall
25 assess a fee of twenty-five dollars to any person not receiving
26 public assistance for each successful federal tax interception.
27 The fee shall be withheld prior to the assistance for each

28 successful federal tax interception. The fee shall be withheld
29 prior to the release of the funds received from each interception
30 and deposited in the Child Support Enforcement Fund estab-
31 lished pursuant to section 18-107.

32 (d) In any action brought by the Bureau for Child Support
33 Enforcement, the court shall order that the obligor shall pay
34 attorney fees for the services of the attorney representing the
35 Bureau for Child Support Enforcement in an amount calculated
36 at a rate similar to the rate paid to court-appointed attorneys
37 paid pursuant to section thirteen-a, article twenty-one, chapter
38 twenty-nine of this code and all court costs associated with the
39 action: *Provided*, That no such award shall be made when the
40 court finds that the award of attorney's fees would create a
41 substantial financial hardship on the obligor or when the obligor
42 is a recipient of public assistance. Further, the Bureau for Child
43 Support Enforcement may not collect such fees until the obligor
44 is current in the payment of child support. No court may order
45 the Bureau for Child Support Enforcement to pay attorney's
46 fees to any party in any action brought pursuant to this chapter.

47 (e) This section shall not apply to the extent it is inconsis-
48 tent with the requirements of federal law for receiving funds for
49 the program under Title IV-A and Title IV-D of the Social
50 Security Act, United States Code, article three, Title 42,
51 Sections 601 to 613 and United States Code, Title 42, Sections
52 651 to 662.

**§48-18-112. Cooperation with other states in the enforcement of
child support.**

1 (a) The Bureau for Child Support Enforcement shall
2 cooperate with any other state in the following:

3 (1) In establishing paternity;

4 (2) In locating an obligor residing temporarily or perma-
5 nently in this state, against whom any action is being taken for

6 the establishment of paternity or the enforcement of child and
7 spousal support;

8 (3) In securing compliance by an obligor residing tempo-
9 rarily or permanently in this state, with an order issued by a
10 court of competent jurisdiction against such obligor for the
11 support and maintenance of a child or children or the parent of
12 such child or children; and

13 (4) In carrying out other functions necessary to a program
14 of child and spousal support enforcement.

15 (b) The Commissioner shall, establish procedures necessary
16 to extend the Bureau for Child Support Enforcements' system
17 of withholding under article fourteen of this chapter, so that
18 such system may include withholding from income derived
19 within this state in cases where the applicable support orders
20 were issued in other states, in order to assure that child support
21 owed by obligors in this state or any other state will be col-
22 lected without regard to the residence of the child for whom the
23 support is payable or the residence of such child's custodial
24 parent.

§48-18-113. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the
2 Bureau for Child Support Enforcement shall be distributed
3 within two business days after receipt from the employer or
4 other source of periodic income. The amounts collected as child
5 support shall be distributed by the Bureau for Child Support
6 Enforcement in accordance with the provisions for distribution
7 set forth in 42 U.S.C. §657. The Commissioner shall promul-
8 gate a legislative rule to establish the appropriate distribution as
9 may be required by the federal law.

10 (b) Any payment required to be made under the provisions
11 of this section to a family shall be made to the resident parent,

12 legal guardian or caretaker relative having custody of or
13 responsibility for the child or children.

14 (c) The Commissioner shall maintain methods of adminis-
15 tration which are designed to assure that employees of the
16 Bureau for Child Support Enforcement or any persons em-
17 ployed pursuant to a contract who are responsible for handling
18 cash receipts do not participate in accounting or operating
19 functions which would permit them to conceal in the account-
20 ing records the misuse of cash receipts: *Provided*, That the
21 Commissioner may provide for exceptions to this requirement
22 in the case of sparsely populated areas in this state where the
23 hiring of unreasonable additional staff in the local office would
24 otherwise be necessary.

25 (d) No penalty or fee may be collected by or distributed to
26 a recipient of Bureau for Child Support Enforcement services
27 from the State Treasury or from the Child Support Enforcement
28 Fund when child support is not distributed to the recipient in
29 accordance with the time frames established herein.

30 (e) For purposes of this section, "business day" means a day
31 on which state offices are open for regular business.

§48-18-117. Obtaining support from federal tax refunds.

1 The Commissioner shall, by legislative rule promulgated
2 pursuant to chapter twenty-nine-a of this code, place in effect
3 procedures necessary for the Bureau for Child Support Enforce-
4 ment to obtain payment of past due support from federal tax
5 refunds from overpayments made to the Secretary of the
6 Treasury of the United States. The Bureau for Child Support
7 Enforcement shall take all steps necessary to implement and
8 utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The Tax Commissioner shall establish procedures
2 necessary for the Bureau for Child Support Enforcement to
3 obtain payment of past due support from state income tax
4 refunds from overpayment made to the Tax Commissioner
5 pursuant to the provisions of article twenty-one, chapter eleven
6 of this code.

7 (b) The Commissioner shall, establish procedures necessary
8 for the Bureau for Child Support Enforcement to enforce a
9 support order through a notice to the Tax Commissioner which
10 will cause any refund of state income tax which would other-
11 wise be payable to an obligor to be reduced by the amount of
12 overdue support owed by such obligor.

13 (1) Such legislative rule shall, at a minimum, prescribe:

14 (A) The time or times at which the Bureau for Child
15 Support Enforcement shall serve on the obligor or submit to the
16 Tax Commissioner notices of past due support;

17 (B) The manner in which such notices shall be served on
18 the obligor or submitted to the Tax Commissioner;

19 (C) The necessary information which shall be contained in
20 or accompany the notices;

21 (D) The amount of the fee to be paid to the Tax Commis-
22 sioner for the full cost of applying the procedure whereby past
23 due support is obtained from state income tax refunds; and

24 (E) Circumstances when the Bureau for Child Support
25 Enforcement may deduct a twenty-five dollar fee from the
26 obligor's state income tax refund. This procedure may not
27 require a deduction from the state income tax refund of an
28 applicant who is a recipient of assistance from the Bureau for
29 Children and Families in the form of temporary assistance for
30 needy families.

31 (2) Withholding from state income tax refunds may not be
32 pursued unless the Bureau for Child Support Enforcement has
33 examined the obligor's pattern of payment of support and the
34 obligee's likelihood of successfully pursuing other enforcement
35 actions, and has determined that the amount of past due support
36 which will be owed, at the time the withholding is to be made,
37 will be one hundred dollars or more. In determining whether the
38 amount of past due support will be one hundred dollars or more,
39 the Bureau for Child Support Enforcement shall consider the
40 amount of all unpaid past due support, including that which
41 may have accrued prior to the time that the Bureau for Child
42 Support Enforcement first agreed to enforce the support order.

43 (c) The Commissioner of the Bureau for Child Support
44 Enforcement shall enter into agreements with the Secretary of
45 the Treasury and the Tax Commissioner, and other appropriate
46 governmental agencies, to secure information relating to the
47 social security number or numbers and the address or addresses
48 of any obligor, in order to provide notice between such agencies
49 to aid the Bureau for Child Support Enforcement in requesting
50 state income tax deductions and to aid the Tax Commissioner
51 in enforcing such deductions. In each such case, the Tax
52 Commissioner, in processing the state income tax deduction,
53 shall notify the Bureau for Child Support Enforcement of the
54 obligor's home address and social security number or numbers.
55 The Bureau for Child Support Enforcement shall provide this
56 information to any other state involved in processing the
57 support order.

58 (d) For the purposes of this section, "past due support"
59 means the amount of unpaid past due support owed under the
60 terms of a support order to or on behalf of a child, or to or on
61 behalf of a minor child and the parent with whom the child is
62 living, regardless of whether the amount has been reduced to a
63 judgment or not.

64 (e) The Bureau for Child Support Enforcement may, under
65 the provisions of this section, enforce the collection of past due
66 support on behalf of a child who has reached the age of
67 majority.

68 (f) The procedure shall, at a minimum, provide that prior to
69 notifying the Tax Commissioner of past due support, a notice
70 to the obligor as prescribed under subsection (a) of this section
71 shall:

72 (1) Notify the obligor that a withholding will be made from
73 any refund otherwise payable to such obligor;

74 (2) Instruct the obligor of the steps which may be taken to
75 contest the determination of the Bureau for Child Support
76 Enforcement that past due support is owed or the amount of the
77 past due support; and

78 (3) Provide information with respect to the procedures to be
79 followed, in the case of a joint return, to protect the share of the
80 refund which may be payable to another person.

81 (g) If the Bureau for Child Support Enforcement is notified
82 by the Tax Commissioner that the refund from which withhold-
83 ing is proposed to be made is based upon a joint return, and if
84 the past due support which is involved has not been assigned to
85 the Department of Health and Human Resources, the Bureau for
86 Child Support Enforcement may delay distribution of the
87 amount withheld until such time as the Tax Commissioner
88 notifies the Bureau for Child Support Enforcement that the
89 other person filing the joint return has received his or her proper
90 share of the refund, but such delay shall not exceed six months.

91 (h) In any case in which an amount is withheld by the Tax
92 Commissioner under the provisions of this section and paid to
93 the Bureau for Child Support Enforcement, if the Bureau for
94 Child Support Enforcement subsequently determines that the

95 amount certified as past due was in excess of the amount
96 actually owed at the time the amount withheld is to be distrib-
97 uted, the agency shall pay the excess amount withheld to the
98 obligor thought to have owed the past due support or, in the
99 case of amounts withheld on the basis of a joint return, jointly
100 to the parties filing the return.

101 (i) The amounts received by the Bureau for Child Support
102 Enforcement shall be distributed in accordance with the
103 provisions for distribution set forth in 42 U.S.C. §657.

**§48-18-119. Obtaining support from unemployment compensa-
tion benefits.**

1 (a) The Commissioner shall enter into a written agreement
2 with the Bureau of Employment Programs for the purpose of
3 withholding unemployment compensation from individuals
4 with unmet support obligations being enforced by the Bureau
5 for Child Support Enforcement. The Commissioner shall,
6 through direct contact with the Bureau of Employment Pro-
7 grams, process cases through the Bureau of Employment
8 Programs in this state, and shall process cases through support
9 enforcement agencies in other states. The Commissioner shall
10 receive all amounts withheld by the Bureau of Employment
11 Programs in this state, forwarding any amounts withheld on
12 behalf of support enforcement agencies in other states to those
13 agencies.

14 (b) For the purposes of this section:

15 (1) "Legal process" means a writ, order, summons or other
16 similar process in the nature of garnishment which is issued by
17 a court of competent jurisdiction or by an authorized official
18 pursuant to an order to such court or pursuant to state or local
19 law.

20 (2) “Unemployment compensation” means any compensa-
21 tion under state unemployment compensation law (including
22 amounts payable in accordance with agreements under any
23 federal unemployment compensation law). It includes extended
24 benefits, unemployment compensation for federal employees,
25 unemployment compensation for ex-servicemen, trade readjust-
26 ment allowances, disaster unemployment assistance, and
27 payments under the Federal Redwood National Park Expansion
28 Act.

**§48-18-121. Providing information to consumer reporting agen-
cies; requesting consumer credit reports for
child support purposes.**

1 (a) For purposes of this section, the term “consumer
2 reporting agency” means any person who, for monetary fees,
3 dues, or on a cooperative nonprofit basis, regularly engages, in
4 whole or in part, in the practice of assembling or evaluating
5 consumer credit information or other information on consumers
6 for the purpose of furnishing consumer reports to third parties.

7 (b) The Commissioner shall establish procedures whereby
8 information regarding the amount of overdue support owed by
9 an obligor will be reported periodically by the Bureau for Child
10 Support Enforcement to any consumer reporting agency, after
11 a request by the consumer reporting agency that it be provided
12 with the periodic reports.

13 (1) The procedures shall provide that any information with
14 respect to an obligor shall be made available only after notice
15 has been sent to the obligor of the proposed action, and such
16 obligor has been given a reasonable opportunity to contest the
17 accuracy of the information.

18 (2) The procedures shall afford the obligor with procedural
19 due process prior to making information available with respect
20 to the obligor.

21 (c) The information made available to a consumer reporting
22 agency regarding overdue support may only be made available
23 to an entity that has furnished evidence satisfactory to the
24 Bureau that the entity is a consumer reporting agency as defined
25 in subsection (a) of this section.

26 (d) The Bureau for Child Support Enforcement may impose
27 a fee for furnishing such information, not to exceed the actual
28 cost thereof.

29 (e) The Commissioner of the Bureau for Child Support
30 Enforcement, or her or his designee, may request a consumer
31 reporting agency to prepare and furnish to the Bureau for Child
32 Support Enforcement a consumer report for purposes relating
33 to child support, by certifying to the consumer reporting agency
34 that:

35 (1) The consumer report is needed for the purpose of
36 establishing an individual's capacity to make child support
37 payments or determining the appropriate level of payments in
38 order to set an initial or modified child support award;

39 (2) The paternity of the child of the individual has been
40 established or acknowledged by the individual in accordance
41 with state law;

42 (3) The individual whose report is being requested has been
43 given at least ten days' prior notice of the request by certified
44 mail to his or her last known address that such report is being
45 requested; and

46 (4) The consumer report will be kept confidential, will be
47 used solely for a purpose described in subdivision (1) of this
48 subsection and will not be used in connection with any other
49 civil, administrative or criminal proceeding or for any other
50 purpose.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.**§48-19-102. Appointment of Bureau for Child Support Enforcement attorneys.**

1 (a) Each Bureau for Child Support Enforcement attorney
2 shall be appointed by the Commissioner of the Bureau for Child
3 Support Enforcement. The Bureau for Child Support Enforce-
4 ment attorneys shall be duly qualified attorneys licensed to
5 practice in the courts of this state. Bureau for Child Support
6 Enforcement attorneys shall be exempted from the appoint-
7 ments in the indigent cases which would otherwise be required
8 pursuant to article twenty-one, chapter twenty-nine of this code.

9 (b) Nothing contained herein shall prohibit the Commis-
10 sioner from temporarily assigning, from time to time as
11 caseload may dictate, a Bureau for Child Support Enforcement
12 attorney from one geographical area to another geographical
13 area.

14 (c) The Bureau for Child Support Enforcement attorney is
15 an employee of the Bureau for Child Support Enforcement.



CHAPTER 40

**(Com. Sub. for H. B. 2492 — By Delegates Long, Spencer,
Talbott, Barker, Hunt, Marshall and Overington)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §49-5-13d of the Code of West Virginia, 1931, as amended, relating to teen court programs; and

authorizing counties to adopt a mandatory fee when a county elects to institute a teen court program, to fund the program.

Belit enacted by the Legislature of West Virginia:

That §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

1 (a) Notwithstanding any provision of this article to the
2 contrary, in any county that chooses to institute a teen court
3 program in accordance with the provisions of this section, any
4 juvenile who is alleged to have committed a status offense or an
5 act of delinquency which would be a misdemeanor if committed
6 by an adult and who is otherwise subject to the provisions
7 of this article may be given the option of proceeding in the teen
8 court program as an alternative to the filing of a formal petition
9 under section seven of this article or proceeding to a disposition
10 as provided by section eleven-a or thirteen of this article, as the
11 case may be. The decision to extend the option to enter the teen
12 court program as an alternative procedure shall be made by the
13 circuit court if the court finds that the offender is a suitable
14 candidate for the program. No juvenile may enter the teen court
15 program unless he or she and his or her parent or guardian
16 consent. Any juvenile who does not successfully cooperate in
17 and complete the teen court program and any disposition
18 imposed therein shall be returned to the circuit court for further
19 disposition as provided by section eleven-a or thirteen of this
20 article, as the case may be.

21 (b) The following provisions apply to all teen court
22 programs:

23 (1) The judge for each teen court proceeding shall be an
24 acting or retired circuit court judge or an active member of the
25 West Virginia State Bar, who serves on a voluntary basis.

26 (2) Any juvenile who selects the teen court program as an
27 alternative disposition shall agree to serve thereafter on at least
28 two occasions as a teen court juror.

29 (3) Volunteer students from grades seven through twelve of
30 the schools within the county shall be selected to serve as
31 defense attorney, prosecuting attorney, court clerk, bailiff and
32 jurors for each proceeding.

33 (4) Disposition in a teen court proceeding shall consist of
34 requiring the juvenile to perform sixteen to forty hours of
35 community service, the duration and type of which shall be
36 determined by the teen court jury from a standard list of
37 available community service programs provided by the county
38 juvenile probation system and a standard list of alternative
39 consequences that are consistent with the purposes of this
40 article. The performance of the juvenile shall be monitored by
41 the county juvenile probation system. The juvenile shall also
42 perform at least two sessions of teen court jury service and, if
43 considered appropriate by the circuit court judge, participate in
44 an education program. Nothing in this section may be construed
45 so as to deny availability of the services provided under section
46 eleven-a of this article to juveniles who are otherwise eligible
47 therefor.

48 (c) The rules for administration, procedure and admission
49 of evidence shall be determined by the chief circuit judge, but
50 in no case may the court require a juvenile to admit the allega-
51 tion against him or her as a prerequisite to participation in the
52 teen court program. A copy of these rules shall be provided to
53 every teen court participant.

54 (d) Each county that operates, or wishes to operate, a teen
55 court program as provided in this section is hereby authorized
56 to adopt a mandatory fee of up to five dollars to be assessed as
57 provided in this subsection. Assessments collected by the clerk
58 of the court pursuant to this subsection shall be deposited into
59 an account specifically for the operation and administration of
60 a teen court program. The clerk of the court of conviction shall
61 collect the fees established in this subsection and shall remit the
62 fees to the teen court program. Any mandatory fee established
63 by the county commission in accordance with the provisions of
64 this subsection shall be paid by the defendant on a judgment of
65 guilty or a plea of nolo contendere for each violation committed
66 in the county of any traffic regulation or law of the road
67 established under the provisions of chapter seventeen-c of this
68 code or any local ordinance.

CHAPTER 41

**(S. B. 585 — By Senators Kessler, Dempsey, Foster, Hunter, Jenkins,
Minard, Oliverio, White, Barnes, Caruth, Deem, Harrison,
Lanham, McKenzie and Weeks)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §49-5-17 of the Code of West Virginia, 1931, as amended, relating to juvenile proceedings and confidentiality of juvenile records; and permitting disclosure of same under specified circumstances.

Be it enacted by the Legislature of West Virginia:

That §49-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.**§49-5-17. Confidentiality of juvenile records.**

1 (a) Records of a juvenile proceeding conducted under this
2 chapter are not public records and shall not be disclosed to
3 anyone unless disclosure is otherwise authorized by this
4 section.

5 (b) Notwithstanding the provisions of subsection (a) of this
6 section, a copy of a juvenile's records shall automatically be
7 disclosed to certain school officials, subject to the following
8 terms and conditions:

9 (1) Only the records of certain juveniles shall be disclosed.
10 These include, and are limited to, cases in which:

11 (A) The juvenile has been charged with an offense which:

12 (i) Involves violence against another person;

13 (ii) Involves possession of a dangerous or deadly weapon;
14 or

15 (iii) Involves possession or delivery of a controlled sub-
16 stance as that term is defined in section one hundred one, article
17 one, chapter sixty-a of this code; and

18 (B) The juvenile's case has proceeded to a point where one
19 or more of the following has occurred:

20 (i) A judge, magistrate or referee has determined that there
21 is probable cause to believe that the juvenile committed the
22 offense as charged;

23 (ii) A judge, magistrate or referee has placed the juvenile on
24 probation for the offense;

25 (iii) A judge, magistrate or referee has placed the juvenile
26 into an improvement period in accordance with section nine of
27 this article; or

28 (iv) Some other type of disposition has been made of the
29 case other than dismissal.

30 (2) The circuit court for each judicial circuit in West
31 Virginia shall designate one person to supervise the disclosure
32 of juvenile records to certain school officials.

33 (3) If the juvenile attends a West Virginia public school, the
34 person designated by the circuit court shall automatically
35 disclose all records of the juvenile's case to the county superin-
36 tendent of schools in the county in which the juvenile attends
37 school and to the principal of the school which the juvenile
38 attends, subject to the following:

39 (A) At a minimum, the records shall disclose the following
40 information:

41 (i) Copies of the arrest report;

42 (ii) Copies of all investigations;

43 (iii) Copies of any psychological test results and any mental
44 health records;

45 (iv) Copies of any evaluation reports for probation or
46 facility placement; and

47 (v) Any other material that would alert the school to
48 potential danger that the juvenile may pose to himself, herself
49 or others;

50 (B) The disclosure of the juvenile's psychological test
51 results and any mental health records shall only be made in
52 accordance with subdivision (14) of this subsection;

53 (C) If the disclosure of any record to be automatically
54 disclosed under this section is restricted in its disclosure by the
55 Health Insurance Portability and Accountability Act of 1996
56 and any amendments and regulations under the Act, the person
57 designated by the circuit court shall provide the superintendent
58 and principal any notice of the existence of the record that is
59 permissible under the Act and, if applicable, any action that is
60 required to obtain the record; and

61 (D) When multiple disclosures are required by this subsection,
62 the person designated by the circuit court is required to
63 disclose only material in the juvenile record that had not
64 previously been disclosed to the county superintendent and the
65 principal of the school which the juvenile attends.

66 (4) If the juvenile attends a private school in West Virginia,
67 the person designated by the circuit court shall determine the
68 identity of the highest ranking person at that school and shall
69 automatically disclose all records of a juvenile's case to that
70 person.

71 (5) If the juvenile does not attend school at the time the
72 juvenile's case is pending, the person designated by the circuit
73 court shall not transmit the juvenile's records to any school.
74 However, the person designated by the circuit court shall
75 transmit the juvenile's records to any school in West Virginia
76 which the juvenile subsequently attends.

77 (6) The person designated by the circuit court shall not
78 automatically transmit juvenile records to a school which is not
79 located in West Virginia. Instead, the person designated by the
80 circuit court shall contact the out-of-state school, inform it that
81 juvenile records exist and make an inquiry regarding whether
82 the laws of that state permit the disclosure of juvenile records.
83 If so, the person designated by the circuit court shall consult
84 with the circuit judge who presided over the case to determine

85 whether the juvenile records should be disclosed to the out-of-
86 state school. The circuit judge shall have discretion in deter-
87 mining whether to disclose the juvenile records and shall
88 consider whether the other state's law regarding disclosure
89 provides for sufficient confidentiality of juvenile records, using
90 this section as a guide. If the circuit judge orders the juvenile
91 records to be disclosed, they shall be disclosed in accordance
92 with the provisions of subdivision (7) of this subsection.

93 (7) The person designated by the circuit court shall transmit
94 the juvenile's records to the appropriate school official under
95 cover of a letter emphasizing the confidentiality of such records
96 and directing the official to consult this section of the code. A
97 copy of this section of the code shall be transmitted with the
98 juvenile's records and cover letter.

99 (8) Juvenile records must be treated as absolutely confiden-
100 tial by the school official to whom they are transmitted, and
101 nothing contained within the juvenile's records shall be noted
102 on the juvenile's permanent educational record. The juvenile
103 records are to be maintained in a secure location and are not to
104 be copied under any circumstances. However, the principal of
105 a school to whom the records are transmitted shall have the
106 duty to disclose the contents of those records to any teacher
107 who teaches a class in which the subject juvenile is enrolled and
108 to the regular driver of a school bus in which the subject
109 juvenile is regularly transported to or from school, except that
110 the disclosure of the juvenile's psychological test results and
111 any mental health records shall only be made in accordance
112 with subdivision (14) of this subsection. Furthermore, any
113 school official to whom the juvenile's records are transmitted
114 may disclose the contents of such records to any adult within
115 the school system who, in the discretion of the school official,
116 has the need to be aware of the contents of those records.

117 (9) If for any reason a juvenile ceases to attend a school
118 which possesses that juvenile's records, the appropriate official
119 at that school shall seal the records and return them to the
120 circuit court which sent them to that school. If the juvenile has
121 changed schools for any reason, the former school shall inform
122 the circuit court of the name and location of the new school
123 which the juvenile attends or will be attending. If the new
124 school is located within West Virginia, the person designated
125 by the circuit court shall forward the juvenile's records to the
126 juvenile's new school in the same manner as provided in
127 subdivision (7) of this subsection. If the new school is not
128 located within West Virginia, the person designated by the
129 circuit court shall handle the juvenile records in accordance
130 with subdivision (6) of this subsection.

131 If the juvenile has been found not guilty of an offense for
132 which records were previously forwarded to the juvenile's
133 school on the basis of a finding of probable cause, the circuit
134 court shall not forward those records to the juvenile's new
135 school. However, this shall not affect records related to other
136 prior or future offenses. If the juvenile has graduated or quit
137 school or will otherwise not be attending another school, the
138 circuit court shall retain the juvenile's records and handle them
139 as otherwise provided in this article.

140 (10) Under no circumstances shall one school transmit a
141 juvenile's records to another school.

142 (11) Under no circumstances shall juvenile records be
143 automatically transmitted to a college, university or other
144 post-secondary school.

145 (12) No one shall suffer any penalty, civil or criminal, for
146 accidentally or negligently attributing certain juvenile records
147 to the wrong person. However, such person shall have the
148 affirmative duty to promptly correct any mistake that he or she
149 has made in disclosing juvenile records when the mistake is

150 brought to his or her attention. A person who intentionally
151 attributes false information to a certain person shall be sub-
152 jected to both criminal and civil penalties in accordance with
153 subsection (e) of this section.

154 (13) If a judge, magistrate or referee has determined that
155 there is probable cause to believe that a juvenile has committed
156 an offense but there has been no final adjudication of the
157 charge, the records which are transmitted by the circuit court
158 shall be accompanied by a notice which clearly states in bold
159 print that there has been no determination of delinquency and
160 that our legal system requires a presumption of innocence.

161 (14) The county superintendent shall designate the school
162 psychologist or psychologists to receive the juvenile's psycho-
163 logical test results and any mental health records. The psychol-
164 ogist designated shall review the juvenile's psychological test
165 results and any mental health records and, in the psychologist's
166 professional judgment, may disclose to the principal of the
167 school that the juvenile attends and other school employees
168 who would have a need to know the psychological test results,
169 mental health records and any behavior that may trigger
170 violence or other disruptive behavior by the juvenile. Other
171 school employees include, but are not limited to, any teacher
172 who teaches a class in which the subject juvenile is enrolled and
173 the regular driver of a school bus in which the subject juvenile
174 is regularly transported to or from school.

175 (c) Notwithstanding the provisions of subsection (a) of this
176 section, juvenile records may be disclosed, subject to the
177 following terms and conditions:

178 (1) If a juvenile case is transferred to the criminal jurisdic-
179 tion of the circuit court pursuant to the provisions of subsection
180 (c) or (d), section ten of this article, the juvenile records shall be
181 open to public inspection.

182 (2) If a juvenile case is transferred to the criminal jurisdic-
183 tion of the circuit court pursuant to the provisions of subsection
184 (e), (f) or (g), section ten of this article, the juvenile records
185 shall be open to public inspection only if the juvenile fails to
186 file a timely appeal of the transfer order, or the Supreme Court
187 of Appeals refuses to hear or denies an appeal which has been
188 timely filed.

189 (3) If a juvenile is fourteen years of age or older and a court
190 has determined there is a probable cause to believe the juvenile
191 committed an offense set forth in subsection (g), section ten of
192 this article, but the case is not transferred to criminal jurisdic-
193 tion, the juvenile records shall be open to public inspection
194 pending trial only if the juvenile is released on bond and no
195 longer detained or adjudicated delinquent of the offense.

196 (4) If a juvenile is younger than fourteen years of age and
197 a court has determined there is probable cause to believe that
198 the juvenile committed the crime of murder under section one,
199 two or three, article two, chapter sixty-one of this code, or the
200 crime of sexual assault in the first degree under section three,
201 article eight-b of said chapter, but the case is not transferred to
202 criminal jurisdiction, the juvenile records shall be open to
203 public inspection pending trial only if the juvenile is released
204 on bond and no longer detained or adjudicated delinquent of the
205 offense.

206 (5) Upon a written petition and pursuant to a written order,
207 the circuit court may permit disclosure of juvenile records to:

208 (A) A court, in this state or another state, which has
209 juvenile jurisdiction and has the juvenile before it in a juvenile
210 proceeding;

211 (B) A court, in this state or another state, exercising
212 criminal jurisdiction over the juvenile which requests such

213 records for the purpose of a presentence report or disposition
214 proceeding;

215 (C) The juvenile, the juvenile's parents or legal guardian, or
216 the juvenile's counsel;

217 (D) The officials of a public institution to which the
218 juvenile is committed if they require such records for transfer,
219 parole or discharge; or

220 (E) A person who is conducting research. However,
221 juvenile records may be disclosed for research purposes only
222 upon the condition that information which would identify the
223 subject juvenile or the juvenile's family shall not be disclosed.

224 (6) Notwithstanding any other provision of this code,
225 juvenile records shall be disclosed, or copies made available, to
226 a probation officer upon his or her written request and approved
227 by his or her supervising circuit court judge: *Provided*, That the
228 clerk of the court shall file the written request and the judge's
229 approval in the juvenile's record and note therein the date and
230 scope of the actual disclosure: *Provided, however*, That any
231 probation officer may, without a court order, access relevant
232 juvenile case information contained in any electronic database
233 maintained by or for the Supreme Court of Appeals and share
234 it with any other probation officer in the same or a different
235 circuit.

236 (7) Notwithstanding any other provision of this code,
237 juvenile records shall be disclosed, or copies made available, in
238 response to any lawfully issued subpoena from a federal court
239 or federal agency.

240 (d) Any records open to public inspection pursuant to the
241 provisions of this section are subject to the same requirements
242 governing the disclosure of adult criminal records.

243 (e) Any person who willfully violates this section is guilty
244 of a misdemeanor and, upon conviction thereof, shall be fined
245 not more than one thousand dollars, or confined in the county
246 or regional jail for not more than six months, or both fined and
247 confined and shall be liable for damages in the amount of three
248 hundred dollars or actual damages, whichever is greater.

CHAPTER 42

(H. B. 2150 — By Delegates Amores, Mahan, Pino and Schadler)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §49-6-1 of the Code of West Virginia, 1931, as amended, relating to expanding the possible venues where a child neglect or abuse petition may be filed.

Be it enacted by the Legislature of West Virginia:

That §49-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-1. Petition to court when child believed neglected or abused; notice.

1 (a) If the department or a reputable person believes that a
2 child is neglected or abused, the department or the person may
3 present a petition setting forth the facts to the circuit court in
4 the county in which the child resides, or if the petition is being
5 brought by the department, in the county in which the custodial
6 respondent or other named party abuser resides, or in which the

7 abuse or neglect occurred, or to the judge of the court in
8 vacation. Under no circumstance may a party file a petition in
9 more than one county based on the same set of facts. The
10 petition shall be verified by the oath of some credible person
11 having knowledge of the facts. The petition shall allege
12 specific conduct including time and place, how such conduct
13 comes within the statutory definition of neglect or abuse with
14 references thereto, any supportive services provided by the
15 department to remedy the alleged circumstances and the relief
16 sought. Upon filing of the petition, the court shall set a time and
17 place for a hearing and shall appoint counsel for the child.
18 When there is an order for temporary custody pursuant to
19 section three of this article, the hearing shall be held within
20 thirty days of the order, unless a continuance for a reasonable
21 time is granted to a date certain, for good cause shown.

22 (b) The petition and notice of the hearing shall be served
23 upon both parents and any other custodian, giving to the parents
24 or custodian at least ten days' notice. Notice shall also be given
25 to the department, any foster or preadoptive parent, and any
26 relative providing care for the child. In cases wherein personal
27 service within West Virginia cannot be obtained after due
28 diligence upon any parent or other custodian, a copy of the
29 petition and notice of the hearing shall be mailed to the person
30 by certified mail, addressee only, return receipt requested, to
31 the last known address of such person. If the person signs the
32 certificate, service shall be complete and the certificate shall be
33 filed as proof of the service with the clerk of the circuit court.
34 If service cannot be obtained by personal service or by certified
35 mail, notice shall be by publication as a Class II legal advertise-
36 ment in compliance with the provisions of article three, chapter
37 fifty-nine of this code. A notice of hearing shall specify the
38 time and place of the hearing, the right to counsel of the child
39 and parents or other custodians at every stage of the proceed-
40 ings and the fact that the proceedings can result in the perma-
41 nent termination of the parental rights. Failure to object to
42 defects in the petition and notice shall not be construed as a
43 waiver.

44 (c) At the time of the institution of any proceeding under
45 this article, the department shall provide supportive services in
46 an effort to remedy circumstances detrimental to a child.

CHAPTER 43

(Com. Sub. for S. B. 587 — By Senators Bowman,
Facemyer, Guills, Love, Edgell and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §49-6-2 of the Code of West Virginia, 1931, as amended, relating to the appointment of counsel in abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

That §49-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused—right to counsel; improvement period; hearing; priority of proceeding; transcript.

1 (a) In any proceeding under the provisions of this article,
2 the child, his or her parents and his or her legally established
3 custodian or other persons standing in loco parentis to him or
4 her shall have the right to be represented by counsel at every
5 stage of the proceedings and shall be informed by the court of
6 their right to be so represented and that if they cannot pay for
7 the services of counsel, that counsel will be appointed. Counsel

8 of the child shall be appointed in the initial order. If the order
9 gives physical custody of the child to the state, the initial order
10 shall appoint counsel for the parents or, if the parents are
11 separated or divorced, the parents or parent or other person or
12 persons standing in loco parentis who had physical custody of
13 the child for the majority of the time in the period immediately
14 preceding the petition: *Provided*, That such representation shall
15 only continue after the first appearance if the parent or other
16 person standing in loco parentis cannot pay for the services of
17 counsel. Counsel for other parties shall only be appointed upon
18 request for appointment of counsel. If the requesting parties
19 have not retained counsel and cannot pay for the services of
20 counsel, the court shall, by order entered of record, appoint an
21 attorney or attorneys to represent the other party or parties and
22 so inform the parties. Under no circumstances may the same
23 attorney represent both the child and the other party or parties,
24 nor shall the same attorney represent both parents or custodians.
25 However, one attorney may represent both parents or custodians
26 where both parents or guardians consent to this representation
27 after the attorney fully discloses to the client the possible
28 conflict and where the attorney assures the court that she or he
29 is able to represent each client without impairing her or his
30 professional judgment; however, if more than one child from a
31 family is involved in the proceeding, one attorney may repre-
32 sent all the children. The court may allow to each attorney so
33 appointed a fee in the same amount which appointed counsel
34 can receive in felony cases. Any attorney appointed pursuant
35 to this section shall by the first day of July, one thousand nine
36 hundred ninety-three, and three hours per year each year
37 thereafter, receive a minimum of three hours of continuing legal
38 education training on representation of children, child abuse
39 and neglect: *Provided, however*, That where no attorney who
40 has completed this training is available for such appointment,
41 the court shall appoint a competent attorney with demonstrated
42 knowledge of child welfare law to represent the child. Any
43 attorney appointed pursuant to this section shall perform all

44 duties required as an attorney licensed to practice law in the
45 State of West Virginia.

46 (b) In any proceeding brought pursuant to the provisions of
47 this article, the court may grant any respondent an improvement
48 period in accord with the provisions of this article. During such
49 period, the court may require temporary custody with a respon-
50 sible person which has been found to be a fit and proper person
51 for the temporary custody of the child or children or the state
52 Department or other agency during the improvement period.
53 An order granting such improvement period shall require the
54 Department to prepare and submit to the court a family case
55 plan in accordance with the provisions of section three, article
56 six-d of this chapter.

57 (c) In any proceeding pursuant to the provisions of this
58 article, the party or parties having custodial or other parental
59 rights or responsibilities to the child shall be afforded a
60 meaningful opportunity to be heard, including the opportunity
61 to testify and to present and cross-examine witnesses. The
62 petition shall not be taken as confessed. A transcript or
63 recording shall be made of all proceedings unless waived by all
64 parties to the proceeding. The rules of evidence shall apply.
65 Where relevant, the court shall consider the efforts of the state
66 Department to remedy the alleged circumstances. At the
67 conclusion of the hearing, the court shall make a determination
68 based upon the evidence and shall make findings of fact and
69 conclusions of law as to whether such child is abused or
70 neglected, which shall be incorporated into the order of the
71 court. The findings must be based upon conditions existing at
72 the time of the filing of the petition and proven by clear and
73 convincing proof.

74 (d) Any petition filed and any proceeding held under the
75 provisions of this article shall, to the extent practicable, be
76 given priority over any other civil action before the court,

77 except proceedings under article two-a, chapter forty-eight of
78 this code and actions in which trial is in progress. Any petition
79 filed under the provisions of this article shall be docketed
80 immediately upon filing. Any hearing to be held at the end of
81 an improvement period and any other hearing to be held during
82 any proceedings under the provisions of this article shall be
83 held as nearly as practicable on successive days and, with
84 respect to said hearing to be held at the end of an improvement
85 period, shall be held as close in time as possible after the end of
86 said improvement period and shall be held within sixty days of
87 the termination of such improvement period.

88 (e) Following the court's determination, it shall be inquired
89 of the parents or custodians whether or not appeal is desired and
90 the response transcribed. A negative response shall not be
91 construed as a waiver. The evidence shall be transcribed and
92 made available to the parties or their counsel as soon as
93 practicable, if the same is required for purposes of further
94 proceedings. If an indigent person intends to pursue further
95 proceedings, the court reporter shall furnish a transcript of the
96 hearing without cost to the indigent person if an affidavit is
97 filed stating that he or she cannot pay therefor.

CHAPTER 44

(H. B. 2271 — By Delegates Mahan and Amores)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §49-6-4 of the Code of West Virginia, 1931, as amended, relating to the payment of expert fees in child abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

That §49-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-4. Medical and mental examinations.

1 (a) At any time during proceedings under this article the
2 court may, upon its own motion or upon motion of the child or
3 other parties, order the child or other parties to be examined by
4 a physician, psychologist or psychiatrist, and may require
5 testimony from such expert, subject to cross-examination and
6 the rules of evidence: *Provided*, That the court shall not
7 terminate parental or custodial rights of a party solely because
8 the party refuses to submit to the examination, nor shall the
9 court hold such party in contempt for refusing to submit to an
10 examination. The physician, psychologist or psychiatrist shall
11 be allowed to testify as to the conclusions reached from
12 hospital, medical, psychological or laboratory records provided
13 the same are produced at the hearing. If the child, parent or
14 custodian is indigent, such witnesses shall be compensated out
15 of the Treasury of the State, upon certificate of the court
16 wherein the case is pending. No evidence acquired as a result of
17 any such examination of the parent or any other person having
18 custody of the child may be used against such person in any
19 subsequent criminal proceedings against such person.

20 (b) If a person with authority to file a petition under the
21 provisions of this article shall have probable cause to believe
22 that evidence exists that a child has been abused or neglected
23 and that such evidence may be found by a medical examination,
24 the person may apply to a circuit judge or juvenile referee for
25 an order to take such child into custody for delivery to a
26 physician or hospital for examination. The application may be
27 on forms prescribed by the Supreme Court of Appeals or

28 prepared by the prosecuting attorney or the applicant, and shall
29 set forth facts from which it may be determined that probable
30 cause exists for such belief. Upon such sworn testimony or
31 other evidence as the judge or referee deems sufficient, the
32 judge or referee may order any law-enforcement officer to take
33 the child into custody and deliver the child to a physician or
34 hospital for examination. If a referee issues such an order the
35 referee shall by telephonic communication have such order
36 orally confirmed by a circuit judge of the circuit or an adjoining
37 circuit who shall on the next judicial day enter an order of
38 confirmation. Any child welfare worker and the child's parents,
39 guardians or custodians may accompany the officer for such
40 examination. After the examination the officer may return the
41 child to the custody of his or her parent, guardian or custodian,
42 retain custody of the child or deliver custody to the state
43 department until the end of the next judicial day, at which time
44 the child shall be returned to the custody of his or her parent,
45 guardian or custodian unless a petition has been filed and
46 custody of the child has been transferred to the department
47 under the provisions of section three of this article.

CHAPTER 45

**(Com. Sub. for H. B. 2174 — By Delegates Spencer,
Perdue and Amores)**

[Passed April 5, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-6A-2a, relating to requiring the Department of Health and Human Resources to

develop a procedure to notify persons mandated to report child abuse and neglect of whether an investigation of the report has occurred.

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 §49-6A-2a, to read as follows:

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

§49-6A-2a. Notification of disposition of reports.

1 (a) The Department of Health and Human Resources shall
2 develop and implement a procedure to notify any person
3 mandated to report suspected child abuse and neglect under the
4 provisions of section two of this article, of whether an investi-
5 gation into the reported suspected abuse or neglect has been
6 initiated and when the investigation is completed.

7 (b) The Department of Health and Human Resources shall
8 develop and implement the above described procedure on or
9 before the first day of January, two thousand six.

CHAPTER 46

**(Com. Sub. for H. B. 2334 — By Mr. Speaker, Mr. Kiss, and Delegates
Michael, Perdue, Amores, Brown and Palumbo)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-7-34, relating to creating a commission to study the out-of-state placement of children; providing for members and a chair; providing study topics; and requiring certain reporting requirements on specific goals.

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 §49-7-34, to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-34. Commission to study residential placement of children.

1 (a) The Legislature finds that the state's current system of
2 serving children and families in need of or at risk of needing
3 social, emotional and behavioral health services is fragmented.
4 The existing categorical structure of government programs and
5 their funding streams discourages collaboration, resulting in
6 duplication of efforts and a waste of limited resources. Children
7 are usually involved in multiple child-serving systems, includ-
8 ing child welfare, juvenile justice and special education. More
9 than ten percent of children presently in care are presently in
10 out-of-state placements. Earlier efforts at reform have focused
11 on quick fixes for individual components of the system at the
12 expense of the whole. It is the purpose of this section therefore
13 to establish a mechanism to achieve systemic reform by which
14 all of the state's child-serving agencies involved in the residen-
15 tial placement of at-risk youth jointly and continually study and
16 improve upon this system and make recommendations to their
17 respective agencies and to the Legislature regarding funding
18 and statutory, regulatory and policy changes. It is further the
19 Legislature's intent to build upon these recommendations to
20 establish an integrated system of care for at-risk youth and
21 families that makes prudent and cost-effective use of limited

22 state resources by drawing upon the experience of successful
23 models and best practices in this and other jurisdictions, which
24 focuses on delivering services in the least restrictive setting
25 appropriate to the needs of the child, and which produces better
26 outcomes for children, families and the state.

27 (b) There is hereby created within the Department of Health
28 and Human Resources a Commission to Study the Residential
29 Placement of Children. The Commission shall consist of the
30 Secretary of the Department of Health and Human Resources,
31 the Commissioner of the Bureau for Children and Families, the
32 Commissioner for the Bureau for Behavioral Health and Health
33 Facilities, the Commissioner for the Bureau for Medical
34 Services, the State Superintendent of Schools, a representative
35 of local educational agencies, the Director of the Office of
36 Institutional Educational Programs, the Director of the Office
37 of Special Education Programs and Assurance, the Director of
38 the Division of Juvenile Services and the Executive Director of
39 the Prosecuting Attorney's Institute. At the discretion of the
40 West Virginia Supreme Court of Appeals, circuit and family
41 court judges and other court personnel, including the adminis-
42 trator of the Supreme Court of Appeals and the director of the
43 Juvenile Probation Services Division, may serve on the
44 Commission. These statutory members may further designate
45 additional persons in their respective offices who may attend
46 the meetings of the Commission if they are the administrative
47 head of the office or division whose functions necessitate their
48 inclusion in this process. In its deliberations, the Commission
49 shall also consult and solicit input from families and service
50 providers.

51 (c) The Secretary of the Department of Health and Human
52 Resources shall serve as chair of the Commission, which shall
53 meet on a monthly basis at the call of the chairman.

54 (d) At a minimum, the Commission shall study:

55 (1) The current practices of placing children out-of-home
56 and into in residential placements, with special emphasis on
57 out-of-state placements;

58 (2) The adequacy, capacity, availability and utilization of
59 existing in-state facilities to serve the needs of children requir-
60 ing residential placements;

61 (3) Strategies and methods to reduce the number of children
62 who must be placed in out-of-state facilities and to return
63 children from existing out-of-state placements, initially
64 targeting older youth who have been adjudicated delinquent;

65 (4) Staffing, facilitation and oversight of multidisciplinary
66 treatment planning teams;

67 (5) The availability of and investment in community-based,
68 less restrictive and less costly alternatives to residential
69 placements;

70 (6) Ways in which up-to-date information about in-state
71 placement availability may be made readily accessible to state
72 agency and court personnel, including an interactive secure web
73 site;

74 (7) Strategies and methods to promote and sustain coopera-
75 tion and collaboration between the courts, state and local
76 agencies, families and service providers, including the use of
77 inter-agency memoranda of understanding, pooled funding
78 arrangements and sharing of information and staff resources;

79 (8) The advisability of including “no-refusal” clauses in
80 contracts with in-state providers for placement of children
81 whose treatment needs match the level of licensure held by the
82 provider;

83 (9) Identification of in-state service gaps and the feasibility
84 of developing services to fill those gaps, including funding;

85 (10) Identification of fiscal, statutory and regulatory
86 barriers to developing needed services in-state in a timely and
87 responsive way;

88 (11) Ways to promote and protect the rights and participa-
89 tion of parents, foster parents and children involved in out-of-
90 home care; and

91 (12) Ways to certify out-of-state providers to ensure that
92 children who must be placed out-of-state receive high quality
93 services consistent with this state's standards of licensure and
94 rules of operation.

95 (e) Beginning July 1, 2005, the chair, or his or her designee,
96 shall report on the work of the Commission to the Legislative
97 Juvenile Task Force during the Legislature's monthly interim
98 meetings.

99 (f) On or before December 1, 2005, the Commission shall
100 report to the Joint Committee on Government and Finance its
101 conclusions and recommendations, including an implementa-
102 tion plan whereby:

103 (1) Out-of-state placements shall be reduced by at least ten
104 per cent per year and by at least fifty percent within three years;

105 (2) Child-serving agencies shall develop joint operating and
106 funding proposals to serve the needs of children and families
107 that cross their jurisdictional boundaries in a more seamless
108 way;

109 (3) Steps shall be taken to obtain all necessary federal plan
110 waivers or amendments in order for agencies to work collabor-
111 atively while maximizing the availability of federal funds;

112 (4) Agencies shall enter into memoranda of understanding
113 to assume joint responsibilities;

114 (5) System of care components and cooperative relation-
115 ships shall be incrementally established at the local, state and
116 regional levels, with links to existing resources, such as family
117 resource networks and regional summits, wherever possible;
118 and

119 (6) Recommendations for changes in fiscal, statutory and
120 regulatory provisions are included for legislative action.

CHAPTER 47

(Com. Sub. for H. B. 2981 — By Delegates H. White,
Proudfoot, Cann, Susman, Evans and Hall)

[Passed April 5, 2005; in effect from passage.]

[Approved by the Governor on April 18, 2005.]

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 Attorney General; Auditor's Office; Bluefield State College; Bureau of Commerce; Community and Technical College of Shepherd; Department of Administration; Department of Administration/Division of Personnel; Department of Agriculture; Department of Education; Department of Education and the Arts; Department of Health and Human Resources; Department of Military Affairs and Public Safety; Department of Revenue; Department of

Transportation; Division of Corrections; Division of Environmental Protection; Division of Highways; Division of Juvenile Services; Division of Motor Vehicles; Division of Natural Resources; Division of Rehabilitation Services; Governor's Office; Governor's Office of Technology; Higher Education Policy Commission; Legislative Services; Marshall University; Public Service Commission; Regional Jail and Correctional Facility Authority; Secretary of State; Southern West Virginia Community and Technical College; Supreme Court of Appeals; West Liberty State College; West Virginia Network; West Virginia Northern Community and Technical College; West Virginia Public Port Authority; West Virginia State University; West Virginia University and Workforce Investment Board 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 concern-
 3 ing various claims against the State and agencies thereof, and
 4 in respect to each of the following claims the Legislature adopts
 5 those findings of fact as its own, and in respect of certain claims
 6 herein, the Legislature has independently made findings of fact
 7 and determinations of award and hereby declares it to be the
 8 moral obligation of the state to pay each such claim in the
 9 amount specified below and directs the Auditor to issue
 10 warrants for the payment thereof out of any fund appropriated
 11 and available for the purpose.

12 (a) *Claim against the Attorney General:*

13 (TO BE PAID FROM GENERAL REVENUE FUND)

14 (1) Verizon West Virginia, Inc. \$31,304.69

15 (b) *Claim against the Auditor's Office:*

16 (TO BE PAID FROM GENERAL REVENUE FUND)

17 (1) Verizon West Virginia, Inc. \$5,290.31

18 (c) *Claim against Bluefield State College:*

19 (TO BE PAID FROM NONGENERAL REVENUE FUND)

20 (1) Verizon West Virginia, Inc \$15,379.21

21 (d) *Claims against Bureau of Commerce:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) Verizon West Virginia, Inc. \$11,082.95

24 (TO BE PAID FROM NONGENERAL REVENUE FUND)

25 (2) Verizon West Virginia, Inc. \$11,696.86

26 (e) *Claim against the Community and Technical College of*
27 *Shepherd:*

28 (TO BE PAID FROM NONGENERAL REVENUE FUND)

29 (1) Verizon West Virginia, Inc. \$22,438.77

30 (f) *Claims against the Department of Administration:*

31 (TO BE PAID FROM SPECIAL REVENUE FUND)

32 (1) Woodrow Lee, dba Lee Contracting \$13,000.00

33 (2) Virginia Controls, Inc. \$101,544.00

34 (TO BE PAID FROM GENERAL REVENUE FUND)

35 (3) Verizon West Virginia, Inc. \$10,806.15

36 (TO BE PAID FROM NONGENERAL REVENUE FUND)

37 (4) Verizon West Virginia, Inc. \$90.91

38 (g) *Claim against the Department of Administra-*
39 *tion/Division of Personnel:*

40 (TO BE PAID FROM SPECIAL REVENUE FUND)

41 (1) Specialty Technical Publishers \$465.00

42 (h) *Claims against the Department of Agriculture:*

43 (TO BE PAID FROM GENERAL REVENUE FUND)

44 (1) Verizon West Virginia, Inc. \$1,324.01

45 (TO BE PAID FROM NONGENERAL REVENUE FUND)

46 (2) Verizon West Virginia, Inc. \$162.27

47 (i) *Claims against the Department of Education:*

48 (TO BE PAID FROM GENERAL REVENUE FUND)

49 (1) Boys' Village, Inc. \$56,821.80

50 (2) Verizon West Virginia, Inc. \$122.90

51 (TO BE PAID FROM NONGENERAL REVENUE FUND)

52 (3) Verizon West Virginia, Inc. \$17,662.00

53 (j) *Claims against the Department of Education and the*
54 *Arts:*

55 (TO BE PAID FROM GENERAL REVENUE FUND)

56 (1) Verizon West Virginia, Inc. \$1,388.56

57 (TO BE PAID FROM NONGENERAL REVENUE FUND)

58 (2) Verizon West Virginia, Inc. \$23,032.62

59 (k) *Claims against the Department of Health and Human*
60 *Resources:*

61	(TO BE PAID FROM GENERAL REVENUE FUND)	
62	(1) Charleston Area Medical Center, Inc.	\$2,586.41
63	(2) Davis Memorial Hospital	\$161.45
64	(3) Monongalia General Hospital	\$38.44
65	(4) Verizon West Virginia, Inc.	\$208,732.82
66	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
67	(5) Verizon West Virginia, Inc.	\$981.79
68	(1) <i>Claims against the Department of Military Affairs and</i>	
69	<i>Public Safety:</i>	
70	(TO BE PAID FROM GENERAL REVENUE FUND)	
71	(1) Verizon West Virginia, Inc.	\$21,193.69
72	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
73	(2) Verizon West Virginia, Inc.	\$29,066.00
74	(m) <i>Claims against the Department of Revenue:</i>	
75	(TO BE PAID FROM GENERAL REVENUE FUND)	
76	(1) Verizon West Virginia, Inc.	\$548.91
77	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
78	(2) Verizon West Virginia, Inc.	\$15,166.32
79	(n) <i>Claims against the Department of Transportation:</i>	
80	(TO BE PAID FROM GENERAL REVENUE FUND)	
81	(1) Verizon West Virginia, Inc.	\$4,899.33
82	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
83	(2) Verizon West Virginia, Inc.	\$198,725.06

84 (o) *Claims against the Division of Corrections:*

85 (TO BE PAID FROM GENERAL REVENUE FUND)

86 (1) Charleston Area Medical Center, Inc. \$89.87

87 (2) Richard Lawson \$485.00

88 (3) Regional Jail and Correctional
89 Facility Authority \$13,320.00

90 (4) Lawrence E. Scible \$30.00

91 (p) *Claims against the Division of Environmental Protec-*
92 *tion:*

93 (TO BE PAID FROM GENERAL REVENUE FUND)

94 (1) Verizon West Virginia, Inc. \$32,210.47

95 (TO BE PAID FROM NONGENERAL REVENUE FUND)

96 (2) Verizon West Virginia, Inc. \$9,760.56

97 (q) *Claims against the Division of Highways:*

98 (TO BE PAID FROM STATE ROAD FUND)

99 (1) Janette F. Adams \$200.00

100 (2) Thomas A. Adkins and
101 Thomas A. Adkins, II \$250.00

102 (3) Roger Amos \$2,400.00

103 (4) Christina Bernardini \$250.00

104 (5) Nancy Blair \$75.21

105 (6) Michael J. Bland \$1,002.43

106 (7) David Wayne Boggess, Sr. \$500.00

107 (8) Boggs Fork Church \$1,100.00

108 (9) Allena L. Bragg and Dickie R. Bragg \$257.52

109 (10) Jeremy C. and Sharon L. Bragg \$500.00

110 (11) Gillis F. and Jacqueline Bryant \$364.53

111 (12) Reba Burkett \$250.00

112	(13) Steve Campbell	\$213.02
113	(14) Diane Canterbury	\$250.88
114	(15) Amanda Casto	\$6,700.00
115	(16) Stephen J. and Sally A. Chandler	\$500.00
116	(17) Dannette Constantino	\$100.00
117	(18) Curtis H. Copley	\$6,750.00
118	(19) Howard Copley	\$60,750.00
119	(20) Betsy A. Covington	\$180.00
120	(21) Matthew B. and Danielle M. Cummings	\$291.50
121	(22) John A. Custer	\$5,000.00
122	(23) Debra Sue Day	\$1,123.56
123	(24) Andrea Depta, an infant through her	
124	father and next friend, Gary Depta	\$36,000.00
125	(25) Charles Derringer	\$491.57
126	(26) Michael T. and Chastity Dillon	\$500.00
127	(27) Robin Doty	\$110.66
128	(28) Steve H. Drake	\$225.00
129	(29) Timothy and Loretta Dunham	\$24,000.00
130	(30) Janet M. Emery	\$104.92
131	(31) Kimberly L. Erskine	\$79.45
132	(32) Bobby J. Ewing	\$53.00
133	(33) Wilburn R. and Kimberly R. Farmer	\$1,908.00
134	(34) Lynn A. Fish	\$69.11
135	(35) Doris Jean Forrester	\$998.87
136	(36) Richard A. Galardi, dba	
137	Rich Galardi Ford, Inc.	\$492.54
138	(37) Flossie Golden	\$100.00
139	(38) Calvin D. Goodwin II and	
140	Rachel A. Goodwin	\$4,477.36
141	(39) Kala Ann Gorbey	\$500.00
142	(40) Melissa S. and Paul L. Gregory	\$500.00
143	(41) Cynthia G. and Douglas Griffith	\$500.00
144	(42) Kim Haynes	\$250.00
145	(43) Donald W. Hazlewood	\$494.30
146	(44) Joeann Isabell	\$800.63

147	(45) Becky Jackson and Arthur L. Jackson, Jr. . .	\$500.00
148	(46) Amanda James	\$500.00
149	(47) Sandra and David Johnston	\$79.50
150	(48) Gregory A. Jordan	\$153.70
151	(49) Gary Kelly	\$730.66
152	(50) Landon A. Kennedy	\$1,785.00
153	(51) Steve Keplinger	\$345.90
154	(52) Jeffrey Lafferty	\$2,100.00
155	(53) Terry W. Lavenski	\$422.85
156	(54) Billy and Bethany Lovejoy	\$500.00
157	(55) Michael S. Macaluso	\$250.00
158	(56) Joseph G. Manoni	\$500.00
159	(57) Diane D. and James R. McClure	\$116.66
160	(58) Shawn A. and Herbert McComsey	\$907.63
161	(59) Heather McCormick	\$31.80
162	(60) Roy Lee McCoy	\$3,940.00
163	(61) Judith A. McNemar	\$500.00
164	(62) Tammy Lynn Mercer	\$160.55
165	(63) Heather M. Michaelson	\$261.20
166	(64) Heather and Thomas Miller	\$500.00
167	(65) Kathy J. Moles	\$250.00
168	(66) Thomas C. Mulligan	\$500.00
169	(67) Debra Nabors, Jonathan Nabors and Sharrion Settle	\$48.18
171	(68) William Kent Nichols	\$308.17
172	(69) Christopher and Susan Norman	\$500.00
173	(70) Ronald W. Ostrosky	\$144.29
174	(71) Norma K. Parker	\$235.93
175	(72) Patricia A. Payne	\$132.50
176	(73) Rosella and William Perry	\$500.00
177	(74) David Grant Pevavar	\$100.00
178	(75) Becky L. Pierson	\$500.00
179	(76) Bobby Reynolds	\$326.00
180	(77) Linda L. Rhodes	\$2,050.00
181	(78) Rudy Rosnick	\$486.28

182	(79) Arthur W. Santowasso	\$250.00
183	(80) Ruth Sears	\$930.68
184	(81) Pamella and David Shields	\$500.00
185	(82) Joey Smith	\$7,000.00
186	(83) Loraine Stout	\$250.00
187	(84) Gary D. Taylor	\$163.77
188	(85) Dawn M. Thomas	\$470.22
189	(86) Mary E. Thomaselli	\$500.00
190	(87) Lora Zane and Roger L. Thomason	\$500.00
191	(88) Tera Thompson	\$101.80
192	(89) Lalisa R. and Don D. Vickers	\$113.11
193	(90) Harold and Lorraine Walters	\$212.96
194	(91) Michael R. and Rose M. Whited	\$150.20
195	(92) Cheryl Whitt	\$220.00
196	(93) Ronnie Lee and Tina Williams	\$3,690.00
197	(94) Jean L. Wright	\$842.69
198	(95) Margaret and George Yanchak	\$229.06
199	<i>(r) Claim against the Division of Juvenile Services:</i>	
200	(TO BE PAID FROM GENERAL REVENUE FUND)	
201	(1) Primecare Medical, Inc.	\$14,516.65
202	<i>(s) Claim against the Division of Motor Vehicles:</i>	
203	(TO BE PAID FROM STATE ROAD FUND)	
204	(1) Sharp Electronics Corporation	\$7,300.00
205	<i>(t) Claims against the Division of Natural Resources:</i>	
206	(TO BE PAID FROM SPECIAL REVENUE FUND)	
207	(1) Klein & Hall Attorneys, L.C.	\$4,616.67
208	(2) Ned Viars, dba Cass Diorama, Inc.	\$19,813.65
209	(TO BE PAID FROM NONGENERAL REVENUE FUND)	

398	CLAIMS AGAINST THE STATE	[Ch. 47
210	(3) Verizon West Virginia, Inc.	\$162.07
211	(u) <i>Claims against the Division of Rehabilitation Services:</i>	
212	(TO BE PAID FROM SPECIAL REVENUE FUND)	
213	(1) NDC Health Corporation	\$31,633.56
214	(2) R.E. Michel Co., Inc.	\$2,342.12
215	(v) <i>Claims against the Governor's Office:</i>	
216	(TO BE PAID FROM GENERAL REVENUE FUND)	
217	(1) Otis L. Laury	\$4,128.00
218	(2) Verizon West Virginia, Inc.	\$11,207.10
219	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
220	(3) Verizon West Virginia, Inc.	\$289.48
221	(w) <i>Claim against the Governor's Office of Technology:</i>	
222	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
223	(1) Verizon West Virginia, Inc.	\$53.57
224	(x) <i>Claim against the Higher Education Policy Commis-</i>	
225	<i>sion:</i>	
226	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
227	(1) Verizon West Virginia, Inc.	\$6,705.95
228	(y) <i>Claim against Legislative Services:</i>	
229	(TO BE PAID FROM GENERAL REVENUE FUND)	
230	(1) Verizon West Virginia, Inc.	\$515.14
231	(z) <i>Claim against Marshall University:</i>	

232	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
233	(1) Verizon West Virginia, Inc.	\$13.28
234	(aa) <i>Claim against the Public Service Commission:</i>	
235	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
236	(1) Verizon West Virginia, Inc.	\$7.11
237	(bb) <i>Claims against Regional Jail and Correctional Facility</i>	
238	<i>Authority:</i>	
239	(TO BE PAID FROM SPECIAL REVENUE FUND)	
240	(1) James Barnett	\$252.99
241	(2) Larry T. Hardman	\$100.00
242	(3) Larry E. Harmon	\$188.99
243	(4) Joseph A. Mansi	\$500.00
244	(5) Jeffrey A. Nichols	\$307.40
245	(6) Robert D. Smith, Jr.	\$180.00
246	(7) Stephanie P. Sprouse	\$9.40
247	(cc) <i>Claim against the Secretary of State:</i>	
248	(TO BE PAID FROM GENERAL REVENUE FUND)	
249	(1) Verizon West Virginia, Inc.	\$0.92
250	(dd) <i>Claims against Southern West Virginia Community</i>	
251	<i>and Technical College:</i>	
252	(TO BE PAID FROM GENERAL REVENUE FUND)	
253	(1) Verizon West Virginia, Inc.	\$109.49
254	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
255	(2) Verizon West Virginia, Inc.	\$7,460.13

400	CLAIMS AGAINST THE STATE	[Ch. 47
256	(ee) <i>Claim against the Supreme Court of Appeals:</i>	
257	(TO BE PAID FROM GENERAL REVENUE FUND)	
258	(1) Verizon West Virginia, Inc.	\$6,627.76
259	(ff) <i>Claim against West Liberty State College:</i>	
260	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
261	(1) Verizon West Virginia, Inc.	\$14,550.00
262	(gg) <i>Claim against the West Virginia Network:</i>	
263	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
264	(1) Verizon West Virginia, Inc.	\$32,488.78
265	(hh) <i>Claim against West Virginia Northern Community and</i>	
266	<i>Technical College:</i>	
267	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
268	(1) Verizon West Virginia, Inc.	\$46,293.90
269	(ii) <i>Claim against the West Virginia Port Authority:</i>	
270	(TO BE PAID FROM GENERAL REVENUE FUND)	
271	(1) Kimley-Horn Associates, Inc.,	
272	and Brown Communications, LLC	\$139,412.98
273	(jj) <i>Claim against West Virginia State University:</i>	
274	(TO BE PAID FROM NONGENERAL REVENUE FUND)	
275	(1) Verizon West Virginia, Inc.	\$11,066.60
276	(kk) <i>Claims against West Virginia University:</i>	
277	(TO BE PAID FROM SPECIAL REVENUE FUND)	

278 (1) Kirby Druschel \$255.00
 279 (2) Sarah Webmeyer \$13.98

280 (TO BE PAID FROM NONGENERAL REVENUE FUND)

281 (3) Verizon West Virginia, Inc. \$139,997.50

282 (II) *Claim against the Workforce Investment Board:*

283 (TO BE PAID FROM NONGENERAL REVENUE FUND)

284 (1) Verizon West Virginia, Inc. \$15.58

285 The Legislature finds that the above moral obligations and
 286 the appropriations made in satisfaction thereof shall be the full
 287 compensation for all claimants, and that prior to the payments
 288 to any claimant provided in this bill, the court of claims shall
 289 receive a release from said claimant releasing any and all
 290 claims for moral obligations arising from the matters consid-
 291 ered by the Legislature in the finding of the moral obligations
 292 and the making of the appropriations for said claimant. The
 293 court of claims shall deliver all releases obtained from claim-
 294 ants to the department against which the claim was allowed.

CHAPTER 48

(S. B. 492 — By Senators Love, Sharpe, Edgell and Minear)

[Passed April 8, 2005; in effect from passage.]
 [Approved by the Governor on April 21, 2005.]

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 Health and Human Resources and Division of Corrections 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 thereof,
5 which have arisen due to overexpenditures of the departmental
6 appropriations by officers of the state spending units, the claims
7 having been previously considered by the Court of Claims
8 which also found that the state has received the benefit of the
9 commodities received and/or services rendered by the claim-
10 ants, but were denied by the Court of Claims on the purely
11 statutory grounds that to allow the claims would be condoning
12 illegal acts contrary to the laws of the state. The Legislature,
13 pursuant to its findings of fact and also by the adoption of the
14 findings of fact by the Court of Claims as its own, while not
15 condoning such illegal acts, hereby declares it to be the moral
16 obligation of the state to pay these claims in the amounts
17 specified below and directs the Auditor to issue warrants upon
18 receipt of properly executed requisitions supported by itemized
19 invoices, statements or other satisfactory documents as required
20 by section ten, article three, chapter twelve of the Code of West
21 Virginia, one thousand nine hundred thirty-one, as amended, for
22 the payments thereof out of any fund appropriated and available
23 for the purpose.

24 (a) *Claims against the Department of Health and Human*
25 *Resources:*

26 (TO BE PAID FROM GENERAL REVENUE FUND)

27	(1) Altmeyer Funeral Homes & Crematory.	\$ 2,500.00
28	(2) Bailey-Kirk Funeral Home, Inc.	\$ 2,500.00
29	(3) Barlow-Bonsall Funeral Home	\$ 5,000.00
30	(4) Bartlett-Chapman Funeral Home, LLC	\$ 2,500.00
31	(5) Boyle Funeral Home, Inc., and	
32	Floyd Funeral Home, Inc.	\$ 13,550.00
33	(6) Brown Funeral Home	\$ 13,750.00
34	(7) Browning Funeral Home, Inc.	\$ 5,000.00
35	(8) Calfee Funeral Home, Inc.	\$ 1,250.00
36	(9) Carpenter & Ford Funeral Home	\$ 2,500.00
37	(10) Chafin Funeral Home, Inc.	\$ 2,500.00
38	(11) Chapel Funeral Home, Inc.	\$ 3,750.00
39	(12) Chapman's Mortuary, Inc.	\$ 2,500.00
40	(13) Cravens-Shires Funeral Home, Inc.	\$ 1,250.00
41	(14) Curry Funeral Home	\$ 1,250.00
42	(15) Davis Funeral Home	\$ 1,250.00
43	(16) Davis-Weaver Funeral Home	\$ 7,500.00
44	(17) Dodd & Reed Funeral Home, Inc.	\$ 5,000.00
45	(18) Donald G. Ford Funeral Home, Inc.	\$ 1,250.00
46	(19) Durgan Funeral Home, Inc.	\$ 1,250.00
47	(20) Fanning Funeral Home, Inc.	\$ 2,500.00
48	(21) Ferrell Funeral Home, Inc.	\$ 6,250.00
49	(22) Ford Funeral Home, Inc.	\$ 1,250.00
50	(23) Frey Home for Funerals, Inc.	\$ 3,750.00
51	(24) Funeral Services, Inc., dba	
52	James Funeral Home	\$ 3,750.00
53	(25) Good Shepherd Mortuary	\$ 3,750.00
54	(26) Greathouse-Gemondo Funeral Home	\$ 1,250.00
55	(27) Hall Funeral Home, Inc.	\$ 2,500.00
56	(28) Highlawn Funeral Chapel, Inc.	\$ 1,250.00
57	(29) Hunter-Anderson Funeral Home	\$ 1,250.00
58	(30) Ingram Funeral Home, RIP Inc.	\$ 6,250.00

59	(31) J.E. Johnson Funeral Home, Inc.	\$ 2,500.00
60	(32) J.G. Lampkin Funeral Home	\$ 1,250.00
61	(33) James Funeral Home	\$ 1,250.00
62	(34) Jarvis Funeral Homes, Inc.	\$ 1,250.00
63	(35) Keller Funeral Home, Inc.	\$ 1,250.00
64	(36) Kepner Funeral Home, Inc.	\$ 3,750.00
65	(37) Kiger-Williams Funeral, Inc., dba	
66	Rotruck-Lobb Funeral Homes	\$ 2,500.00
67	(38) Klingel-Carpenter Mortuary, Inc.	\$ 2,500.00
68	(39) Koontz Funeral Home	\$ 2,500.00
69	(40) Lambert-Tatman Funeral Home	\$ 6,250.00
70	(41) Leavitt Funeral Home, Inc.	\$ 6,250.00
71	(42) Lohr & Barb Funeral Home, Inc.	\$ 3,750.00
72	(43) McKee Funeral Home	\$ 1,250.00
73	(44) Memorial Funeral Chapels, Inc., dba	
74	Greene-Robertson Funeral Home	\$ 1,250.00
75	(45) Memorial Funeral Directory, Inc.	\$ 7,450.00
76	(46) Mercer Funeral Home of Bluefield, Inc.	\$ 2,500.00
77	(47) Morris Funeral Home, Inc.	\$ 1,250.00
78	(48) Mosti Funeral Home, Inc.	\$ 1,250.00
79	(49) Pennington Funeral Home, Inc.	\$ 1,250.00
80	(50) Preston Funeral Home, Inc.	\$ 1,250.00
81	(51) Rose and Quesenberry Funeral Home	\$ 6,250.00
82	(52) Schaeffer Funeral Home, Inc.	\$ 1,250.00
83	(53) Seaver Funeral Service, Inc.	\$ 1,250.00
84	(54) Shaffer-Warnick Funeral Home	\$ 1,250.00
85	(55) Simons-Coleman Funeral Home, Inc.	\$ 2,500.00
86	(56) Snodgrass Funeral Home	\$ 5,000.00
87	(57) Stevens & Grass Funeral Home	\$ 1,250.00
88	(58) Stockert-Gibson Funeral Home	\$ 2,500.00
89	(59) Taylor & Vandale Funeral Home, Inc.	\$ 2,500.00
90	(60) Tomblyn Funeral Home	\$ 2,500.00

91	(61) Tyler Mountain Funeral Home	\$ 1,250.00
92	(62) Tyree Funeral Home, Inc.	\$ 2,500.00
93	(63) Wallace & Wallace, Inc.	\$ 1,225.00
94	(64) Wallace Funeral Home	\$ 1,250.00
95	(65) Widner Funeral Home	\$ 1,250.00
96	(66) Wilcoxon Funeral Home	\$ 2,500.00
97	(67) William McCulla Funeral Home	\$ 1,250.00
98	<i>(b) Claims against the Division of Corrections:</i>	
99	(TO BE PAID FROM GENERAL REVENUE FUND)	
100	(1) Allegheny General Hospital	\$ 8,412.00
101	(2) Anesthesia Medical Group	\$ 1,650.00
102	(3) Charleston Area Medical	
103	Center, Inc.	\$ 179,126.83
104	(4) Correctional Medical Services, Inc.	\$ 16,898.89
105	(5) Davis Memorial Hospital	\$ 651.00
106	(6) General Anesthesia Services, Inc.	\$ 8,475.00
107	(7) Grafton City Hospital	\$ 4,206.47
108	(8) Mirza, Abdul M., M.D.	\$ 852.67
109	(9) Professional Anesthesia Services	\$ 1,800.00
110	(10) Thoracic & Cardiovascular	
111	Associates, Inc.	\$ 10,504.00
112	(11) United Hospital Center	\$ 1,646.59
113	(12) University Health Associates	\$ 17,832.00
114	(13) West Virginia University	
115	Hospitals, Inc.	\$ 30,772.24
116	(14) West Virginia University Physicians	
117	of Charleston	\$ 687.00

CHAPTER 49

(H. B. 2802 — By Delegate Boggs)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code, all relating to updating provisions pertaining to commercial driver's licenses to conform with federal law.

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 §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code be amended and reenacted, all to read as follows:

Chapter

8. Municipal Corporations.

17E. Uniform Commercial Driver's License Act.

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 authorized
5 by subsection (a) of this section, if a person is found guilty of
6 a traffic offense, the municipal court may, with the person's
7 consent, withhold for a reasonable time not to exceed ninety
8 days the entry of a judgment of conviction so that the person
9 may attend a driver safety education course designated by the
10 municipal court. If the person attends said course, the municipal
11 court, if satisfied with the person's participation in the course,
12 shall, without entering a judgment of conviction, dismiss the
13 proceeding against the person.

14 (c) It shall be a condition of any prejudgment alternative
15 disposition authorized by the provisions of this section that the
16 person pay any fine assessed by the court and pay all fees and
17 costs required to be paid by any provision of this code where a
18 person is convicted of a criminal traffic offense. No municipal
19 court shall utilize any prejudgment alternative disposition
20 procedure unless it collects such fees and costs as are required
21 by any provision of this code and transmits the moneys col-
22 lected as required by law. No municipal court shall utilize any
23 prejudgment alternative disposition procedure unless it con-
24 forms with the requirements of this section.

25 (d) The procedure authorized by the provisions of this
26 section shall not be available to any person who:

27 (1) Holds a commercial driver's license issued by this state
28 in accordance with chapter seventeen-e of this code, or who
29 holds a commercial driver's license issued by any other state or
30 jurisdiction;

31 (2) Is arrested while operating a commercial motor vehicle
32 as defined in chapter seventeen-e of this code; or

33 (3) Is arrested for driving under the influence of alcohol or
34 drugs or any other offense for which a mandatory period of
35 confinement in jail is required.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

- §17E-1-2. Statement of intent and purpose.
- §17E-1-3. Definitions.
- §17E-1-5. Notification required by driver.
- §17E-1-6. Employer responsibilities.
- §17E-1-7. Commercial driver's license required; disqualification for driving without valid license.
- §17E-1-8. Exemptions to the commercial driver's license requirements.
- §17E-1-9. Commercial driver license qualification standards.
- §17E-1-10. Application for commercial driver's license.
- §17E-1-11. Commercial driver's license.
- §17E-1-12. Classifications, endorsements and restrictions.
- §17E-1-13. Disqualification.
- §17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more, refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.
- §17E-1-15. Implied consent requirements for commercial motor vehicle drivers; disqualification for driving with blood alcohol concentration of four hundredths of one percent or more, by weight.
- §17E-1-16. Notification of traffic convictions.
- §17E-1-17. Driving record information to be furnished.
- §17E-1-23. Funding for the commercial driver's license fees.
- §17E-1-24. Enforcement.

§17E-1-2. Statement of intent and purpose.

1 (a) The purpose of this article is to implement 49 U.S.C et
2 seq., The Federal Motor Carrier Safety Improvement Act of
3 1999, 49 U.S.C. §5103a, Uniting and Strengthening America by
4 Providing Appropriate Tools Required to Intercept or Obstruct
5 Terrorism Act of 2001 and to reduce or prevent commercial
6 motor vehicle accidents, fatalities and injuries by:

- 7 (1) Permitting commercial drivers to hold only one license;
- 8 (2) Disqualifying commercial drivers who have committed
9 certain serious traffic offenses;
- 10 (3) Permitting only commercial drivers who do not present
11 a security threat to operate commercial vehicles carrying a
12 hazardous material; and
- 13 (4) Strengthening licensing and testing standards.
- 14 (b) This article is a remedial law and shall be liberally
15 construed to promote the public health, safety and welfare.
16 Where this chapter is silent, the general driver licensing
17 provisions and the provisions of Title 49 of the Code of Federal
18 Regulations apply.

§17E-1-3. Definitions.

- 1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:
- 3 (1) "Alcohol" means:
- 4 (A) Any substance containing any form of alcohol, includ-
5 ing, but not limited to, ethanol, methanol, propanol and
6 isopropanol;
- 7 (B) Beer, ale, port or stout and other similar fermented
8 beverages (including sake or similar products) of any name or
9 description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or in
11 part, or from any substitute for malt;
- 12 (C) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form (including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced); or

16 (D) Wine of not less than one half of one percent of alcohol
17 by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten
22 liters of breath; or

23 (C) The number of grams of alcohol per sixty-seven
24 milliliters of urine.

25 (D) The number of grams of alcohol per eighty-six millili-
26 ters of serum.

27 (3) "At fault traffic accident" means for the purposes of
28 waiving the road test, a determination, by the official filing the
29 accident report, of fault as evidenced by an indication of
30 contributing circumstances in the accident report.

31 (4) "Commercial driver's license" means a license issued
32 in accordance with the requirements of this article to an
33 individual which authorizes the individual to drive a class of
34 commercial motor vehicle.

35 (5) "Commercial driver's license information system" is the
36 information system established pursuant to the Federal Com-
37 mercial Motor Vehicle Safety Act to serve as a clearinghouse
38 for locating information related to the licensing and identifica-
39 tion of commercial motor vehicle drivers.

40 (6) "Commercial driver instruction permit" means a permit
41 issued pursuant to subsection (d), section nine of this article.

42 (7) "Commercial motor vehicle" means a motor vehicle
43 designed or used to transport passengers or property:

44 (A) If the vehicle has a gross combination vehicle weight
45 rating of 26,001 pounds or more inclusive of a towed unit(s)
46 with a gross vehicle weight rating of more than 10,000 pounds;

47 (B) If the vehicle has a gross vehicle weight rating of more
48 than 26,001 pounds or more;

49 (C) If the vehicle is designed to transport sixteen or more
50 passengers, including the driver; or

51 (D) If the vehicle is of any size transporting hazardous
52 materials as defined in this section.

53 (8) "Commissioner" means the Commissioner of Motor
54 Vehicles of this state.

55 (9) "Controlled substance" means any substance classified
56 under the provisions of chapter sixty-a of this code (Uniform
57 Controlled Substances Act) and includes all substances listed on
58 Schedules I through V, inclusive, article two of said chapter
59 sixty-a, as they are revised. The term "controlled substance"
60 also has the meaning such term has under 21 U.S.C. §802.6 and
61 includes all substances listed on Schedules I through V of 21
62 C.F.R. §1308 as they may be amended by the United States
63 Department of Justice.

64 (10) "Conviction" means an unvacated adjudication of
65 guilt; a determination that a person has violated or failed to
66 comply with the law in a court of original jurisdiction or by an
67 authorized administrative tribunal or proceeding; an unvacated
68 forfeiture of bail or collateral deposited to secure the persons
69 appearance in court; a plea of guilty or nolo contendere
70 accepted by the court or the payment of a fine or court cost, or
71 violation of a condition of release without bail regardless of
72 whether or not the penalty is rebated, suspended, or probated.

73 (11) "Division" means the Division of Motor Vehicles.

74 (12) "Disqualification" means any of the following three
75 actions:

76 (A) The suspension, revocation, or cancellation of a
77 driver's license by the state or jurisdiction of issuance.

78 (B) Any withdrawal of a person's privilege to drive a
79 commercial motor vehicle by a state or other jurisdiction as the
80 result of a violation of state or local law relating to motor
81 vehicle traffic control other than parking or vehicle weight
82 except as to violations committed by a special permittee on the
83 coal resource transportation system or vehicle defect violations.

84 (C) A determination by the Federal Motor Carrier Safety
85 Administration that a person is not qualified to operate a
86 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

87 (13) "Drive" means to drive, operate or be in physical
88 control of a motor vehicle in any place open to the general
89 public for purposes of vehicular traffic. For the purposes of
90 sections twelve, thirteen and fourteen of this article, "drive"
91 includes operation or physical control of a motor vehicle
92 anywhere in this state.

93 (14) "Driver" means any person who drives, operates or is
94 in physical control of a commercial motor vehicle, in any place
95 open to the general public for purposes of vehicular traffic, or
96 who is required to hold a commercial driver's license.

97 (15) "Driver's license" means a license issued by a state to
98 an individual which authorizes the individual to drive a motor
99 vehicle of a specific class.

100 (16) "Employee" means any operator of a commercial
101 motor vehicle, including full time, regularly employed drivers;
102 casual, intermittent, or occasional drivers; leased drivers and
103 independent, owner-operator contractors (while in the course of
104 operating a commercial motor vehicle) who are either directly

105 employed by or under lease to drive a commercial motor
106 vehicle for an employer.

107 (17) "Employer" means any person, including the United
108 States, a state or a political subdivision of a state, who owns or
109 leases a commercial motor vehicle or assigns a person to drive
110 a commercial motor vehicle.

111 (18) "Endorsement" means an authorization to a person to
112 operate certain types of commercial motor vehicles.

113 (19) "Farm vehicle" includes a motor vehicle or combina-
114 tion vehicle registered to the farm owner or entity operating the
115 farm and used exclusively in the transportation of agricultural
116 or horticultural products, livestock, poultry and dairy products
117 from the farm or orchard on which they are raised or produced
118 to markets, processing plants, packing houses, canneries,
119 railway shipping points and cold storage plants and in the
120 transportation of agricultural or horticultural supplies and
121 machinery to the farms or orchards to be used on the farms or
122 orchards.

123 (20) "Farmer" includes an owner, tenant, lessee, occupant
124 or person in control of the premises used substantially for
125 agricultural or horticultural pursuits who is at least eighteen
126 years of age with two years' licensed driving experience.

127 (21) "Farmer vehicle driver" means the person employed
128 and designated by the "farmer" to drive a "farm vehicle" as
129 long as driving is not his or her sole or principal function on the
130 farm who is at least eighteen years of age with two years'
131 licensed driving experience.

132 (22) "Felony" means an offense under state or federal law
133 that is punishable by death or imprisonment for a term exceed-
134 ing one year.

135 (23) "Gross combination weight rating (GCWR)" means
136 the value specified by the manufacturer as the loaded weight of
137 a combination (articulated) vehicle. In the absence of a value
138 specified by the manufacturer, GCWR will be determined by
139 adding the GVWR of the power unit and the total weight of the
140 towed unit and any load thereon.

141 (24) "Gross vehicle weight rating (GVWR)" means the
142 value specified by the manufacturer as the loaded weight of a
143 single vehicle. In the absence of a value specified by the
144 manufacturer the GVWR will be determined by the total weight
145 of the vehicle and any load thereon.

146 (25) "Hazardous materials" means any material that has
147 been designated as hazardous under 49 U.S.C. §5103 and is
148 required to be placarded under subpart F of 49 C.F.R. Part §172
149 or any quantity of a material listed in 42 C.F.R. Part §73.

150 (26) "Imminent Hazard" means existence of a condition
151 that presents a substantial likelihood that death, serious illness,
152 severe personal injury or a substantial endangerment to health,
153 property or the environment may occur before the reasonably
154 foreseeable completion date of a formal proceeding begun to
155 lessen the risk of that death, illness, injury or endangerment.

156 (27) "Motor vehicle" means every vehicle which is
157 self-propelled and every vehicle which is propelled by electric
158 power obtained from overhead trolley wires but not operated
159 upon rails.

160 (28) "Non-Commercial motor vehicle" means a motor
161 vehicle or combination of motor vehicles not defined by the
162 term "commercial motor vehicle".

163 (29) "Out-of-service order" means a temporary prohibition
164 against driving a commercial motor vehicle as a result of a
165 determination by a law-enforcement officer, an authorized

166 enforcement officer of a federal, state, Canadian, Mexican,
167 county or local jurisdiction including any special agent of the
168 Federal Motor Carrier Safety Administration pursuant to 49
169 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or
170 the North American uniform out-of-service criteria that an
171 imminent hazard exists.

172 (30) "Violation of an out-of-service order" means:

173 (A) The operation of a commercial motor vehicle during the
174 period the driver was placed out-of-service; or

175 (B) The operation of a commercial motor vehicle by a
176 driver after the vehicle was placed out of service and before the
177 required repairs are made.

178 (30) "School bus" means a commercial motor vehicle used
179 to transport preprimary, primary, or secondary school students
180 from home-to-school, from school-to-home, or to and from
181 school sponsored events. School bus does not include a bus
182 used as a common carrier.

183 (31) "Serious traffic violation" means conviction for any of
184 the following offenses when operating a commercial motor
185 vehicle:

186 (A) Excessive speeding involving any single offense for
187 any speed of fifteen miles per hour or more above the posted
188 limits;

189 (B) Reckless driving as defined in section three, article five,
190 chapter seventeen-c of this code, careless, or negligent driving,
191 including, but not limited to, the offenses of driving a commer-
192 cial motor vehicle in willful or wanton disregard for the safety
193 of persons or property;

194 (C) Erratic or improper traffic lane changes including, but
195 not limited to, passing a school bus when prohibited, improper
196 lane changes and other passing violations;

197 (D) Following the vehicle ahead too closely;

198 (E) Driving a commercial motor vehicle without obtaining
199 a commercial driver's license;

200 (F) Driving a commercial motor vehicle without a commer-
201 cial driver's license in the driver's possession. However, any
202 person who provides proof to the law-enforcement agency that
203 issued the citation, by the date the person must appear in court,
204 or pay any fine for such violation, that the person held a valid
205 commercial driver's license on the date the citation was issued,
206 shall not be guilty of this offense;

207 (G) Driving a commercial motor vehicle without the proper
208 class of commercial driver's license and/or, endorsements for
209 the specific vehicle group being operated or for the passengers
210 or type of cargo being transported; or

211 (H) A violation of state or local law relating to motor
212 vehicle traffic control, other than a parking violation, arising in
213 connection with a fatal traffic accident.

214 (I) Vehicle defects are excluded as serious traffic viola-
215 tions, except as to violations committed by a special permittee
216 on the coal resource transportation road system; or

217 (J) Any other serious violations determined by the United
218 States Secretary of Transportation.

219 (32) "State" means a state of the United States and the
220 District of Columbia.

221 (33) "State of Domicile" means the state where a person
222 has his or her true, fixed and permanent home and principle

223 residence and to which he or she has the intention of returning
224 whenever absent in accordance with chapter seventeen-a, article
225 three, section one-a.

226 (34) "Suspension, revocation or cancellation" of a driver's
227 license, or a commercial driver's license means the privilege to
228 operate any type of motor vehicle on the roads and highways of
229 this state is withdrawn.

230 (35) "Tank vehicle" means any commercial motor vehicle
231 that is designed to transport any liquid or gaseous materials
232 within a tank that is either permanently or temporarily attached
233 to the vehicle or the chassis. These vehicles include, but are not
234 limited to, cargo tanks and portable tanks, as defined in 49 C.
235 F. R. Part 171 (1998). However, this definition does not include
236 portable tanks having a rated capacity under one thousand
237 gallons.

238 "At fault traffic accident" means for the purposes of
239 waiving the road test, a determination, by the official filing of
240 the accident report, of fault as evidenced by an indication of
241 contributing circumstances in the accident report.

242 (36) "Transportation Security Administration" means the
243 United States Department of Homeland Security Transportation
244 Security Administration.

245 (37) "United States" means the fifty states and the District
246 of Columbia.

247 (38) "Vehicle Group" means a class or type of vehicle with
248 certain operating characteristics.

§17E-1-5. Notification required by driver.

1 (a) Notification of convictions.

2 (1) Any driver of a commercial motor vehicle holding a
3 driver's license issued by this state, who is convicted of
4 violating any state law or local ordinance relating to motor
5 vehicle traffic control, in any other state or federal, provincial,
6 territorial or municipal laws of Canada, other than parking
7 violations, shall notify the West Virginia Division of Motor
8 Vehicles in the manner specified by the Commissioner and in
9 accordance with C.F.R. §383.31(2004) within thirty days of the
10 date of conviction.

11 (2) Any driver of a commercial motor vehicle holding a
12 driver's license issued by this state, who is convicted of
13 violating any state law or local ordinance relating to motor
14 vehicle traffic control in this state or any other state or federal,
15 provincial, territorial or municipal laws of Canada, other than
16 parking violations, must notify his or her employer in writing
17 and in accordance with 49 C. F. R. §383.31 (2004) of the
18 conviction within thirty days of the date of conviction.

19 (b) Each driver whose driver's license is:

20 (1) Suspended, revoked, canceled or expired, by any state;

21 (2) Who loses the privilege to drive a commercial motor
22 vehicle in any state for any period; or

23 (3) Who is disqualified from driving a commercial motor
24 vehicle for any period, shall notify his or her employer of that
25 fact before the end of the business day following the day the
26 driver received notice of the action against his or her driving
27 privileges.

28 (c) Each person who applies to be a commercial motor
29 vehicle driver shall provide the employer, at the time of the
30 application, with the following information for the ten years
31 preceding the date of application:

32 (1) A list of the names and addresses of the applicant's
33 previous employers for which the applicant was a driver of a
34 commercial motor vehicle;

35 (2) The dates between which the applicant drove for each
36 employer; and

37 (3) The reason for leaving that employer.

38 The applicant shall certify that all information furnished is
39 true and complete. An employer may require an applicant to
40 provide additional information.

§17E-1-6. Employer responsibilities.

1 (a) Each employer must require the applicant to provide the
2 information specified in section five of this article.

3 (b) No employer may knowingly allow, permit or authorize
4 a driver to drive a commercial motor vehicle during any period:

5 (1) In which the driver has a driver's license suspended,
6 revoked or canceled by a state; has lost the privilege to drive a
7 commercial motor vehicle in a state, or has been disqualified
8 from driving a commercial motor vehicle; or

9 (2) In which the driver has more than one driver's license
10 at one time.

11 (3) During any period in which the driver, or the commer-
12 cial motor vehicle he or she is driving or the motor carrier
13 operation, is subject to an out-of-service order; or

14 (4) In violation of federal, state or local law or regulation
15 pertaining to railroad highway grade crossings; or

16 (5) During any period the driver is in violation of any
17 provision of 49 C.F.R., Part §382 related to controlled sub-
18 stances and alcohol use and testing.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

1 (a) On or after the first day of April, one thousand nine
2 hundred ninety-two, except when driving under a commercial
3 driver's instruction permit accompanied by the holder of a
4 commercial driver's license valid for the vehicle being driven,
5 no person may drive a commercial motor vehicle unless the
6 person holds a commercial driver's license and applicable
7 endorsements valid for the vehicle they are driving.

8 (b) No person may drive a commercial motor vehicle while
9 their driving privilege is suspended, revoked, canceled, expired,
10 subject to a disqualification or in violation of an out-of-service
11 order.

12 (c) Drivers of a commercial motor vehicle must have a
13 commercial driver's license in their possession at all times
14 while driving.

15 (d) The Commissioner shall suspend for a period of ninety
16 days the driving privileges of any person who is convicted of
17 operating a commercial motor vehicle without holding a valid
18 commercial driver's license and the applicable endorsements
19 valid for the vehicle he or she is driving or for any conviction
20 for operating a commercial motor vehicle while disqualified
21 from operating a commercial motor vehicle.

22 (e) Any person not holding a commercial driver's license
23 who is convicted of an offense that requires disqualification
24 from operating a commercial motor vehicle shall also be
25 disqualified from eligibility for a commercial driver's license
26 for the same time periods as prescribed in federal law or rule or
27 section thirteen of this article for commercial driver's license
28 holders.

§17E-1-8. Exemptions to the commercial driver's license requirements.

1 (a) Bona fide farmers or farm vehicle drivers, as defined,
2 operating a vehicle otherwise covered by the commercial
3 driver's license requirements may be exempted from the
4 provisions of this article only if the vehicle used is:

5 (1) Driven by a farmer or farm vehicle driver;

6 (2) Used only to transport either agricultural products, farm
7 machinery, farm supplies, to or from a farm;

8 (3) Not used in the operation of a common or contract
9 motor carrier; and

10 (4) Used within one hundred fifty miles of the qualifying
11 farm. Farmers who wish to be exempted from the commercial
12 driver's license requirements must apply to the Division of
13 Motor Vehicles for a certificate of exemption.

14 (b) Military personnel, including the National Guard and
15 Reserve, are exempt from the provisions of this article, only:

16 (1) When in uniform; and

17 (2) Operating equipment owned by the United States
18 Department of Defense, except during declared emergencies or
19 disaster situations; and

20 (3) On duty; and

21 (4) In possession of a valid classified military driver's
22 license for the class of vehicle being driven.

23 (c) Fire fighting and rescue equipment. Operators of
24 vehicles authorized to hold an "authorized emergency vehicle

25 permit” for use of red signal lights only are exempt from the
26 provisions of this article while the “authorized emergency
27 vehicle permit” is in force. Vehicles in this class include, but
28 are not limited to, firefighters and rescue equipment:

29 (1) Owned and operated by state, county and municipal fire
30 departments;

31 (2) Owned and operated by state, county and municipal
32 civil defense organizations;

33 (3) Owned and operated by a manufacturer engaged in a
34 type of business that requires firefighter equipment to protect
35 the safety of their plants and its employees; or

36 (4) Owned and operated by volunteer fire departments.

37 (d) Operators of off-road construction and mining equip-
38 ment. Operators of equipment which, by its design, appearance
39 and function, is not intended for use on a public road, including,
40 without limitation, motorscrapers, backhoes, motorgraders,
41 compactors, excavators, tractors, trenches and bulldozers, are
42 exempt from the provisions of this article: *Provided*, That the
43 exemption recognized by this subsection shall not be construed
44 to permit the operation of such equipment on any public road
45 except such operation as may be required for a crossing of such
46 road: *Provided, however*, That no such equipment may be
47 operated on a public road for a distance exceeding five hundred
48 feet from the place where such equipment entered upon the
49 public road.

50 (e) The Federal Motor Carrier Safety Improvement Act of
51 1999 exempts vehicles used exclusively for personal use such
52 as recreation vehicles and rental trucks used only to transport
53 the driver's personal or household property.

§17E-1-9. Commercial driver license qualification standards.

1 (a) No person may be issued a commercial driver's license
2 unless that person is a resident of this state and has passed a
3 knowledge and skills test for driving a commercial motor
4 vehicle which complies with minimum federal standards
5 established by federal regulations enumerated in 49 C.F.R. part
6 §383, sub-parts G and H, (2004) and has satisfied all other
7 requirements of the Federal Motor Carrier Safety Improvement
8 Act of 1999 in addition to other requirements imposed by state
9 law or federal regulations.

10 (b) Third party testing. The Commissioner may authorize
11 a person, including an agency of this or another state, an
12 employer, private individual or institution, department, agency
13 or instrumentality of local government, to administer the skills
14 test specified by this section: *Provided, That:*

15 (1) The test is the same which would otherwise be adminis-
16 tered by the state; and

17 (2) The party has entered into an agreement with the state
18 which complies with the requirements of 49 C.F.R., part
19 §383.75.

20 (c) Indemnification of driver examiners. No person who
21 has been officially trained and certified by the state as a driver
22 examiner, who administers a driving test, and no other person,
23 firm or corporation by whom or with which that person is
24 employed or is in any way associated, may be criminally liable
25 for the administration of the tests, or civilly liable in damages
26 to the person tested or other persons or property unless for gross
27 negligence or willful or wanton injury.

28 (d) The Commissioner may waive the skills test specified
29 in this section for a commercial driver license applicant who

30 meets the requirements of 49 C.F.R. part §383.77 and those
31 requirements specified by the Commissioner.

32 (e) A commercial driver's license or commercial driver's
33 instruction permit may not be issued to a person while the
34 person is subject to a disqualification from driving a commer-
35 cial motor vehicle, or while the person's driver's license is
36 suspended, revoked or canceled in any state; nor may a com-
37 mercial driver's license be issued by any other state unless the
38 person first surrenders all such licenses to the division.

39 (f) Commercial driver's instruction permit may be issued
40 as follows:

41 (1) A commercial driver's instruction permit may be issued
42 to an individual who holds a valid Class E or Class D driver's
43 license who has passed the vision and written tests required for
44 issuance of a commercial driver's license.

45 (2) The commercial instruction permit may not be issued
46 for a period to exceed six months. Only one renewal or
47 reissuance may be granted within a two-year period. The
48 holder of a commercial driver's instruction permit may drive a
49 commercial motor vehicle on a highway only when accompa-
50 nied by the holder of a commercial driver's license valid for
51 the type of vehicle driven who is twenty-one years of age or
52 older and who occupies a seat beside the individual for the
53 purpose of giving instruction or testing.

54 (3) A commercial driver's instruction permit may only be
55 issued to a person who is at least eighteen years of age and has
56 held a graduated Class E, Class E or Class D license for at least
57 two years.

58 (4) The applicant for a commercial driver's instruction
59 permit shall also be otherwise qualified to hold a commercial
60 driver's license.

§17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license or
2 commercial driver's instruction permit must include at least the
3 following:

4 (1) The full name and current mailing and residential
5 address of the person;

6 (2) A physical description of the person including sex,
7 height, weight and eye color;

8 (3) Date of birth;

9 (4) The applicant's social security number;

10 (5) The person's signature;

11 (6) The person's color photograph;

12 (7) Certifications including those required by 49 C.F.R. Part
13 §383.71(a)(2004);

14 (8) Any other information required by the Commissioner;
15 and

16 (9) A consent to release driving record information.

17 (b) When a licensee changes his or her name, mailing
18 address or residence, the licensee shall submit an application
19 for a duplicate license and obtain a duplicate driver's license
20 displaying the updated information.

21 (c) No person who has been a resident of this state for thirty
22 days or more may drive a commercial motor vehicle under the
23 authority of a commercial driver's license issued by another
24 jurisdiction.

§17E-1-11. Commercial driver's license.

1 The commercial driver's license shall be marked "commer-
2 cial driver's license" or "CDL" and shall be, to the maximum
3 extent practicable, tamper proof. It must include, but not be
4 limited to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex,
8 height, weight, and eye color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive, together with
13 any endorsement(s) and or restriction(s);

14 (g) The name of this state; and

15 (h) The dates between which the license is valid.

§17E-1-12. Classifications, endorsements and restrictions.

1 (a) Commercial driver's licenses may be issued with the
2 following classifications:

3 (1) *Class A combination vehicle* - Any combination of
4 vehicles with a gross combined vehicle weight rating of
5 twenty-six thousand one pounds or more, provided the gross
6 vehicle weight rating of the vehicle being towed is in excess of
7 ten thousand pounds.

8 (2) *Class B heavy straight vehicle* - Any single vehicle with
9 a gross vehicle weight rating of twenty-six thousand one pounds

10 or more and any vehicle towing a vehicle not in excess of ten
11 thousand pounds.

12 (3) *Class C Small Vehicle* - Any single vehicle or combina-
13 tion vehicle that does not fall under either Class A or Class B
14 but are:

15 (A) Vehicles designed to transport sixteen or more passen-
16 gers, including the driver; and

17 (B) Vehicles used in the transportation of hazardous
18 materials which requires the vehicle to be placarded under 49
19 C.F.R., Part §172, subpart F (2004).

20 (4) Each applicant who desires to operate a vehicle in a
21 classification different from the class in which the applicant is
22 authorized shall be required to retake and pass all related tests
23 except the following;

24 (A) A driver who has passed the knowledge and skills test
25 for a combination vehicle in Class A may operate a heavy
26 straight vehicle in Class B or a small vehicle in Class C
27 provided he or she possesses the required endorsements; and

28 (B) A driver who has passed the knowledge and skills test
29 for a vehicle in Class B may operate any small vehicle in Class
30 C provided he or she possesses the required endorsements.

31 (b) *Endorsements and restrictions.* — The Commissioner
32 upon issuing a commercial driver's license may impose
33 endorsements and or restrictions determined by the Commis-
34 sioner to be appropriate to assure the safe operation of a motor
35 vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R.
36 §383.93 (2004) including, but not limited to:

37 (1) Double/triple trailers which shall require successful
38 completion of a knowledge test;

39 (2) Passenger vehicles which shall require successful
40 completion of a knowledge and skills test;

41 (3) Tank vehicles which shall require successful completion
42 of a knowledge test;

43 (4) Vehicles used for the transportation of hazardous
44 materials as defined in section three of this article which shall
45 require the completion of a knowledge test and a background
46 security risk check in accordance with 49 C.F.R. §1572.5
47 (2004);or

48 (5) School buses which shall require successful completion
49 of a knowledge and skills test unless the applicant meets the
50 criteria for waiver of the skills test in accordance with 49 C.F.R.
51 §383.123(b)(2004).

52 (c) *Applicant record check.* — Before issuing a commercial
53 driver's license, the Commissioner shall obtain driving record
54 information through the commercial driver's license informa-
55 tion system, the national driver register and from each state in
56 which the person has been licensed.

57 (d) *Notification of license issuance.* — Within ten days after
58 issuing a commercial driver's license, the Commissioner shall
59 notify the commercial driver's license information system of
60 that fact, providing all information required to ensure identifica-
61 tion of the person.

62 (e) *Expiration of license.* —

63 (1) Every commercial driver's license issued to persons
64 who have attained their twenty-first birthday expires on the
65 applicant's birthday in those years in which the applicant's age
66 is evenly divisible by five. Except as provided in subdivision
67 (2) of this subsection, no commercial driver's license may be
68 issued for less than three years nor more than seven years and

69 the commercial driver's license shall be renewed by the
70 applicant's birthday and is valid for a period of five years,
71 expiring on the applicant's birthday and in a year in which the
72 applicant's age is evenly divisible by five.

73 (2) Every commercial driver's license issued to persons
74 who have not attained their twenty-first birthday expires thirty
75 days after the applicant's birthday in the year in which the
76 applicant attains the age of twenty-one years.

77 (3) Commercial driver's licenses held by any person in the
78 armed forces which expire while that person is on active duty
79 remains valid for thirty days from the date on which that person
80 reestablishes residence in West Virginia.

81 (4) Any person applying to renew a commercial driver's
82 license which has been expired for six months or more shall
83 follow the procedures for an initial issuance of a commercial
84 driver's license, including the testing provisions.

85 (f) When applying for renewal of a commercial driver's
86 license, the applicant shall complete the application form and
87 provide updated information and required certifications.

88 (g) If the applicant wishes to obtain or retain a hazardous
89 materials endorsement, the applicant shall comply with a
90 background check in accordance with 49 U.S.C., § 5103a and
91 49 C.F.R. Part §1572 (2004) and subject to the following:

92 (1) The applicant is a citizen of the United States or a
93 lawful permanent resident of the United States;

94 (2) The applicant completes the application prescribed by
95 the Division and submits fingerprints in a form and manner
96 prescribed by the Division and the United States Department of
97 Homeland Security- Transportation Security Administration at

98 the time of application or at any other time in accordance with
99 49 C.F.R. §1572.5(2004);

100 (3) The applicant pays all fees prescribed by the Transpor-
101 tation Security Administration or its agent and the Division;

102 (4) The applicant has not been adjudicated as a mental
103 defective or committed to a mental institution as prescribed in
104 49 C.F.R. §1572.109(2004);

105 (5) The applicant has not committed a disqualifying
106 criminal offense as described in 49 C.F.R. §1572.103 (2004);

107 (6) The applicant has passed the Transportation Security
108 Administration security threat assessment and the Division has
109 received a final notification of threat assessment or notification
110 of no security threat from the Transportation Security Adminis-
111 tration: *Provided*, That any appeal of any decision, determina-
112 tion or ruling of the Federal Bureau of Investigation or the
113 Transportation Security Agency shall be directed to that
114 agency; and

115 (7) The applicant has successfully passed the written test
116 for the issuance or renewal of a hazardous material endorse-
117 ment.

§17E-1-13. Disqualification.

1 (a) A person shall not operate a commercial motor vehicle
2 if his or her privilege to operate a commercial motor vehicle is
3 disqualified under the provisions of the Federal Motor Carrier
4 Safety Improvement Act of 1999 (public law 106-159 §1748),
5 49 C.F.R. Part §383, Subpart D (2004) or in accordance with
6 the provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each conviction

9 for any offense listed in this section resulting from a separate
10 incident shall include convictions for offenses committed in a
11 commercial motor vehicle or a noncommercial motor vehicle.

12 (2) Any person disqualified from operating a commercial
13 motor vehicle for life under the provisions of this chapter for
14 offenses described in subsection (b), subdivisions (1) through
15 (8) of this section is eligible for reinstatement of privileges to
16 operate a commercial motor vehicle after ten years and after
17 completion of the safety and treatment program or other
18 appropriate program prescribed by the Division. Any person
19 whose lifetime disqualification has been amended under the
20 provisions of this subdivision and who is subsequently con-
21 victed of a disqualifying offense described in subsection (b),
22 subdivisions (1) through (8) of this section shall not be eligible
23 for reinstatement.

24 (3) Any disqualification imposed by this section shall be in
25 addition to any action to suspend, revoke or cancel the driver's
26 license or driving privileges if suspension, revocation or
27 cancellation is required under another provision of this code.

28 (4) The provisions of this section apply to any person
29 operating a commercial motor vehicle and to any person
30 holding a commercial driver's license.

31 (b) Any person is disqualified from driving a commercial
32 motor vehicle for the following offenses and time periods if
33 convicted of:

34 (1) Driving a motor vehicle under the influence of alcohol
35 or a controlled substance;

36 (A) For a first conviction or for refusal to submit to any
37 designated secondary chemical test while operating a commer-
38 cial motor vehicle, a driver shall be disqualified from operating
39 a commercial motor vehicle for a period of one year.

40 (B) For a first conviction or for refusal to submit to any
41 designated secondary chemical test while operating a noncom-
42 mercial motor vehicle, a commercial driver's license holder
43 shall be disqualified from operating a commercial motor
44 vehicle for a period of one year.

45 (C) For a first conviction or for refusal to submit to any
46 designated secondary chemical test while operating a commer-
47 cial motor vehicle transporting hazardous materials required to
48 be placarded under 49 C.F.R. Part §172, Subpart F, a driver
49 shall be disqualified from operating a commercial motor
50 vehicle for a period of three years.

51 (D) For a second conviction or for refusal to submit to any
52 designated secondary chemical test in a separate incident of any
53 combination of offenses in this subsection while operating a
54 commercial motor vehicle, a driver shall be disqualified from
55 operating a commercial motor vehicle for life.

56 (E) For a second conviction or refusal to submit to any
57 designated secondary chemical test in a separate incident of any
58 combination of offenses in this subsection while operating a
59 noncommercial motor vehicle, a commercial motor vehicle
60 license holder shall be disqualified from operating a commer-
61 cial motor vehicle for life.

62 (2) Driving a commercial motor vehicle while the person's
63 alcohol concentration of the person's blood, breath or urine is
64 four hundredths of one percent or more, by weight;

65 (A) For a first conviction or for refusal to submit to any
66 designated secondary chemical test while operating a commer-
67 cial motor vehicle, a driver shall be disqualified from operating
68 a commercial motor vehicle for one year.

69 (B) For a first conviction or for refusal to submit to any
70 designated secondary chemical test while operating a commer-

71 cial motor vehicle transporting hazardous materials required to
72 be placarded under 49 C.F.R. Part §172, Subpart F, a driver
73 shall be disqualified from operating a commercial motor
74 vehicle for three years.

75 (C) For a second conviction or refusal to submit to any
76 designated secondary chemical test in a separate incident of any
77 combination of offenses in this subsection while operating a
78 commercial motor vehicle, a driver shall be disqualified from
79 operating a commercial motor vehicle for life.

80 (3) Refusing to submit to any designated secondary
81 chemical required by the provisions of this code or the provi-
82 sions of 49 C.F.R. §383.72 (2004);

83 (A) For the first conviction or refusal to submit to any
84 designated secondary chemical test while operating a commer-
85 cial motor vehicle, a driver shall be disqualified from operating
86 a commercial motor vehicle for one year.

87 (B) For the first conviction or refusal to submit to any
88 designated secondary chemical test while operating a noncom-
89 mercial motor vehicle, a commercial driver's license holder
90 shall be disqualified from operating a commercial motor
91 vehicle for one year.

92 (C) For the first conviction or for refusal to submit to any
93 designated secondary chemical test while operating a commer-
94 cial motor vehicle transporting hazardous materials required to
95 be placarded under 49 C.F.R. Part §172, Subpart F (2004), a
96 driver shall be disqualified from operating a commercial motor
97 vehicle for a period of three years.

98 (D) For a second conviction or refusal to submit to any
99 designated secondary chemical test in a separate incident of any
100 combination of offenses in this subsection while operating a

101 commercial motor vehicle, a driver shall be disqualified from
102 operating a commercial motor vehicle for life.

103 (E) For a second conviction or refusal to submit to any
104 designated secondary chemical test in a separate incident of any
105 combination of offenses in this subsection while operating a
106 noncommercial motor vehicle, a commercial driver's license
107 holder shall be disqualified from operating a commercial motor
108 vehicle for life.

109 (4) Leaving the scene of an accident;

110 (A) For the first conviction while operating a commercial
111 motor vehicle, a driver shall be disqualified from operating a
112 commercial motor vehicle for one year.

113 (B) For the first conviction while operating a noncomm-
114 ercial motor vehicle, a commercial driver's license holder shall be
115 disqualified for one year.

116 (C) For the first conviction while operating a commercial
117 motor vehicle transporting hazardous materials required to be
118 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver
119 shall be disqualified from operating a commercial motor
120 vehicle for a period of three years.

121 (D) For a second conviction in a separate incident of any
122 combination of offenses in this subsection while operating a
123 commercial motor vehicle, a driver shall be disqualified from
124 operating a commercial motor vehicle for life.

125 (E) For a second conviction in a separate incident of any
126 combination of offenses in this subsection while operating a
127 noncommercial motor vehicle, a commercial driver's license
128 holder shall be disqualified from operating a commercial motor
129 vehicle for life.

130 (5) Using a motor vehicle in the commission of any felony
131 as defined in section three, article one of this chapter: *Pro-*
132 *vided*, That the commission of any felony involving the
133 manufacture, distribution or dispensing of a controlled sub-
134 stance, or possession with intent to manufacture, distribute or
135 dispense a controlled substance falls under the provisions of
136 subdivision(8)of this subsection;

137 (A) For the first conviction while operating a commercial
138 motor vehicle, a driver shall be disqualified from operating a
139 commercial motor vehicle for one year.

140 (B) For the first conviction while operating a noncommer-
141 cial motor vehicle, a commercial driver's license holder shall be
142 disqualified from operating a commercial motor vehicle for one
143 year.

144 (C) For the first conviction while operating a commercial
145 motor vehicle transporting hazardous materials required to be
146 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver
147 shall be disqualified from operating a commercial motor
148 vehicle for a period of three years.

149 (D) For a second conviction in a separate incident of any
150 combination of offenses in this subsection while operating a
151 commercial motor vehicle, a driver shall be disqualified from
152 operating a commercial motor vehicle for life.

153 (E) For a second conviction in a separate incident of any
154 combination of offenses in this subsection while operating a
155 noncommercial motor vehicle, a commercial motor vehicle
156 license holder shall be disqualified from operating a commer-
157 cial motor vehicle for life.

158 (6) Operating a commercial motor vehicle when, as a result
159 of prior violations committed operating a commercial motor
160 vehicle, the driver's privilege to operate a motor vehicle has

161 been suspended, revoked or canceled, or the driver's privilege
162 to operate a commercial motor vehicle has been disqualified.

163 (A) For the first conviction while operating a commercial
164 motor vehicle, a driver shall be disqualified from operating a
165 commercial motor vehicle for one year.

166 (B) For the first conviction while operating a commercial
167 motor vehicle transporting hazardous materials required to be
168 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver
169 shall be disqualified from operating a commercial motor
170 vehicle for a period of three years.

171 (C) For a second conviction in a separate incident of any
172 combination of offenses in this subsection while operating a
173 commercial motor vehicle, a driver shall be disqualified from
174 operating a commercial motor vehicle for life.

175 (7) Causing a fatality through the negligent operation of a
176 commercial motor vehicle, including, but not limited to, the
177 crimes of motor vehicle manslaughter, homicide and negligent
178 homicide as defined in section five, article three, chapter
179 seventeen-b, and section one, article five, chapter seventeen-c
180 of this code;

181 (A) For the first conviction while operating a commercial
182 motor vehicle, a driver shall be disqualified from operating a
183 commercial motor vehicle for one year.

184 (B) For the first conviction while operating a commercial
185 motor vehicle transporting hazardous materials required to be
186 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver
187 shall be disqualified from operating a commercial motor
188 vehicle for a period of three years.

189 (C) For a second conviction in a separate incident of any
190 combination of offenses in this subsection while operating a

191 commercial motor vehicle, a driver shall be disqualified from
192 operating a commercial motor vehicle for life.

193 (8) Using a motor vehicle in the commission of any felony
194 involving the manufacture, distribution or dispensing of a
195 controlled substance, or possession with intent to manufacture,
196 distribute or dispense a controlled substance, a driver shall be
197 disqualified from operating a commercial motor vehicle for life
198 and shall not be eligible for reinstatement.

199 (c) Any person is disqualified from driving a commercial
200 motor vehicle if convicted of;

201 (1) Speeding excessively involving any speed of fifteen
202 miles per hour or more above the posted speed limit;

203 (A) For a second conviction of any combination of offenses
204 in this subsection in a separate incident within a three-year
205 period while operating a commercial motor vehicle, a driver
206 shall be disqualified from operating a commercial motor
207 vehicle for a period of sixty days.

208 (B) For a second conviction of any combination of offenses
209 in this section in a separate incident within a three-year period
210 while operating a noncommercial motor vehicle, if the convic-
211 tion results in the suspension, revocation or cancellation of the
212 commercial driver's license holder's privilege to operate any
213 motor vehicle, a commercial driver's license holder shall be
214 disqualified from operating a commercial motor vehicle for a
215 period of sixty days.

216 (C) For a third or subsequent conviction of any combination
217 of the offenses in this subsection in a separate incident in a
218 three-year period while operating a commercial motor vehicle,
219 a driver shall be disqualified from operating a commercial
220 motor vehicle for a period of one hundred twenty days.

221 (D) For a third or subsequent conviction of any combina-
222 tion of offenses in this subsection in a separate incident within
223 a three-year period while operating a noncommercial motor
224 vehicle, if the conviction results in the suspension, revocation
225 or cancellation of the commercial driver's license holder's
226 privilege to operate any motor vehicle, a commercial driver's
227 license holder shall be disqualified from operating a commer-
228 cial motor vehicle for a period of one hundred twenty days.

229 (2) Reckless driving as defined in section three, article five,
230 chapter seventeen-c of this code, careless, or negligent driving
231 including, but not limited to, the offenses of driving a motor
232 vehicle in willful or wanton disregard for the safety of persons
233 or property;

234 (A) For a second conviction of any combination of offenses
235 in this subsection in a separate incident within a three-year
236 period while operating a commercial motor vehicle, a driver
237 shall be disqualified from operating a commercial motor
238 vehicle for a period of sixty days.

239 (B) For a second conviction of any combination of offenses
240 in this section in a separate incident within a three-year period
241 while operating a noncommercial motor vehicle, if the convic-
242 tion results in the suspension, revocation, or cancellation of the
243 commercial driver's license holder's privilege to operate any
244 motor vehicle, a commercial driver's license holder shall be
245 disqualified from operating a commercial motor vehicle for a
246 period of sixty days.

247 (C) For a third or subsequent conviction of any combination
248 of the offenses in this subsection in a separate incident in a
249 three-year period while operating a commercial motor vehicle,
250 a driver shall be disqualified from operating a commercial
251 motor vehicle for a period of one hundred twenty days.

252 (D) For a third or subsequent conviction of any combina-
253 tion of offenses in this subsection in a separate incident within
254 a three-year period while operating a noncommercial motor
255 vehicle, if the conviction results in the suspension, revocation
256 or cancellation of the commercial driver's license holder's
257 privilege to operate any motor vehicle, a commercial driver's
258 license holder shall be disqualified from operating a commer-
259 cial motor vehicle for a period of one hundred twenty days.

260 (3) Making improper or erratic traffic lane changes;

261 (A) For a second conviction of any combination of offenses
262 in this subsection in a separate incident within a three-year
263 period while operating a commercial motor vehicle, a driver
264 shall be disqualified from operating a commercial motor
265 vehicle for a period of sixty days.

266 (B) For a second conviction of any combination of offenses
267 in this section in a separate incident within a three-year period
268 while operating a noncommercial motor vehicle, if the convic-
269 tion results in the suspension, revocation, or cancellation of the
270 commercial driver's license holder's privilege to operate any
271 motor vehicle, a commercial driver's license holder shall be
272 disqualified from operating a commercial motor vehicle for a
273 period of sixty days.

274 (C) For a third or subsequent conviction of any combination
275 of the offenses in this subsection in a separate incident in a
276 three-year period while operating a commercial motor vehicle,
277 a driver shall be disqualified from operating a commercial
278 motor vehicle for a period of one hundred twenty days.

279 (D) For a third or subsequent conviction of any combina-
280 tion of offenses in this subsection in a separate incident within
281 a three-year period while operating a noncommercial motor
282 vehicle, if the conviction results in the suspension, revocation
283 or cancellation of the commercial driver's license holder's

284 privilege to operate any motor vehicle, a commercial driver's
285 license holder shall be disqualified from operating a commer-
286 cial motor vehicle for a period of one hundred twenty days.

287 (4) Following the vehicle ahead too closely;

288 (A) For a second conviction of any combination of offenses
289 in this subsection in a separate incident within a three-year
290 period while operating a commercial motor vehicle, a driver
291 shall be disqualified from operating a commercial motor
292 vehicle for a period of sixty days.

293 (B) For a second conviction of any combination of offenses
294 in this section in a separate incident within a three-year period
295 while operating a noncommercial motor vehicle, if the convic-
296 tion results in the suspension, revocation, or cancellation of the
297 commercial driver's license holder's privilege to operate any
298 motor vehicle, a commercial driver's license holder shall be
299 disqualified from operating a commercial motor vehicle for a
300 period of sixty days.

301 (C) For a third or subsequent conviction of any combination
302 of the offenses in this subsection in a separate incident in a
303 three-year period while operating a commercial motor vehicle,
304 a driver shall be disqualified from operating a commercial
305 motor vehicle for a period of one hundred twenty days.

306 (D) For a third or subsequent conviction of any combina-
307 tion of offenses in this subsection in a separate incident within
308 a three-year period while operating a noncommercial motor
309 vehicle, if the conviction results in the suspension, revocation
310 or cancellation of the commercial driver's license holder's
311 privilege to operate any motor vehicle, a commercial driver's
312 license holder shall be disqualified from operating a commer-
313 cial motor vehicle for a period of one hundred twenty days.

314 (5) Violating any law relating to traffic control arising in
315 connection with a fatal accident, other than a parking violation;

316 (A) For a second conviction of any combination of offenses
317 in this subsection in a separate incident within a three-year
318 period while operating a commercial motor vehicle, a driver
319 shall be disqualified from operating a commercial motor
320 vehicle for a period of sixty days.

321 (B) For a second conviction of any combination of offenses
322 in this section in a separate incident within a three-year period
323 while operating a noncommercial motor vehicle, if the conviction
324 results in the suspension, revocation, or cancellation of the
325 commercial driver's license holder's privilege to operate any
326 motor vehicle, a commercial driver's license holder shall be
327 disqualified from operating a commercial motor vehicle for a
328 period of sixty days.

329 (C) For a third or subsequent conviction of any combination
330 of the offenses in this subsection in a separate incident in a
331 three-year period while operating a commercial motor vehicle,
332 a driver shall be disqualified from operating a commercial
333 motor vehicle for a period of one hundred twenty days.

334 (D) For a third or subsequent conviction of any combina-
335 tion of offenses in this subsection in a separate incident within
336 a three-year period while operating a noncommercial motor
337 vehicle, if the conviction results in the suspension, revocation
338 or cancellation of the commercial driver's license holder's
339 privilege to operate any motor vehicle, a commercial motor
340 vehicle license holder shall be disqualified from operating a
341 commercial motor vehicle for a period of one hundred twenty
342 days.

343 (6) Driving a commercial motor vehicle without obtaining
344 a commercial driver's license;

345 (A) For a second conviction of any combination of offenses
346 in this subsection in a separate incident within a three-year
347 period while operating a commercial motor vehicle, a driver
348 shall be disqualified from operating a commercial motor
349 vehicle for a period of sixty days.

350 (B) For a third or subsequent conviction of any combination
351 of the offenses in this subsection in a separate incident in a
352 three-year period while operating a commercial motor vehicle,
353 a driver shall be disqualified from operating a commercial
354 motor vehicle for a period of one hundred twenty days.

355 (7) Driving a commercial motor vehicle without a commer-
356 cial driver's license in the driver's possession, provided that
357 any person who provides proof of possession of a commercial
358 driver's license to the enforcement agency that issued the
359 citation, by the court appearance or fine payment deadline shall
360 not be guilty of this offense;

361 (A) For a second conviction of any combination of offenses
362 in this subsection in a separate incident within a three-year
363 period while operating a commercial motor vehicle, a commer-
364 cial driver's license holder shall be disqualified from operating
365 a commercial motor vehicle for a period of sixty days.

366 (B) For a third or subsequent conviction of any combination
367 of the offenses in this subsection in a separate incident in a
368 three-year period while operating a commercial motor vehicle,
369 a commercial driver's license holder shall be disqualified from
370 operating a commercial motor vehicle for a period of one
371 hundred twenty days.

372 (8) Driving a commercial motor vehicle without the proper
373 class of commercial driver's license or the proper endorsements
374 for the specific vehicle group being operated, or for the
375 passengers or type of cargo being transported;

376 (A) For a second conviction of any combination of offenses
377 in this subsection in a separate incident within a three-year
378 period while operating a commercial motor vehicle, a commer-
379 cial driver's license holder shall be disqualified from operating
380 a commercial motor vehicle for a period of sixty days.

381 (B) For a third or subsequent conviction of any combination
382 of the offenses in this subsection in a separate incident in a
383 three-year period while operating a commercial motor vehicle,
384 a commercial driver's license holder shall be disqualified from
385 operating a commercial motor vehicle for a period of one
386 hundred twenty days.

387 (d) Any person convicted of operating a commercial motor
388 vehicle in violation of any federal, state or local law or ordi-
389 nance pertaining to any of the railroad crossing violations
390 described in subdivisions (1) through (6) of this subsection shall
391 be disqualified from operating a commercial motor vehicle for
392 the period of time specified;

393 (1) Failing to slow down and check that the tracks are clear
394 of an approaching train, if not required to stop in accordance
395 with the provisions of section three, article twelve, chapter
396 seventeen-c of this code;

397 (A) For the first conviction, a driver shall be disqualified
398 from operating a commercial motor vehicle for a period of sixty
399 days;

400 (B) For a second conviction of any combination of offenses
401 in this subsection within a three-year period, a driver shall be
402 disqualified from operating a commercial motor vehicle for one
403 hundred twenty days; and

404 (C) For a third or subsequent conviction of any combination
405 of offenses in this subsection within a three-year period, a

406 driver shall be disqualified from operating a commercial motor
407 vehicle for one year.

408 (2) Failing to stop before reaching the crossing, if the tracks
409 are not clear, if not required to stop, in accordance with the
410 provisions of section one, article twelve, chapter seventeen-c of
411 this code;

412 (A) For the first conviction, a driver shall be disqualified
413 from operating a commercial motor vehicle for a period of sixty
414 days;

415 (B) For a second conviction of any combination of offenses
416 in this subsection within a three-year period, a driver shall be
417 disqualified from operating a commercial motor vehicle for one
418 hundred twenty days; and

419 (C) For a third or subsequent conviction of any combination
420 of offenses in this subsection within a three-year period, a
421 driver shall be disqualified from operating a commercial motor
422 vehicle for one year.

423 (3) Failing to stop before driving onto the crossing, if
424 required to stop in accordance with the provisions of section
425 three, article twelve, chapter seventeen-c of this code;

426 (A) For the first conviction, a driver shall be disqualified
427 from operating a commercial motor vehicle for a period of sixty
428 days;

429 (B) For a second conviction of any combination of offenses
430 in this subsection within a three-year period, the driver shall be
431 disqualified from operating a commercial motor vehicle for one
432 hundred twenty days; and

433 (C) For a third or subsequent conviction of any combination
434 of offenses in this subsection within a three-year period, a

435 driver shall be disqualified from operating a commercial motor
436 vehicle for one year.

437 (4) Failing to have sufficient space to drive completely
438 through the crossing without stopping in accordance with the
439 provisions of section three, article twelve, chapter seventeen-c
440 of this code;

441 (A) For the first conviction, a driver shall be disqualified
442 from operating a commercial motor vehicle for a period of sixty
443 days;

444 (B) For a second conviction of any combination of offenses
445 in this subsection within a three-year period, a driver shall be
446 disqualified from operating a commercial motor vehicle for one
447 hundred twenty days; and

448 (C) For a third or subsequent conviction of any combination
449 of offenses in this subsection within a three-year period, a
450 driver shall be disqualified from operating a commercial motor
451 vehicle for one year.

452 (5) Failing to obey a traffic control device or the directions
453 of an enforcement official at the crossing in accordance with the
454 provisions of section one, article twelve, chapter seventeen-c of
455 this code; or

456 (A) For the first conviction, a driver shall be disqualified
457 from operating a commercial motor vehicle for a period of sixty
458 days;

459 (B) For a second conviction of any combination of offenses
460 in this subsection within a three-year period, a driver shall be
461 disqualified from operating a commercial motor vehicle for one
462 hundred twenty days; and

463 (C) For a third or subsequent conviction of any combination
464 of offenses in this subsection within a three-year period, a

465 driver shall be disqualified from operating a commercial motor
466 vehicle for one year.

467 (6) Failing to negotiate a crossing because of insufficient
468 undercarriage clearance in accordance with the provisions of
469 section three, article twelve, chapter seventeen-c of this code.

470 (A) For the first conviction, a driver shall be disqualified
471 from operating a commercial motor vehicle for a period of sixty
472 days;

473 (B) For a second conviction of any combination of offenses
474 in this subsection within a three-year period, a driver shall be
475 disqualified from operating a commercial motor vehicle for one
476 hundred twenty days; and

477 (C) For a third or subsequent conviction of any combination
478 of offenses in this subsection within a three-year period, a
479 driver shall be disqualified from operating a commercial motor
480 vehicle for one year.

481 (e) Any person who is convicted of violating an out-of-
482 service order while operating a commercial motor vehicle shall
483 be disqualified for the following periods of time if:

484 (1) Convicted of violating a driver or vehicle out-of-service
485 order while transporting nonhazardous materials;

486 (A) For the first conviction of violating an out-of-service
487 order while operating a commercial motor vehicle, a driver
488 shall be disqualified from operating a commercial motor
489 vehicle for ninety days.

490 (B) For a second conviction in a separate incident within a
491 ten-year period for violating an out of service order while
492 operating a commercial motor vehicle, a driver shall be
493 disqualified from operating a commercial motor vehicle for one
494 year.

495 (C) For a third or subsequent conviction in a separate
496 incident within a ten-year period for violating an out-of-service
497 order while operating a commercial motor vehicle, a driver
498 shall be disqualified from operating a commercial motor
499 vehicle for three years.

500 (2) Convicted of violating a driver or vehicle out-of-service
501 order while transporting hazardous materials required to be
502 placarded under 49 C.F.R. Part §172, Subpart F (2004), or
503 while operating a vehicle designed to transport sixteen or more
504 passengers including the driver;

505 (A) For the first conviction of violating an out-of-service
506 order while operating a commercial motor vehicle, a driver
507 shall be disqualified from operating a commercial motor
508 vehicle for one hundred eighty days.

509 (B) For a second conviction in a separate incident within a
510 ten-year period for violating an out-of-service order while
511 operating a commercial motor vehicle, a driver shall be
512 disqualified from operating a commercial motor vehicle for
513 three years.

514 (C) For a third or subsequent conviction in a separate
515 incident within a ten-year period for violating an out-of-service
516 order while operating a commercial motor vehicle, a driver
517 shall be disqualified from operating a commercial motor
518 vehicle for three years.

519 (f) After disqualifying, suspending, revoking or canceling
520 a commercial driver's license, the Division shall update its
521 records to reflect that action within ten days.

522 (g) In accordance with the provisions of 49 U.S.C.
523 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and
524 notwithstanding the provisions of section twenty-five, article
525 eleven, chapter sixty-one of this code, no record of conviction,

526 revocation, suspension or disqualification related to any type of
527 motor vehicle traffic control offense, other than a parking
528 violation, of a commercial driver's license holder or a person
529 operating a commercial motor vehicle may be masked, ex-
530 punged, deferred, or be subject to any diversion program.

531 (h) Notwithstanding any provision in this code to the
532 contrary, the Division shall not issue any temporary driving
533 permit, work-only driving permit or hardship license or permit
534 that authorizes a person to operate a commercial motor vehicle
535 when his or her privilege to operate any motor vehicle has been
536 revoked, suspended, disqualified or otherwise canceled for any
537 reason.

538 (i) In accordance with the provisions of 49 C.F.R.
539 §391.15(b), a driver is disqualified from operating a commer-
540 cial motor vehicle for the duration of any suspension, revoca-
541 tion or cancellation of his or her driver's license or privilege to
542 operate a motor vehicle by this state or by any other state or
543 jurisdiction until the driver complies with the terms and
544 conditions for reinstatement set by this state or by another state
545 or jurisdiction.

**§17E-1-14. Commercial drivers prohibited from driving with
blood alcohol concentration of four hundredths of
one percent or more; refusal of preliminary
breath test to determine alcohol content of blood;
criminal penalties.**

1 (a) In addition to any other penalties provided by this code,
2 any person who drives, operates or is in physical control of a
3 commercial motor vehicle while having an alcohol concentra-
4 tion in his or her blood, breath or urine of four hundredths of
5 one percent or more, by weight, is guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in jail for not less
7 than twenty-four hours nor more than six months, and shall be

8 fined not less than one hundred dollars nor more than five
9 hundred dollars. A person convicted of a second or any subse-
10 quent offense under the provisions of this subsection shall be
11 confined in jail for a period of not less than six months nor
12 more than one year, and the court may, in its discretion, impose
13 a fine of not less than one thousand dollars nor more than three
14 thousand dollars.

15 (b) A person who violates the provisions of subsection (a)
16 of this section shall be treated in the same manner set forth in
17 section three, article nineteen, chapter seventeen-c of this code,
18 as if he or she had been arrested for driving under the influence
19 of alcohol or of any controlled substance.

20 (c) In addition to any other penalties provided by this code,
21 a person who drives, operates or is in physical control of a
22 commercial motor vehicle having any measurable alcohol in
23 such person's system or who refuses to take a preliminary
24 breath test to determine such person's blood alcohol content as
25 provided by section fifteen of this article, shall be placed out-
26 of-service for twenty-four hours by the arresting
27 law-enforcement officer.

**§17E-1-15. Implied consent requirements for commercial motor
vehicle drivers; disqualification for driving with
blood alcohol concentration of four hundredths of
one percent or more, by weight.**

1 (a) A person who drives a commercial motor vehicle within
2 this state is deemed to have given consent, subject to provisions
3 of section four, article five, chapter seventeen-c of this code, to
4 take a test or tests of that person's blood, breath or urine for the
5 purpose of determining that person's alcohol concentration, or
6 the presence of other drugs.

7 (b) A test or tests may be administered at the direction of a
8 law-enforcement officer, who after lawfully stopping or

9 detaining the commercial motor vehicle driver, has reasonable
10 cause to believe that driver was driving a commercial motor
11 vehicle while having alcohol in his or her system.

12 (c) A person requested to submit to a test as provided in
13 subsection (a) of this section must be warned by the
14 law-enforcement officer requesting the test that a refusal to
15 submit to the test will result in that person being disqualified
16 from operating a commercial motor vehicle under section
17 thirteen or fifteen of this article.

18 (d) If the person refuses testing, or submits to a test which
19 discloses an alcohol concentration of four hundredths of one
20 percent or more, by weight, that law-enforcement officer shall
21 submit a sworn report to the Division of Motor Vehicles
22 certifying that the test was requested pursuant to subsection (a)
23 of this section and that the person refused to submit to testing,
24 or submitted to a test which disclosed an alcohol concentration
25 of four hundredths of one percent or more, by weight.

26 (e) Upon receipt of the sworn report of a law-enforcement
27 officer submitted under subsection (d) of this section, the
28 Commissioner shall enter an order revoking the person's
29 driver's license in accordance with section seven, article five,
30 chapter seventeen-c of this code and disqualifying the person
31 from driving a commercial motor vehicle for the period of time
32 prescribed in section thirteen of this article.

§17E-1-16. Notification of traffic convictions.

1 (a) The Commissioner shall notify the licensing authority
2 of the state where the driver is licensed within thirty days of
3 the date of conviction of any holder of a commercial driver
4 license or any person operating a commercial motor vehicle for
5 any violation of state law or local ordinance relating to motor
6 vehicle traffic control, other than parking violations, committed
7 in a commercial motor vehicle.

8 (b) The Commissioner shall notify the driver licensing
9 authority in the licensing state where the driver is licensed
10 within ten days of the date of disqualification of any holder of
11 a commercial driver license or any person operating a commer-
12 cial motor vehicle.

13 (c) Beginning on the thirtieth day of September, two
14 thousand eight, the Commissioner shall notify the driver
15 licensing authority in the licensing state where the driver is
16 licensed within ten days of the date of conviction of any holder
17 of a commercial driver's license or any person operating a
18 commercial motor vehicle for any violation of state law or local
19 ordinance relating to motor vehicle traffic control, other than
20 parking violations, committed in a commercial motor vehicle.

§17E-1-17. Driving record information to be furnished.

1 Subject to the provisions of article two-a, chapter seven-
2 teen-a of this code, the Commissioner shall furnish full infor-
3 mation regarding the driving record of any person:

4 (a) To the driver license administrator of any other state or
5 province or territory of Canada requesting that information;

6 (b) To any motor carrier employer or prospective motor
7 carrier employer;

8 (c) To the United States Secretary of Transportation; and

9 (d) To the driver:

10 *Provided*, That nothing in this section shall be construed to
11 prevent an insurer from obtaining a standard driving record
12 issued in accordance with section two, article two, chapter
13 seventeen-d of this code.

§17E-1-23. Funding for the commercial driver's license fees.

1 (a) Each application for a commercial driver's license shall
2 be accompanied by the fees provided in this section and the fees
3 shall be deposited in a special revolving fund for the operation
4 by the Division of its functions established by this chapter.

5 (b) The fee for a commercial driver's license shall be
6 established by the Commissioner to cover all necessary costs
7 for program administration. The fees for knowledge and road
8 testing shall also be established by the Commissioner to cover
9 all program costs projected to be incurred by the Division.

§17E-1-24. Enforcement.

1 In addition to the officers of the West Virginia State Police,
2 any police officer, or any inspector or weight enforcement
3 officer of the Public Service Commission, Motor Carrier
4 Division, and any special agent of the Federal Motor Carrier
5 Safety Administration may enforce the provisions of this
6 article.

CHAPTER 50

**(Com. Sub. for S. B. 456 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §46A-6-102 and §46A-6-106 of the Code of West Virginia, 1931, as amended, all relating to cure offers; definitions; requiring notice of violation prior to initiation of law suits; authorizing and limiting awards for inconvenience;

tolling of statute of limitation during twenty-day period for consideration of cure offer proposal or during cure period; inadmissability of cure offers; exceptions; and authorizing attorneys fees and costs where seller or lessor sued after performing agreed upon cure.

Be it enacted by the Legislature of West Virginia:

That §46A-6-102 and §46A-6-106 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

§46A-6-106. Actions by consumers.

§46A-6-102. Definitions.

1 When used in this article, the following words, terms and
2 phrases, and any variations thereof required by the context,
3 shall have the meaning ascribed to them in this article, except
4 where the context indicates a different meaning:

5 (1) "Advertisement" means the publication, dissemination
6 or circulation of any matter, oral or written, including labeling,
7 which tends to induce, directly or indirectly, any person to enter
8 into any obligation, sign any contract or acquire any title or
9 interest in any goods or services and includes every word
10 device to disguise any form of business solicitation by using
11 such terms as "renewal", "invoice", "bill", "statement" or
12 "reminder" to create an impression of existing obligation when
13 there is none or other language to mislead any person in relation
14 to any sought-after commercial transaction.

15 (2) "Consumer" means a natural person to whom a sale or
16 lease is made in a consumer transaction and a "consumer
17 transaction" means a sale or lease to a natural person or persons
18 for a personal, family, household or agricultural purpose.

19 (3) “Cure offer” means a written offer of one or more things
20 of value, including, but not limited to, the payment of money,
21 that is made by a merchant or seller and that is delivered by
22 certified mail to a consumer claiming to have suffered a loss as
23 a result of a consumer transaction or to the attorney for such
24 person.

25 (4) “Merchantable” means, in addition to the qualities
26 prescribed in section three hundred fourteen, article two,
27 chapter forty-six of this code, that the goods conform in all
28 material respects to applicable state and federal statutes and
29 regulations establishing standards of quality and safety of goods
30 and, in the case of goods with mechanical, electrical or thermal
31 components, that the goods are in good working order and will
32 operate properly in normal usage for a reasonable period of
33 time.

34 (5) “Sale” includes any sale, offer for sale or attempt to sell
35 any goods for cash or credit or any services or offer for services
36 for cash or credit.

37 (6) “Trade” or “commerce” means the advertising, offering
38 for sale, sale or distribution of any goods or services and shall
39 include any trade or commerce, directly or indirectly, affecting
40 the people of this state.

41 (7) “Unfair methods of competition and unfair or deceptive
42 acts or practices” means and includes, but is not limited to, any
43 one or more of the following:

44 (A) Passing off goods or services as those of another;

45 (B) Causing likelihood of confusion or of misunderstanding
46 as to the source, sponsorship, approval or certification of goods
47 or services;

48 (C) Causing likelihood of confusion or of misunderstanding
49 as to affiliation, connection or association with or certification
50 by another;

51 (D) Using deceptive representations or designations of
52 geographic origin in connection with goods or services;

53 (E) Representing that goods or services have sponsorship,
54 approval, characteristics, ingredients, uses, benefits or quanti-
55 ties that they do not have or that a person has a sponsorship,
56 approval, status, affiliation or connection that he does not have;

57 (F) Representing that goods are original or new if they are
58 deteriorated, altered, reconditioned, reclaimed, used or second-
59 hand;

60 (G) Representing that goods or services are of a particular
61 standard, quality or grade, or that goods are of a particular style
62 or model if they are of another;

63 (H) Disparaging the goods, services or business of another
64 by false or misleading representation of fact;

65 (I) Advertising goods or services with intent not to sell
66 them as advertised;

67 (J) Advertising goods or services with intent not to supply
68 reasonably expectable public demand, unless the advertisement
69 discloses a limitation of quantity;

70 (K) Making false or misleading statements of fact concern-
71 ing the reasons for, existence of or amounts of price reductions;

72 (L) Engaging in any other conduct which similarly creates
73 a likelihood of confusion or of misunderstanding;

74 (M) The act, use or employment by any person of any
75 deception, fraud, false pretense, false promise or misrepresenta-

76 tion, or the concealment, suppression or omission of any
77 material fact with intent that others rely upon such conceal-
78 ment, suppression or omission, in connection with the sale or
79 advertisement of any goods or services, whether or not any
80 person has in fact been misled, deceived or damaged thereby;

81 (N) Advertising, printing, displaying, publishing, distribut-
82 ing or broadcasting, or causing to be advertised, printed,
83 displayed, published, distributed or broadcast in any manner,
84 any statement or representation with regard to the sale of goods
85 or the extension of consumer credit including the rates, terms or
86 conditions for the sale of such goods or the extension of such
87 credit, which is false, misleading or deceptive or which omits
88 to state material information which is necessary to make the
89 statements therein not false, misleading or deceptive;

90 (O) Representing that any person has won a prize, one of a
91 group of prizes or any other thing of value if receipt of the prize
92 or thing of value is contingent upon any payment of a service
93 charge, mailing charge, handling charge or any other similar
94 charge by the person or upon mandatory attendance by the
95 person at a promotion or sales presentation at the seller's place
96 of business or any other location: *Provided*, That a person may
97 be offered one item or the choice of several items conditioned
98 on the person listening to a sales promotion or entering a
99 consumer transaction if the true retail value and an accurate
100 description of the item or items are clearly and conspicuously
101 disclosed along with the person's obligations upon accepting
102 the item or items; such description and disclosure shall be
103 typewritten or printed in at least eight point regular type, in
104 upper or lower case, where appropriate; or

105 (P) Violating any provision or requirement of article six-b
106 of this chapter.

107 (8) "Warranty" means express and implied warranties
108 described and defined in sections three hundred thirteen, three

109 hundred fourteen and three hundred fifteen, article two, chapter
110 forty-six of this code and expressions or actions of a merchant
111 which assure the consumer that the goods have described
112 qualities or will perform in a described manner.

§46A-6-106. Actions by consumers.

1 (a) Any person who purchases or leases goods or services
2 and thereby suffers any ascertainable loss of money or property,
3 real or personal, as a result of the use or employment by another
4 person of a method, act or practice prohibited or declared to be
5 unlawful by the provisions of this article may bring an action in
6 the circuit court of the county in which the seller or lessor
7 resides or has his principal place of business or is doing
8 business, or as provided for in sections one and two, article one,
9 chapter fifty-six of this code, to recover actual damages or two
10 hundred dollars, whichever is greater. The court may, in its
11 discretion, provide such equitable relief as it deems necessary
12 or proper.

13 (b) Notwithstanding the provisions of subsection (a) of this
14 section, no action may be brought pursuant to the provisions of
15 this section until the consumer has informed the seller or lessor
16 in writing and by certified mail of the alleged violation and
17 provided the seller or lessor twenty days from receipt of the
18 notice of violation to make a cure offer: *Provided*, That the
19 consumer shall have ten days from receipt of the cure offer to
20 accept the cure offer or it is deemed refused and withdrawn.

21 (c) If a cure offer is accepted, the seller or lessor shall have
22 ten days to begin effectuating the agreed upon cure and such
23 must be completed within a reasonable time.

24 (d) Any applicable statute of limitations shall be tolled for
25 the twenty-day period set forth in subsection (b) of this section
26 or for the period of time the effectuation of the cure offer is
27 being performed, whichever is longer.

28 (e) Nothing in this section shall be construed to prevent a
29 consumer that has accepted a cure offer from bringing a civil
30 action against a seller or lessor for failing to timely effect such
31 cure offer.

32 (f) Any permanent injunction, judgment or order of the
33 court under section one hundred eight, article seven of this
34 chapter for a violation of section one hundred four of this article
35 shall be prima facie evidence in an action brought pursuant to
36 the provisions of this section that the respondent used or
37 employed a method, act or practice declared unlawful by
38 section one hundred four of this article.

39 (g) Where an action is brought pursuant to the provisions of
40 this section, it shall be a complete defense that a cure offer was
41 made, accepted and the agreed upon cure was performed. If the
42 finder of fact determines that the cure offer was accepted and
43 the agreed upon cure performed, the seller or lessor shall be
44 entitled to reasonable attorney's fees and costs attendant to
45 defending the action.

46 (h) No cure offer shall be admissible in any proceeding
47 initiated pursuant to the provisions of this article unless the cure
48 offer is delivered by a seller or lessor to the person claiming
49 loss or to any attorney representing such person prior to the
50 filing of the seller or lessee's initial responsive pleading in such
51 proceeding. If the cure offer is timely delivered by the seller or
52 lessor, then the seller or lessee may introduce the cure offer into
53 evidence at trial. The seller or lessor shall not be liable for such
54 person's attorney's fees and court costs incurred following
55 delivery of the cure offer unless the actual damages found to
56 have been sustained and awarded, without consideration of
57 attorney's fees and court costs, exceed the value of the cure
58 offer.

CHAPTER 51

**(H. B. 2483 — By Delegates Perry, Beach,
Hartman, Pino, Leach and Michael)**

[Passed March 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2005.]

AN ACT to repeal §28-5-26 of the Code of West Virginia, 1931, as amended, relating to escape of convicts and rewards.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to escape of convicts and rewards.

- 1 Section twenty-six, article five, chapter twenty-eight of the
- 2 Code of West Virginia, one thousand nine hundred thirty-one,
- 3 as amended, is hereby repealed.

CHAPTER 52

(S. B. 699 — By Senators Caruth and Minard)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §31D-7-705 of the Code of West Virginia, 1931, as amended, relating to deleting the provision which allows shareholders to participate in corporate meetings by

means of communication in which all shareholders may simultaneously hear each other.

Be it enacted by the Legislature of West Virginia:

That §31D-7-705 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. SHAREHOLDERS.

§31D-7-705. Notice of meeting.

1 (a) A corporation is to notify shareholders of the date, time
2 and place of each annual and special shareholders' meeting no
3 fewer than ten nor more than sixty days before the meeting
4 date. Unless this chapter or the articles of incorporation require
5 otherwise, the corporation is required to give notice only to
6 shareholders entitled to vote at the meeting.

7 (b) Unless this chapter, the articles of incorporation or
8 bylaws require otherwise, notice of an annual meeting need not
9 include a description of the purpose or purposes for which the
10 meeting is called.

11 (c) Notice of a special meeting must include a description
12 of the purpose or purposes for which the meeting is called.

13 (d) If not otherwise fixed under section seven hundred three
14 or seven hundred seven of this article, the record date for
15 determining shareholders entitled to notice of and to vote at an
16 annual or special shareholders' meeting is the day before the
17 first notice is delivered to shareholders.

18 (e) Unless the bylaws require otherwise, if an annual or
19 special shareholders' meeting is adjourned to a different date,
20 time or place, notice need not be given of the new date, time or
21 place if the new date, time or place is announced at the meeting
22 before adjournment. If a new record date for the adjourned

23 meeting is or must be fixed under section seven hundred seven
24 of this article, notice of the adjourned meeting must be given
25 under this section to persons who are shareholders as of the new
26 record date.

CHAPTER 53

(H. B. 2869 — By Mr. Speaker, Mr. Kiss, and Delegates Amores,
Azinger, Craig, Mahan, Armstead and Trump)

[Passed March 21, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-11-1109, relating to permitting the conversion of a domestic corporation to a domestic limited liability company.

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 §31D-11-1109, to read as follows:

ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1109. Conversion of a domestic corporation to a domestic limited liability company.

- 1 (a) A corporation of this state may convert to a limited
2 liability company, in accordance with this section.
- 3 (b) The Board of Directors of the corporation which desires
4 to convert under this section shall adopt a plan of conversion

5 approving the conversion and recommending the approval of the
6 conversion by the shareholders of the corporation. Such resolu-
7 tion shall be submitted to the shareholders of the corporation at
8 an annual or special meeting. The corporation must notify each
9 shareholder, whether or not entitled to vote of the meeting of
10 shareholders at which the plan of conversion is to be submitted
11 for approval. At the meeting, the plan of conversion shall be
12 considered and a vote taken for its adoption or rejection.
13 Approval of the plan of conversion requires the approval of all
14 of the shareholders, whether or not entitled to vote.

15 (c) After a plan of conversion is approved pursuant to
16 subsection (b) of this section, the corporation shall file with the
17 office of the Secretary of State articles of conversion which
18 satisfy the requirements for articles of organization under section
19 two hundred three, article two, chapter thirty-one-b of this code
20 and which set forth:

21 (1) The name of the corporation, and if it has been changed,
22 the name under which it was originally incorporated;

23 (2) The date of filing of its original articles of incorporation
24 with the office of the Secretary of State;

25 (3) The name of the limited liability company into which the
26 corporation shall be converted; and

27 (4) That the conversion has been approved in accordance
28 with the provisions of this section.

29 (d) Upon the filing of articles of conversion in accordance
30 with subsection (c) of this section and payment to the Secretary
31 of State of all fees prescribed, the Secretary of State shall issue
32 a certificate of conversion. Such certificate of the Secretary of
33 State shall be prima facie evidence of the conversion of the
34 corporation.

35 (e) A conversion takes effect when the articles of conversion
36 are filed in the office of the Secretary of State or at any later date
37 specified in the articles of conversion.

38 (f) The conversion of a corporation pursuant to articles of
39 conversion under this section shall not be deemed to affect any
40 obligations or liabilities of the corporation incurred prior to the
41 conversion or the personal liability of any person incurred prior
42 to the conversion.

43 (g) After the time the certificate of conversion becomes
44 effective the corporation shall continue to exist as a limited
45 liability company and the laws of this state shall apply to the
46 entity to the same extent as prior to that time.

47 (h) Unless otherwise provided in the plan of conversion
48 adopted in accordance with this section, the converting corpora-
49 tion shall not be required to wind up its affairs or pay its
50 liabilities and distribute its assets, and the conversion shall not
51 constitute a dissolution of the corporation and shall constitute a
52 continuation of the existence of the converting corporation in the
53 form of a limited liability company of this state.

54 (i) When a corporation has been converted to a limited
55 liability corporation pursuant to this section, the limited liability
56 company shall, for all purposes of the laws of this state, be
57 deemed to be the same entity as the converting corporation, and
58 all of the rights, privileges and powers of the corporation that has
59 been converted, and all property, real, personal and mixed, and
60 all debts due to the corporation, as well as all other things and
61 causes of action belonging to the corporation, shall remain
62 vested in the limited liability company to which the corporation
63 has been converted and shall be the property of the limited
64 liability company, and the title to any real property vested by
65 deed or otherwise in the corporation shall not revert or in any
66 way be impaired by reason of this chapter; but all rights of

67 creditors and all liens upon the property of the corporation shall
68 be preserved unimpaired, and all debts, liabilities and duties of
69 the corporation that has been converted shall remain attached to
70 the limited liability company to which the corporation has been
71 converted, and may be enforced against it to the same extent as
72 if said debts, liabilities and duties had originally been incurred
73 or contracted by it in its capacity as a limited liability company.
74 The rights, privileges, powers and interests in property of the
75 corporation, as well as the debts, liabilities and duties of the
76 corporation, shall not be deemed, as a consequence of the
77 conversion, to have been transferred to the limited liability
78 company to which the corporation has been converted for any
79 purpose of the laws of this state.

CHAPTER 54

**(S. B. 183 — By Senators Love, Sharpe,
White, Yoder, Hunter, and Unger)**

[Passed April 5, 2005; in effect from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §25-1-3a of the Code of West Virginia, 1931, as amended, relating to inmate accounts and property; and authorizing the warden of a correctional facility to allow an inmate to withdraw money from the inmate's mandatory savings account for the purpose of preparing the inmate for reentry into society.

Be it enacted by the Legislature of West Virginia:

That §25-1-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.****§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 institu-
4 tion shall receive and take charge of the money and personal
5 property, as defined by policy, of all inmates in his or her
6 institution and all money or personal property, as defined by
7 policy, sent to the inmates or earned by the inmates as compen-
8 sation for work performed while they are domiciled there. The
9 warden or administrator shall credit the money and earnings to
10 the inmate entitled to it and shall keep an accurate account of
11 all the money and personal property so received, which account
12 is subject to examination by the Commissioner of Corrections.
13 The warden or administrator shall deposit the moneys in one or
14 more responsible banks in accounts to be designated a "Trustee
15 Fund".

16 (b) For all inmates, except those serving life without mercy
17 and those the warden determines are likely to serve the remain-
18 der of their natural lives in the custody of the Division of
19 Corrections due to their age and the length of their sentences,
20 the warden or administrator shall keep in an account at least ten
21 percent of all money earned during the inmate's incarceration
22 and pay the money to the inmate at the time of the inmate's
23 release. The warden may authorize the inmate to withdraw
24 money from his or her mandatory savings for the purpose of
25 preparing the inmate for reentry into society.

26 (c) The Commissioner of Corrections may direct that
27 offenders who work in community work programs, including
28 work release inmates who have obtained employment, make
29 reimbursement to the state toward the cost of his or her incar-
30 ceration.

31 (d)(1) Prior to ordering an incarcerated offender to make
32 reimbursement toward the costs of his or her incarceration, the
33 Commissioner, or his or her designee, shall consider the
34 following:

35 (A) The offender's ability to pay;

36 (B) The nature and extent of the offender's responsibilities
37 to his or her dependents, if any;

38 (C) The length of probable incarceration under the court's
39 sentence; and

40 (D) The effect, if any, that reimbursement might have on
41 the offender's rehabilitation.

42 (2) No order of reimbursement entered pursuant to this
43 section may exceed five hundred dollars per month unless the
44 offender gives his or her express consent.

45 (3) The Commissioner of Corrections shall, prior to the
46 beginning of each fiscal year, prepare a report that details the
47 average cost per inmate incurred by the Division for the care
48 and supervision of those individuals in his or her custody.

49 (e) The chief executive officer of any correctional institu-
50 tion, on request of an inmate, may expend up to one half of the
51 money earned by the inmate on behalf of the family of the
52 inmate if the ten percent mandatory savings has first been set
53 aside and other fees owed by the inmate have been paid. The
54 remainder of the money earned, after deducting amounts
55 expended as authorized, shall be accumulated to the credit of
56 the inmate and be paid to the inmate at times as may be
57 prescribed by rules. The funds so accumulated on behalf of
58 inmates shall be held by the chief executive officer of each
59 institution under a bond approved by the Attorney General.

60 (f) The warden or administrator shall deliver to the inmate
61 at the time he or she leaves the institution, or as soon as
62 practicable after departure, all personal property, moneys and
63 earnings then credited to the inmate, or in case of the death of
64 the inmate before authorized release from the institution, the
65 warden or administrator shall deliver the property to the
66 inmate's personal representative. In case a conservator is
67 appointed for the inmate while he or she is domiciled at the
68 institution, the warden or administrator shall deliver to the
69 conservator, upon proper demand, all moneys and personal
70 property belonging to the inmate that are in the custody of the
71 warden or administrator.

CHAPTER 55

**(Com. Sub. for H. B. 2471 — By Delegates Perry, Beach,
Hartman, Pino, Leach and Michael)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-3c, relating to inmate funds; establishing a financial responsibility program for inmates; requiring wardens to deduct a portion from inmate earnings to be used to satisfy child support payments and legitimate court-ordered financial obligations; providing for administrative fees; and requiring the Division of Corrections to develop policies and procedures for the administration of the program and the maintenance of records.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §25-1-3c, to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.**

§25-1-3c. Financial responsibility program for inmates.

1 (a) The Legislature finds that:

2 (1) There is an urgent need for vigorous enforcement of
3 child support, restitution and other court ordered obligations;

4 (2) The duty of inmates to provide for the needs of depend-
5 ent children, including their necessary food, clothing, shelter,
6 education and health care should not be avoided because of
7 where the inmate resides;

8 (3) A person owing a duty of child support who chooses to
9 engage in behaviors that result in the person becoming incarcer-
10 ated should not be able to avoid child support obligations; and

11 (4) Each sentenced inmate should be encouraged to meet
12 his or her legitimate court-ordered financial obligations.

13 (b) As part of the initial classification process into a
14 correctional facility, the Division of Corrections shall assist the
15 inmate in developing a financial plan for meeting the inmate's
16 child support obligations, if any exist. At subsequent program
17 reviews, the Division shall consider the inmate's efforts to
18 fulfill those obligations as indicative of that individual's
19 acceptance and demonstrated level of responsibility.

20 (c)(1) The warden shall deduct from the earnings of each
21 inmate, legitimate court-ordered financial obligations. The
22 warden shall also deduct child support payments from the
23 earnings of each inmate who has a court-ordered financial
24 obligation. The Commissioner of the Division of Corrections

25 shall develop a policy that outlines the formula for the distribu-
26 tion of the offender's income and the formula shall include a
27 percentage deduction, not to exceed forty percent in the
28 aggregate, for any court ordered victim restitution, court fees
29 and child support obligations owed under a support order,
30 including an administrative fee not to exceed one dollar,
31 consistent with the provisions of subsection (c), section four
32 hundred six, article fourteen, chapter forty-eight of this code, to
33 support the Division of Correction's administration of this
34 financial service.

35 (2) In the event that the inmate worker's income is subject
36 to garnishment for child support enforcement deductions, it
37 shall be calculated on the net wages after taxes, legal financial
38 obligations and garnishment.

39 (3) The Division of Corrections shall develop the necessary
40 administrative structure to record inmates' wages and keep
41 records of the amount inmates pay for child support.

42 (4) Nothing in this section limits the authority of the Bureau
43 for Child Support Enforcement of the Department of Health and
44 Human Resources from taking collection action against an
45 inmate's moneys, assets or property.

CHAPTER 56

(Com. Sub. for H. B. 3010 — By Delegate Pino)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §25-1-11a of the Code of West Virginia, 1931, as amended, relating to the duties and responsibil-

ities required of a warden or administrator of a correctional institution.

Be it enacted by the Legislature of West Virginia:

That §25-1-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.**

§25-1-11a. Duties of wardens and administrators; bond; residence.

1 The warden or administrator is the chief executive officer
2 of his or her assigned correctional institution and has the
3 responsibility for the overall management of all operations
4 within his or her assigned institution. He or she is in charge of
5 its internal police and management, and shall provide for
6 feeding, clothing, working and taking care of the inmates,
7 subject to the control of the State Commissioner of Corrections:
8 *Provided*, That the Commissioner of Corrections may authorize
9 the warden or administrator to establish an imprest fund in
10 accordance with the provisions of section two, article two,
11 chapter twelve of this code for the sole purpose of providing
12 employees with funds to transport inmates for any purpose as
13 determined by the warden or administrator. The employee is
14 required to complete a travel reimbursement form for the travel
15 within five days of returning to the correctional facility. The
16 funds shall be used to reimburse the imprest fund for the
17 amount expended by the employee. The warden or administra-
18 tor shall promptly enforce all orders and rules made by the
19 Commissioner. He or she shall protect and preserve the
20 property of the state and may for that purpose punish the
21 inmates in the manner authorized by the Commissioner of
22 Corrections. The warden or administrator shall have the custody
23 and control of all the real and personal property at the correc-

24 tional institution, subject to the orders of the Commissioner of
25 Corrections. The warden or administrator shall be bonded by
26 the Board of Risk and Insurance Management.

CHAPTER 57

(S. B. 417 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 4, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-12-9b, relating generally to joint development entities; providing that municipalities, county development authorities or municipal development authorities, or both, may organize and jointly own joint development entities for the purpose of developing and owning local economic development projects; describing the powers, duties and authority of joint development entities; and providing that joint development entities, as political subdivisions of the State of West Virginia, are exempt from all state and local taxation.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-12-9b, to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9b. Joint development entities.

1 (a) The Legislature hereby finds and declares that the
2 citizens of this state would benefit from coordinated economic
3 development efforts and that to encourage cooperation and
4 coordination, municipalities and county and municipal develop-
5 ment authorities should be authorized to organize and jointly
6 own all of the partnership, ownership and membership interests
7 in a partnership, corporation or limited liability company for the
8 sole purpose of undertaking jointly through their joint owner-
9 ship of or membership in the partnership, corporation or limited
10 liability company any project or projects that an authority
11 established pursuant to this article would be permitted to
12 undertake.

13 (b) Any combination of two or more municipalities,
14 municipal development authorities or county development
15 authorities may jointly form and hold all of the partnership,
16 ownership or membership interests in a partnership, corporation
17 or limited liability company, the sole purpose of which is to
18 develop and own one or more joint economic development
19 projects (for purposes of this section, a “joint development
20 entity”). No person or entity other than a municipality, municipi-
21 pal development authority or county development authority
22 may own any ownership or membership interest in a joint
23 development entity. Any existing partnership, corporation or
24 limited liability company is a joint development entity on and
25 after the effective date of this section if: (i) It was organized for
26 the purposes described in this subsection prior to the effective
27 date of this section; and (ii) the partnership, ownership or
28 membership interests in it meet the requirements of this
29 subsection on and after the effective date of this section.

30 (c) To the extent consistent with and not prohibited by or in
31 conflict with the restrictions and limitations on, or the rights
32 and attributes of, a joint development entity set forth in this
33 section, the applicable general law governing partnerships,
34 corporations or limited liability companies govern the organiza-

35 tion, existence, duration, powers, governance and dissolution of
36 a joint development entity and the rights and responsibilities of
37 the partners, owners or members of a joint development entity.

38 (d) A joint development entity is a public corporation and
39 a political subdivision and instrumentality of its partners,
40 owners or members and has the powers, rights and privileges of
41 an authority set forth in sections seven, eight, nine, ten, eleven,
42 twelve and fourteen of this article in addition to those granted
43 to partnerships, corporations and limited liability companies
44 under applicable general law.

45 (e) For West Virginia tax purposes, a joint development
46 entity is a political subdivision of the State of West Virginia
47 and is exempt from all state and local taxation and all real and
48 personal property owned by a joint development entity, or
49 which the joint development entity may acquire to be leased,
50 sold or otherwise disposed of, is exempt from taxation by the
51 state or any county, municipality or other levying body as
52 public property.

CHAPTER 58

(S. B. 692 — By Senator Hunter)

[Passed April 6, 2005; in effect from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §8-5-7 of the Code of West Virginia, 1931, as amended, relating to removing an unconstitutional provision providing that a mayor, a recorder and councilmen were required for the year preceding their election to have been

assessed with and paid real or personal property taxes to the municipality; and related exceptions.

Be it enacted by the Legislature of West Virginia:

That §8-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§8-5-7. Certain officers; wards or election districts; residency and other requirements.

1 (a) Unless otherwise provided in the charter of a municipal-
2 ity, there shall be elected a mayor, a recorder and councilmen,
3 who together shall form the governing body of the municipality.

4 (b) When a municipality has not been divided into wards or
5 election districts, there shall be at least five councilmen, but
6 when the municipality has been divided into wards or election
7 districts, the governing body may, by ordinance, determine the
8 number of councilmen to be elected from each ward or election
9 district. When it is deemed necessary, the governing body may,
10 by ordinance, increase the number of wards or election districts
11 and change the boundaries thereof, such wards or election
12 districts to be made as nearly equal as may be, in population,
13 and when the municipality shall be divided into wards or
14 election districts, or there shall be an increase in the number of
15 wards or election districts as aforesaid, the governing body may
16 increase the number of councilmen and direct an election to be
17 held at the next regular municipal election in such ward or
18 wards or election district or districts so that each ward or
19 election district may have its full number of councilmen
20 residing therein and may have equal representation on the
21 governing body. When a municipality has been divided into

22 wards or election districts, the governing body may, by ordi-
23 nance, also provide for the election of councilmen at large in
24 addition to the councilmen to be elected from each ward or
25 election district. The provisions of this subsection shall be
26 applicable to any municipality except to the extent otherwise
27 provided in the charter of such municipality.

28 (c) Unless otherwise provided by charter provision or
29 ordinance, the mayor, recorder and councilmen must be
30 residents of the municipality and must be qualified voters
31 entitled to vote for members of its governing body. A city
32 manager in a manager form of government need only be a
33 resident of the city at the time of his or her appointment.

CHAPTER 59

(S. B. 705 — By Senators Edgell and Helmick)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §8-13C-4, §8-13C-5 and §8-13C-6 of the Code of West Virginia, 1931, as amended, all relating to Municipal Sales and Service Tax and Municipal Use Tax; delaying the effective date of these taxes; establishing a special revenue account in the State Treasury; and making clerical and technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That §8-13C-4, §8-13C-5 and §8-13C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS.

§8-13C-4. Municipal sales and service taxes.

§8-13C-5. Municipal use tax.

§8-13C-6. Notification to Tax Commissioner; responsibilities of Tax Commissioner; fee; special revenue account; application of state tax law.

§8-13C-4. Municipal sales and service taxes.

1 (a) *Pension relief municipal sales tax.* — On and after the
2 first day of July, two thousand five, each qualifying municipal-
3 ity, as defined in section two of this article, has the plenary
4 power and authority to impose, by ordinance, a pension relief
5 municipal sales and service tax at a rate not to exceed one
6 percent, subject to the provisions of this article: *Provided,*
7 That: (1) The tax does not apply to any purchase of tangible
8 personal property, custom software or the results of taxable
9 services in a transaction completed within the corporate limits
10 of the municipality before the first day of July, two thousand
11 eight, or before such later date specified in the ordinance of the
12 municipality imposing the tax; and (2) the effective date of the
13 tax, or of a change in the rate of the tax, shall be no earlier than
14 the first day of a calendar quarter that at a minimum begins one
15 hundred eighty days after notice of the tax, or of a change in the
16 rate of tax, is provided to the Tax Commissioner as provided in
17 section six of this article.

18 (b) *Alternative municipal sales tax.* — On and after the first
19 day of July, two thousand five, notwithstanding subsection (a)
20 of this section, and in addition thereto in the case of a qualify-
21 ing municipality, any municipality that does not impose, or
22 ceases to impose, the business and occupation or privilege tax
23 authorized by section five, article thirteen of this chapter has the
24 plenary power and authority to impose, by ordinance, an
25 alternative municipal sales and service tax at a rate not to
26 exceed one percent, subject to the provisions of this article:

27 *Provided*, That: (1) The tax does not apply to any purchase of
28 tangible personal property, custom software or the results of
29 taxable services in a transaction completed within the corporate
30 limits of the municipality before the first day of July, two
31 thousand eight, or before such later date specified in the
32 ordinance of the municipality imposing the tax; and (2) the
33 effective date of the tax, or of a change in the rate of the tax,
34 shall be no earlier than the first day of a calendar quarter that at
35 a minimum begins one hundred eighty days after notice of the
36 tax, or of a change in the rate of tax, is provided to the Tax
37 Commissioner as provided in section six of this article.

38 (c) *Uniformity of tax base.* — Any municipal sales and
39 service tax imposed under the authority granted by this section
40 is subject to the following:

41 (1) The base of a municipal sales and service tax imposed
42 pursuant to this section shall be identical to the base of the
43 consumers sales and service tax imposed pursuant to article
44 fifteen, chapter eleven of this code on sales made and services
45 rendered within the boundaries of the municipality, subject to
46 the following:

47 (A) Except for the exemption provided in section nine-f,
48 article fifteen, chapter eleven of this code, all exemptions and
49 exceptions from consumers sales and service tax apply to a
50 municipal sales and service tax imposed pursuant to this
51 section; and

52 (B) Sales of gasoline and special fuel are not subject to a
53 municipal sales and service tax imposed pursuant to this
54 section;

55 (2) Any municipal sales and service tax imposed pursuant
56 to this section applies solely to tangible personal property,
57 custom software and services that are sourced to the municipal-
58 ity. The sourcing rules set forth in article fifteen-b, chapter

59 eleven of this code, including any amendments thereto, apply
60 to municipal sales and use taxes levied pursuant to this article.

61 (d) *Notification of Tax Commissioner.* — Any municipality
62 that imposes a municipal sales and service tax pursuant to this
63 section or changes the rate of a municipal sales and service tax
64 imposed pursuant to this section shall notify the tax commis-
65 sioner pursuant to section six of this article.

66 (e) *State level administration required.* — Any municipal-
67 ity that imposes a municipal sales and service tax pursuant to
68 this section may not administer or collect the tax, but shall use
69 the services of the tax commissioner to administer, enforce and
70 collect the tax.

71 (f) *Tax in addition to state use tax.* — Any municipal sales
72 and service tax imposed pursuant to this section shall be
73 imposed in addition to the consumers sales and service tax
74 imposed pursuant to article fifteen, chapter eleven of this code
75 on sales made and services rendered within the boundaries of
76 the municipality and, except as exempted or excepted, all sales
77 made and services rendered within the boundaries of the
78 municipality shall remain subject to the tax levied by that
79 article.

80 (g) *Tax in addition to special district tax.* — Any municipi-
81 pal sales and service tax imposed pursuant to this section shall
82 be imposed in addition to any tax imposed pursuant to section
83 one, article eighteen, chapter seven of this code, sections six
84 and seven, article thirteen of this chapter and section twelve,
85 article thirty-eight of this chapter.

§8-13C-5. Municipal use tax.

1 (a) *Pension relief municipal use tax.* — On and after the
2 first day of July, two thousand five, each qualifying municipal-
3 ity, as defined in section two of this article, that imposes a

4 pension relief municipal sales and service tax pursuant to this
5 article shall impose, by ordinance, a pension relief municipal
6 use tax at the same rate that is set for the pension relief municipi-
7 pal sales and service tax: *Provided*, That: (1) The tax does not
8 apply to any use of tangible personal property, custom software
9 or the results of taxable services in the corporate limits of the
10 municipality where the first use occurs before the first day of
11 July, two thousand eight, or before such later date specified in
12 the ordinance of the municipality imposing the tax; and (2) the
13 effective date of the tax, or of a change in the rate of the tax,
14 shall be no earlier than the first day of a calendar quarter that at
15 a minimum begins one hundred eighty days after notice of the
16 tax, or of a change in the rate of tax, is provided to the Tax
17 Commissioner as provided in section six of this article.

18 (b) *Alternative municipal use tax.* — On and after the first
19 day of July, two thousand five, each municipality that imposes
20 an alternative municipal sales and service tax pursuant to this
21 article shall impose, by ordinance, an alternative municipal use
22 tax at the same rate that is set for the alternative municipal sales
23 and service tax: *Provided*, That: (1) The tax does not apply to
24 any use of tangible personal property, custom software or the
25 results of taxable services in the corporate limits of the municipi-
26 pality where the first use occurs before the first day of July, two
27 thousand eight, or before such later date specified in the
28 ordinance of the municipality imposing the tax; and (2) the
29 effective date of the tax, or of a change in the rate of the tax,
30 shall be no earlier than the first day of a calendar quarter that at
31 a minimum begins one hundred eighty days after notice of the
32 tax, or of a change in the rate of tax, is provided to the Tax
33 Commissioner as provided in section six of this article.

34 (c) *Uniformity of tax base.* — The base of a municipal use
35 tax imposed pursuant to this section shall be identical to the
36 base of the use tax imposed pursuant to article fifteen-a, chapter
37 eleven of this code on the use of tangible personal property,

38 custom software and taxable services within the boundaries of
39 the municipality, subject to the following:

40 (1) Except for the exemption provided in section nine-f,
41 article fifteen, chapter eleven of this code, all exemptions and
42 exceptions from the use tax apply to a municipal use tax
43 imposed pursuant to this section; and

44 (2) Uses of gasoline and special fuel are not subject to a
45 municipal use tax imposed pursuant to this section when the use
46 is subject to the tax imposed by article fourteen-c, chapter
47 eleven of this code.

48 (d) *Notification to Tax Commissioner.* — Any municipality
49 that imposes a municipal use tax pursuant to this section or
50 changes the rate of a municipal use tax imposed pursuant to this
51 section shall notify the tax commissioner pursuant to section six
52 of this article.

53 (e) *State level administration required.* — Any municipal-
54 ity that imposes a municipal use tax pursuant to this section
55 may not administer or collect the tax, but shall use the services
56 of the Tax Commissioner to administer, enforce and collect the
57 taxes.

58 (f) *Tax in addition to state use tax.* — Any municipal use
59 tax imposed pursuant to this section shall be imposed in
60 addition to the use tax imposed pursuant to article fifteen-a,
61 chapter eleven of this code on the use of tangible personal
62 property, custom software or taxable services within the
63 boundaries of the municipality and, except as exempted or
64 excepted, all use of tangible personal property, custom software
65 or taxable services within the boundaries of the municipality
66 shall remain subject to the tax levied by said article.

67 (g) *Tax in addition to special district tax.* — Any municipi-
68 pal use tax imposed pursuant to this section shall be imposed in

69 addition to any tax imposed pursuant to section one, article
70 eighteen, chapter seven of this code, sections six and seven,
71 article thirteen of this chapter and section twelve, article thirty-
72 eight of this chapter.

**§8-13C-6. Notification to Tax Commissioner; responsibilities of
Tax Commissioner; fee; special revenue account;
application of state tax law.**

1 (a) *Notification to Tax Commissioner.* — Any municipality
2 that imposes a municipal sales and service tax and a municipal
3 use tax pursuant to this article or changes the rate of the taxes
4 shall notify the Tax Commissioner at least one hundred eighty
5 days before the effective date of the imposition of the taxes or
6 the change in the rate of the taxes.

7 (b) *State level administration of taxes.* — The Tax Com-
8 missioner is responsible for administering, collecting and
9 enforcing any municipal sales and service tax and any municipi-
10 pal use tax imposed pursuant to this article in the same manner
11 as the state consumers sales and service tax imposed pursuant
12 to article fifteen, chapter eleven of this code and the state use
13 tax imposed pursuant to article fifteen-a of said chapter.

14 (c) *Fee for services.* — The Tax Commissioner may retain
15 from collections a fee not to exceed the lesser of the cost of the
16 service provided or one percent of the amount of taxes imposed
17 pursuant to this article that are collected by the Tax Commis-
18 sioner during any fiscal year.

19 (d) *Establishment of special revenue account.* — There is
20 created in the State Treasury a special revenue revolving fund
21 account known as the Tax Department Municipal Sales and Use
22 Tax Operations Fund, which shall be an interest-bearing
23 account. The fund shall consist of any future funds received
24 from fees charged by the Tax Commissioner pursuant to this
25 section and any funds appropriated by the Legislature or

26 transferred by any public agency as contemplated or permitted
27 by applicable federal or state law; and any accrued interest or
28 other return on the moneys in the fund. The balance remaining
29 in the fund at the end of each fiscal year shall remain in the
30 fund and not revert to the state General Revenue Fund.

31 (e) *Application of state sales tax law.* — The state consum-
32 ers sales and service tax law, set forth in article fifteen, chapter
33 eleven of this code, and the amendments to that article and the
34 rules of the Tax Commissioner relating to the laws shall apply
35 to a municipal sales and service tax imposed pursuant to this
36 article to the extent the rules and laws are applicable.

37 (f) *Application of state use tax law.* — The state use tax
38 law, set forth in article fifteen-a, chapter eleven of this code,
39 and the amendments to that article and the rules of the Tax
40 Commissioner relating to the laws shall apply to a municipal
41 use tax imposed pursuant to this article to the extent the rules
42 and laws are applicable.

43 (g) *Definitions incorporated.* — Any term used in this
44 article or in an ordinance adopted pursuant to this article that is
45 defined in articles fifteen, fifteen-a and fifteen-b, chapter eleven
46 of this code, as amended, shall have the same meaning when
47 used in this article or in an ordinance adopted pursuant to this
48 article, unless the context in which the term is used clearly
49 requires a different result.

50 (h) *Automatic updating.* — Any amendments to articles
51 nine, ten, fifteen, fifteen-a and fifteen-b, chapter eleven of this
52 code shall automatically apply to a sales or use tax imposed
53 pursuant to this article, to the extent applicable.

54 (i) *Administrative procedures.* — Each and every provision
55 of the West Virginia Tax Procedure and Administration Act set
56 forth in article ten, chapter eleven of this code applies to the

57 taxes imposed pursuant to this article, except as otherwise
58 expressly provided in this article, with like effect as if that act
59 were applicable only to the taxes imposed by this article and
60 were set forth in extenso in this article.

61 (j) *Criminal penalties.* — Each and every provision of the
62 West Virginia Tax Crimes and Penalties Act set forth in article
63 nine, chapter eleven of this code applies to the taxes imposed
64 pursuant to this article with like effect as if that act were
65 applicable only to the taxes imposed pursuant to this article and
66 were set forth in extenso in this article.

CHAPTER 60

**(Com. Sub. for H. B. 2619 — By Mr. Speaker, Mr. Kiss, and Delegates
Varner, Pethel, Kominar, Stemple, Ennis and Leach)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended, relating to authorized expenditures from municipal pensions and protection funds and fire protection funds; and providing that moneys from revenues allocated to volunteer and part volunteer fire companies and departments may be expended for the payment of dues to national, state and county associations.

Be it enacted by the Legislature of West Virginia:

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

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

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

1 Revenues allocated to volunteer and part volunteer fire
2 companies and departments may be expended only for the items
3 listed in subdivisions (1) through (12) of this section.

4 Funds received from the State for volunteer and part
5 volunteer fire companies and departments, pursuant to sections
6 fourteen-d and thirty-three, article three, and section sixteen-a,
7 article twelve, all of chapter thirty-three of this code, may not
8 be commingled with funds received from any other source.
9 Expenditures may be made for the following:

10 (1) Personal protective equipment, including protective
11 head gear, bunker coats, pants, boots, combination of bunker
12 pants and boots, coats and gloves;

13 (2) Equipment for compliance with the national fire
14 protection standard or automotive fire apparatus, NFPA-1901;

15 (3) Compliance with insurance service office recommenda-
16 tions relating to fire departments;

17 (4) Rescue equipment, communications equipment and
18 ambulance equipment: *Provided*, That no moneys received
19 from the municipal pensions and protection fund or the fire
20 protection fund may be used for equipment for personal
21 vehicles owned or operated by volunteer fire company or
22 department members;

23 (5) Capital improvements reasonably required for effective
24 and efficient fire protection service and maintenance of the
25 capital improvements;

- 26 (6) Retirement of debts;
- 27 (7) Payment of utility bills;
- 28 (8) Payment of the cost of immunizations, including any
29 laboratory work incident to the immunizations, for firefighters
30 against hepatitis-b and other blood borne pathogens: *Provided,*
31 That the vaccine shall be purchased through the state immuni-
32 zation program or from the lowest cost vendor available:
33 *Provided, however,* That volunteer and part volunteer fire
34 companies and departments shall seek to obtain no cost
35 administration of the vaccinations through local boards of
36 health: *Provided further,* That in the event any volunteer or part
37 volunteer fire company or department is unable to obtain no
38 cost administration of the vaccinations through a local board of
39 health, the company or department shall seek to obtain the
40 lowest cost available for the administration of the vaccinations
41 from a licensed health care provider;
- 42 (9) Any filing fee required to be paid to the Legislative
43 Auditor's Office under section fourteen, article four, chapter
44 twelve of this code relating to sworn statements of annual
45 expenditures submitted by volunteer or part volunteer fire
46 companies or departments that receive state funds or grants;
- 47 (10) Property/casualty insurance premiums for protection
48 and indemnification against loss or damage or liability;
- 49 (11) Operating expenses reasonably required in the normal
50 course of providing effective and efficient fire protection
51 service, which include, but are not limited to, gasoline, bank
52 fees, postage and accounting costs; and
- 53 (12) Dues paid to national, state and county associations.

CHAPTER 61

(H. B. 2782 — By Delegates Beach, Perry, Marshall and Houston)

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §8-21-3 of the Code of West Virginia, 1931, as amended, relating to municipal board of park and recreation commissioners generally; increasing the number of members the governing body may appoint to a board of park and recreation commissioners to not more than seven; and providing for the appointment of not more than three members from the governing body if the board of park and recreation commissioners consists of six or seven members.

Be it enacted by the Legislature of West Virginia:

That §8-21-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSIONERS.

§8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

1 The board shall consist of not less than three nor more than
2 seven members as may be provided by charter provision or
3 ordinance, a majority of whom shall constitute a quorum for the
4 transaction of business, except as hereinafter in this article
5 provided. Each member of the board must be a resident and

6 freeholder of the city. It may be provided either by charter
7 provision or by ordinance for the appointment of the members
8 thereof by the governing body, but unless and until such
9 provision is made, the members of the board shall be elected by
10 the qualified voters of the city at appropriate regular municipal
11 elections. Membership on the governing body may not disqual-
12 ify any member for election to the board. If provision is made
13 for the appointment of members as aforesaid and the board
14 consists of three or four members, one member of the govern-
15 ing body, if otherwise qualified, may be appointed by the
16 governing body; if the board consists of five members not more
17 than two members of the governing body so qualified may be
18 so appointed and if the board consists of six or seven members
19 not more than three members of the governing body so quali-
20 fied may be so appointed. The term of the board membership of
21 any member of the governing body so appointed shall continue
22 during his or her term as a member of the governing body and
23 until his or her successor is appointed or elected and qualified.
24 The terms of other appointed or of elected members shall be for
25 six years, and until their successors have been duly appointed
26 or elected and qualified: *Provided*, That notwithstanding the
27 fact that there be no charter provision or ordinance for appoint-
28 ment of the members of the board, the governing body of the
29 city shall appoint the members of the first board, such appoint-
30 ees to serve, one for a term of six years, one for a term of four
31 years, and one for a term of two years. The date upon which the
32 terms of the board members shall begin shall be specified by
33 ordinance. When any member of the board, during his or her
34 term of office, shall cease to be a resident and freeholder of the
35 city, he or she shall thereby be disqualified as a member of the
36 board and his or her office shall thereupon become vacant.

CHAPTER 62

**(H. B. 2296 — By Delegates Stemple, Campbell, Varner,
Swartzmiller and Michael)**

[Passed April 8, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §59-1-14 of the Code of West Virginia, 1931, as amended, relating to increasing service of process fees charged by the sheriff; and providing that two dollars of the fees charged and collected by the sheriff for service of process be placed in the Deputy Sheriff Retirement Fund and that three dollars of the increased fees be placed in the general revenue account of the county commission.

Be it enacted by the Legislature of West Virginia:

That §59-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

1 (a) The county commission shall determine the amount
2 which the sheriff may charge, which charges shall not exceed
3 the following:

4 For serving on any person an order, notice,
5 summons or other process where the body is
6 not taken, except a subpoena served on a
7 witness, and making return thereof \$25.00

- 8 For summoning a witness 25.00
- 9 For serving on any person an attachment or
- 10 other process under which the body is taken 25.00
- 11 For levying an attachment on real estate and
- 12 making the return 25.00
- 13 For making any other levy 25.00
- 14 For serving a writ of possession 25.00
- 15 (b) The county commission shall determine the amount
- 16 which the sheriff may charge, which charges shall not exceed
- 17 the following:
- 18 For conveying a prisoner to or from jail, for
- 19 each mile of necessary travel either
- 20 in going or returning25
- 21 For taking any bond 1.00
- 22 When a jury is sworn in court, for
- 23 summoning and impaneling such jury 1.00
- 24 For issuing receipt to purchaser at
- 25 delinquent tax sale 1.00
- 26 (c) The county commission, giving due regard to the cost
- 27 thereof, may from time to time prescribe the amount which the
- 28 sheriff may charge for keeping any property or in removing any
- 29 property. When, after distraining or levying, he or she neither
- 30 sells nor receives payment, and either takes no bond or takes
- 31 one which is not forfeited, he or she shall, if guilty of no
- 32 default, have (in addition to the one dollar for a bond, if one
- 33 was taken) a fee of three dollars, unless this be more than half
- 34 of what his or her commission would have amounted to if he or

35 she had received payment; in which case he or she shall
36 (whether a bond was taken or not) have a fee of one dollar at
37 the least, and so much more as is necessary to make the said
38 half of his or her commission. The commission to be included
39 in a forthcoming bond (when one is taken) shall be five percent
40 on the first three hundred dollars of the money for which the
41 distress or levy is made, and two percent on the residue of the
42 money; but the commission shall not be received, in whole or
43 in part, except as hereinbefore provided, unless the bond be
44 forfeited, or the amount (including the commission) be paid to
45 the plaintiff. An officer receiving payment in money, or selling
46 property, shall have the like commission of five percent on the
47 first three hundred dollars of the money paid or proceeds from
48 the sale, and two percent on the residue, except that when the
49 payment or sale is on an execution on a forthcoming bond, his
50 or her commission shall be only half what it would be if the
51 execution were not on the bond.

52 (d) Any amounts collected by the sheriff pursuant to this
53 section shall be deposited in a separate account of the county
54 general fund and used by the sheriff for the expenses of
55 providing the services herein described: *Provided*, That two
56 dollars of each fee collected pursuant to the provisions of
57 subsection (a) of this section shall be deposited by the county
58 commission in the "West Virginia Deputy Sheriff Retirement
59 Fund" created in section six, article fourteen-d, chapter seven
60 of this code and three dollars of each fee collected pursuant to
61 the provisions of subsection (a) of this section shall be depos-
62 ited by the county commission in the general revenue account
63 of the county commission. Any surplus funds that remain in the
64 separate account of the county general fund required by the
65 provisions of this subsection on the last day of the fiscal year,
66 and have not been expended for the purposes herein described,
67 shall revert to the county general fund.

CHAPTER 63

(S. B. 521 — By Senators Plymale and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-37, relating to requiring a study on the feasibility of requiring flood insurance, general property insurance or both on all buildings owned by a county board and the contents of those buildings.

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 §18-2-37, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-37. State Board study on flood insurance and general property insurance.

- 1 (a) The Legislature finds the following:
- 2 (1) When county boards do not fully insure their buildings
- 3 and the contents of those buildings, the Legislature is some-
- 4 times expected to cover at least part of the costs of any damages
- 5 that are incurred;
- 6 (2) Although the Federal Emergency Management Agency
- 7 through the Public Assistance Grant Program will provide, in
- 8 some instances, grants to repair or replace buildings owned by

9 a county board, those grants are only provided if those build-
10 ings are located in an area where a state of emergency has been
11 declared; and

12 (3) The Federal Emergency Management Agency requires
13 a certain amount and type of insurance for certain school
14 buildings.

15 (b) The State Board shall conduct a study on the feasibility
16 of requiring flood insurance, general property insurance or both
17 on all buildings owned by a county board and the contents of
18 those buildings. The State Board shall report back to the
19 Legislative Oversight Commission on Education Accountability
20 before the first day of December, two thousand five. The report
21 shall include any recommended legislation.

CHAPTER 64

**(S. B. 583 — By Senators Kessler, Dempsey, Foster, Hunter,
Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem,
Harrison, Lanham, McKenzie and Weeks)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §51-2A-11, §51-2A-14 and §51-2A-16 of the Code of West Virginia, 1931, as amended, all relating to appealing orders from the family court to the circuit court.

Be it enacted by the Legislature of West Virginia:

That §51-2A-14 and §51-2A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. FAMILY COURTS.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

§51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

1 (a) The circuit court may refuse to consider the petition for
2 appeal may affirm or reverse the order, may affirm or reverse
3 the order in part or may remand the case with instructions for
4 further hearing before the family court judge.

5 (b) In considering a petition for appeal, the circuit court
6 may only consider the record as provided in subsection (d),
7 section eight of this article.

8 (c) The circuit court shall review the findings of fact made
9 by the family court judge under the clearly erroneous standard
10 and shall review the application of law to the facts under an
11 abuse of discretion standard.

12 (d) If the circuit court agrees to consider a petition for
13 appeal, the court shall provide the parties an opportunity to
14 appear for oral argument, upon the request of either party or in
15 the discretion of the court. The provisions of this subsection are
16 effective until the adoption of rules by the Supreme Court of
17 Appeals governing the appellate procedures of family courts.

18 (e) If the proceeding is remanded to the family court, the
19 circuit court must enter appropriate temporary orders for a
20 parenting plan or other allocation of custodial responsibility or
21 decision-making responsibility for a child, child support,
22 spousal support or such other temporary relief as the circum-
23 stances of the parties may require. If the circuit court remands
24 the case to the family court, it must state the legal or factual
25 issues to be considered by the family court on remand. If the

26 family court determines that the consideration of those issues
27 also requires consideration of collateral or interdependent
28 issues, the family court may also consider those other collateral
29 or interdependent issues.

30 (f) The circuit court must enter an order ruling on a petition
31 for appeal within sixty days from the last day a reply to the
32 petition for appeal could have been filed. If the circuit court
33 does not enter the order within the sixty-day period or does not,
34 within the sixty-day period, enter an order stating just cause
35 why the order has not been timely entered, the circuit clerk shall
36 send a written notice to the parties that unless the parties both
37 file an objection within fourteen days of the date of the notice,
38 the appeal will be transferred to the Supreme Court of Appeals
39 as provided in section fifteen of this article due to the failure of
40 the circuit court to timely enter an order. The appeal shall be
41 transferred without the necessity of the filing of any petition or
42 further document by the petitioner.

**§51-2A-16. Expiration of appellate procedures; exceptions;
report requirements.**

1 (a) The provisions of sections eleven, twelve, thirteen,
2 fourteen and fifteen of this article shall expire and be of no
3 force and effect after the thirtieth day of June, two thousand ten,
4 except as otherwise provided by subsection (b) of this section.

5 (b) Appeals that are pending before a circuit court or the
6 Supreme Court of Appeals on the thirtieth day of June, two
7 thousand ten, but not decided before the first day of July, two
8 thousand ten, shall proceed to resolution in accordance with the
9 provisions of sections eleven, twelve, thirteen, fourteen and
10 fifteen of this article, notwithstanding the provisions of subsec-
11 tion (a) of this section that provide for the expiration of those
12 sections. The Supreme Court of Appeals shall, by rule, provide
13 procedures for those appeals that are remanded but not con-

14 cluded prior to the first day of July, two thousand ten, in the
15 event that the appeals process set forth in sections eleven,
16 twelve, thirteen, fourteen and fifteen of this article is substan-
17 tially altered as of the first day of July, two thousand ten.

18 (c) Prior to the two thousand eight regular session of the
19 Legislature and annually thereafter, the Supreme Court of
20 Appeals shall report to the Joint Committee on Government and
21 Finance the number of appeals from final orders of the family
22 court filed in the various circuit courts and in the Supreme
23 Court of Appeals, the number of pro se appeals filed, the
24 subject matter of the appeals, the time periods in which appeals
25 are concluded, the number of cases remanded upon appeal and
26 such other detailed information so as to enable the Legislature
27 to study the appellate procedures for family court matters and
28 to consider the possible necessity and feasibility of creating an
29 intermediate appellate court or other system of appellate
30 procedure.

CHAPTER 65

**(S. B. 421 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-24, relating to the apportionment of damages in court actions involving the tortious conduct of more than one person; allowing for several liability for certain defendants; allowing for several liability subject to

reallocation for certain defendants; and providing for several liability for defendants that are found to be less than thirty percent at fault under 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 §55-7-24, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-24. Apportionment of damages.

1 (a) In any cause of action involving the tortious conduct of
2 more than one defendant, the trial court shall:

3 (1) Instruct the jury to determine, or, if there is no jury,
4 find, the total amount of damages sustained by the claimant and
5 the proportionate fault of each of the parties in the litigation at
6 the time the verdict is rendered; and

7 (2) Enter judgment against each defendant found to be
8 liable on the basis of the rules of joint and several liability,
9 except that if any defendant is thirty percent or less at fault,
10 then that defendant's liability shall be several and not joint and
11 he or she shall be liable only for the damages attributable to
12 him or her, except as otherwise provided in this section.

13 (b) Notwithstanding subdivision (2), subsection (a) of this
14 section, the rules of joint and several liability shall apply to:

15 (1) Any party who acted with the intention of inflicting
16 injury or damage;

17 (2) Any party who acted in concert with another person as
18 part of a common plan or design resulting in harm;

19 (3) Any party who negligently or willfully caused the
20 unlawful emission, disposal or spillage of a toxic or hazardous
21 substance; or

22 (4) Any party strictly liable for the manufacture and sale of
23 a defective product.

24 (c) Notwithstanding subdivision (2), subsection (a) of this
25 section, if a claimant through good faith efforts is unable to
26 collect from a liable defendant, the claimant may, not later than
27 six months after judgment becomes final through lapse of time
28 for appeal or through exhaustion of appeal, whichever occurs
29 later, move for reallocation of any uncollectible amount among
30 the other parties in the litigation at the time the verdict is
31 rendered.

32 (1) Upon the filing of such a motion, the court shall
33 determine whether all or part of a defendant's proportionate
34 share of the verdict is uncollectible from that defendant and
35 shall reallocate such uncollectible amount among the other
36 parties in the litigation at the time the verdict is rendered,
37 including a claimant at fault according to their percentages of
38 fault: *Provided*, That the court shall not reallocate to any
39 defendant an uncollectible amount greater than that defendant's
40 percentage of fault multiplied by such uncollectible amount.

41 (2) If such a motion is filed, the parties may conduct
42 discovery on the issue of collectability prior to a hearing on
43 such motion.

44 (3) Any order regarding such motion shall be entered within
45 one hundred twenty days after the date of filing such a motion.

46 (4) A defendant's share of the obligation to a claimant may
47 not be increased by reason of reallocation under this subsection
48 if:

49 (A) The percentage of fault of that defendant is equal to or
50 less than the claimant's percentage of fault; or

51 (B) The percentage of fault of that defendant is less than ten
52 percent.

53 (5) A party whose liability is reallocated is nonetheless
54 subject to contribution and to any continuing liability to the
55 claimant on the judgment.

56 (6) If any defendant's share of the obligation to a claimant
57 is not increased by reason of the application of subdivision (4)
58 of this subsection, the amount of that defendant's share of the
59 reallocation shall be considered uncollectible and shall be
60 reallocated among all other parties who are not subject to
61 subdivision four of this subsection, including the claimant, in
62 the same manner as otherwise provided this subsection.

63 (d) Nothing in this section may be construed to affect,
64 impair or abrogate any right of indemnity or contribution
65 arising out of any contract or agreement or any right of indem-
66 nity otherwise provided by law.

67 (e) Nothing in this section creates or recognizes, either
68 explicitly or impliedly, any new or different cause of action not
69 otherwise recognized by law.

70 (f) Nothing in this section may be construed to affect,
71 impair or abrogate the provisions of section seven, article
72 twelve-a, chapter twenty-nine of this code or section nine,
73 article seven-b of this chapter.

74 (g) This section applies only to causes of action that accrue
75 on or after the first day of July, two thousand five.

CHAPTER 66

(Com. Sub. for S. B. 729 — By Senators Facemyer, Bowman,
Edgell, Love, Guills, Jenkins, Plymale, Foster,
Sharpe, Minear and Chafin)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §62-11B-4 of the Code of West Virginia, 1931, as amended, relating to home confinement; authorizing magistrate courts to order home incarceration as a condition of bail; authorizing magistrate courts to order home incarceration intermittently; and requiring magistrate court orders of home incarceration as a condition of bail be done consistent with Supreme Court guidelines.

Be it enacted by the Legislature of West Virginia:

That §62-11B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-4. Home incarceration; period of home incarceration; applicability.

- 1 (a) As a condition of probation or bail or as an alternative
- 2 sentence to another form of incarceration for any criminal
- 3 violation of this code over which a circuit court has jurisdiction,
- 4 a circuit court may order an offender confined to the offender's
- 5 home for a period of home incarceration. As an alternative
- 6 sentence to incarceration in jail for any criminal violation of
- 7 this code over which a magistrate court has jurisdiction or as a

8 condition of bail for a criminal violation of this code over
9 which a magistrate court has jurisdiction to set bail, a magis-
10 trate may order an offender confined to the offender's home for
11 a period of electronically monitored home incarceration:
12 *Provided*, That electronic monitoring may not be required in a
13 specific case if a circuit court upon petition thereto finds by
14 order that electronic monitoring is not necessary.

15 (b) The period of home incarceration may be continuous or
16 intermittent, as the circuit court or magistrate court orders.
17 However, the aggregate time actually spent in home incarceration
18 may not exceed the term of imprisonment or incarceration
19 prescribed by this code for the offense committed by the
20 offender.

21 (c) A grant of home incarceration under this article consti-
22 tutes a waiver of any entitlement to deduction from a sentence
23 for good conduct under the provisions of section twenty-seven,
24 article five, chapter twenty-eight of this code.

25 (d) When imposing home incarceration as a condition of
26 bail, a magistrate shall do so consistent with guidelines promul-
27 gated by the Supreme Court of Appeals.

CHAPTER 67

(Com. Sub. for S. B. 588 — By Senators Unger and Hunter)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-13f;

and to amend and reenact §61-8-19 of said code, all relating to Animal Cruelty Early Intervention Program for juveniles; expanding the definition of cruelty to animals; increased criminal penalties for cruelty to animals; and allowing judges to require that offenders complete an anger management program.

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 §49-5-13f; and that §61-8-19 of said code be amended and reenacted, all to read as follows:

CHAPTER 49. CHILD WELFARE.

Chapter

49. Child Welfare.

61. Crimes and Their Punishment.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13f. Animal Cruelty Early Intervention Program.

1 (a) Notwithstanding any provision of this article to the
2 contrary, a juvenile who has been alleged to have committed an
3 act of delinquency which involved causing harm to an animal
4 shall be given the option of proceeding in the Animal Cruelty
5 Early Intervention Program as an alternative to the filing of a
6 formal petition under section seven of this article, as the case
7 may be. The decision to extend the option to enter the Animal
8 Cruelty Early Intervention Program shall be made by the circuit
9 court if the court finds that the offender is a suitable candidate
10 for the program. No juvenile may enter the Animal Cruelty
11 Early Intervention Program unless he or she and his or her
12 parent or guardian consent. Any juvenile who does not
13 successfully cooperate in and complete the Animal Cruelty
14 Early Intervention Program shall be returned to the circuit court
15 for further disposition as provided by section eleven-a or
16 thirteen of this article, as the case may be.

17 (b) The Department of Juvenile Services shall establish a
18 task force to create an Animal Cruelty Early Intervention
19 Program. Services provided by the Department for Juvenile
20 Services in the Animal Cruelty Early Intervention Program
21 shall be consistent with the provisions of article five-b of this
22 chapter and shall be designed to develop skills and supports
23 within families and to resolve problems related to the juveniles
24 who have engaged in animal cruelty. Services may include, but
25 are not limited to, referral of juveniles and parents, guardians or
26 custodians and other family members to services for psychiatric
27 or other medical care, or psychological, welfare, legal, educa-
28 tional or other social services, as appropriate to the needs of the
29 juvenile and his or her family.

30 (c) The effective date for this section is the first day of July,
31 two thousand six.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a) If any person cruelly mistreats, abandons or withholds
2 proper sustenance, including food, water, shelter or medical
3 treatment, necessary to sustain normal health and fitness or to
4 end suffering or abandons any animal to die, or intentionally,
5 knowingly or recklessly leaves an animal unattended and
6 confined in a motor vehicle when physical injury to or death of
7 the animal is likely to result, or rides an animal when it is
8 physically unfit, or baits or harasses any animal for the purpose
9 of making it perform for a person's amusement, or cruelly
10 chains any animal or uses, trains or possesses any domesticated
11 animal for the purpose of seizing, detaining or mistreating any
12 other domesticated animal, he or she is guilty of a misdemeanor
13 and, upon conviction thereof, shall be fined not less than three

14 hundred nor more than two thousand dollars or confined in jail
15 not more than six months, or both.

16 (b) If any person intentionally tortures, or mutilates or
17 maliciously kills an animal, or causes, procures or authorizes
18 any other person to torture, mutilate or maliciously kill an
19 animal, he or she is guilty of a felony and, upon conviction
20 thereof, shall be confined in a correctional facility not less than
21 one nor more than five years and be fined not less than one
22 thousand dollars nor more than five thousand dollars. For the
23 purposes of this subsection, "torture" means an action taken for
24 the primary purpose of inflicting pain.

25 (c) Any person, other than a licensed veterinarian or a
26 person acting under the direction or with the approval of a
27 licensed veterinarian, who knowingly and willfully administers
28 or causes to be administered to any animal participating in any
29 contest any controlled substance or any other drug for the
30 purpose of altering or otherwise affecting said animal's
31 performance is guilty of a misdemeanor and, upon conviction
32 thereof, shall be fined not less than five hundred nor more than
33 two thousand dollars.

34 (d) Any person convicted of a violation of this section shall
35 forfeit his or her interest in any animal and all interest in the
36 animal shall vest in the humane society or county pound of the
37 county in which the conviction was rendered and the person
38 shall, in addition to any fine imposed, be liable for any costs
39 incurred or to be incurred by the humane society or county
40 pound as a result.

41 (e) For the purpose of this section, the term "controlled
42 substance" has the same meaning ascribed to it by subsection
43 (d), section one hundred one, article one, chapter sixty-a of this
44 code.

45 (f) The provisions of this section do not apply to lawful acts
46 of hunting, fishing, trapping or animal training or farm live-
47 stock, poultry, gaming fowl or wildlife kept in private or
48 licensed game farms if kept and maintained according to usual
49 and accepted standards of livestock, poultry, gaming fowl or
50 wildlife or game farm production and management, nor to
51 humane use of animals or activities regulated under and in
52 conformity with the provisions of 7 U. S. C. §2131, *et seq.*,
53 and the regulations promulgated thereunder, as both statutes
54 and regulations are in effect on the effective date of this section.

55 (g) Notwithstanding the provisions of subsection (a) of this
56 section, any person convicted of a second or subsequent
57 violation of said subsection is guilty of a misdemeanor and
58 shall be confined in jail for a period of not less than ninety days
59 nor more than one year, fined not less than five hundred dollars
60 nor more than three thousand dollars, or both. The incarceration
61 set forth in this subsection shall be mandatory unless the
62 provisions of subsection (h) of this section are complied with.

63 (h) (1) Notwithstanding any provision of this code to the
64 contrary, no person who has been convicted of a violation of the
65 provisions of subsection (a) or (b) of this section may be
66 granted probation until the defendant has undergone a complete
67 psychiatric or psychological evaluation and the court has
68 reviewed the evaluation. Unless the defendant is determined by
69 the court to be indigent, he or she shall be responsible for the
70 cost of said evaluation.

71 (2) For any person convicted of a violation of subsection (a)
72 or (b) of this section, the court may, in addition to the penalties
73 provided in this section, impose a requirement that he or she
74 complete a program of anger management intervention for
75 perpetrators of animal cruelty. Unless the defendant is deter-
76 mined by the court to be indigent, he or she shall be responsible
77 for the cost of the program.

78 (i) In addition to any other penalty which can be imposed
79 for a violation of this section, a court shall prohibit any person
80 so convicted from possessing, owning or residing with any
81 animal or type of animal for a period of five years following
82 entry of a misdemeanor conviction and fifteen years following
83 entry of a felony conviction. A violation under this subsection
84 is a misdemeanor punishable by a fine not exceeding two
85 thousand dollars and forfeiture of the animal.

CHAPTER 68

**(Com. Sub. for H. B. 3049 — By Mr. Speaker, Mr. Kiss, and Delegates
Beach, Pino, Stalnaker, Amores, Poling, Varner and Stemple)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9c, relating to creating a new crime of wanton endangerment involving the use of fire; and imposing a criminal penalty.

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 §61-2-9c, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9c. Wanton endangerment involving the use of fire; penalty.

1 Any person who, during the manufacture or production of
2 an illegal controlled substance uses fire, the use of which

3 creates substantial risk of death or serious bodily injury to
4 another due to the use of fire, is guilty of a felony and, upon
5 conviction, shall be committed to the custody of the Division of
6 Corrections for a definite term of years of not less than one nor
7 more than five years or, in the discretion of the court, confined
8 in the regional jail for not more than one year, or fined not less
9 than two hundred fifty dollars or more than two thousand five
10 hundred dollars, or both.

CHAPTER 69

(Com. Sub. for S. B. 548 — By Senators Love, Sharpe,
Minard, Bailey, White, Jenkins and Dempsey)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to the crimes of assault and battery upon law-enforcement officers; and adding Public Service Commission motor carrier inspectors to the list of law-enforcement officers.

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 recidivism of battery; assault on police officers, conservation officers, probation officers, humane

officers, emergency medical service personnel, firefighters, fire marshal, Division of Forestry employees and county or state correctional employees; penalties.

1 (a) *Malicious assault.* — Any person who maliciously
2 shoots, stabs, cuts or wounds or by any means causes bodily
3 injury with intent to maim, disfigure, disable or kill a police
4 officer, probation officer, conservation officer, humane officer,
5 emergency medical service personnel, firefighter, State Fire
6 Marshal or employee, Division of Forestry employee, county
7 correctional employee or state correctional employee, employee
8 of an urban mass transportation system or Public Service
9 Commission motor carrier inspector acting in his or her official
10 capacity and the person committing the malicious assault knows
11 or has reason to know that the victim is a police officer,
12 probation officer, conservation officer, humane officer,
13 emergency medical service personnel, firefighter, State Fire
14 Marshal or employee, Division of Forestry employee, county
15 correctional employee, state correctional employee, employee
16 of an urban mass transportation system or Public Service
17 Commission motor carrier inspector acting in his or her official
18 capacity is guilty of a felony and, upon conviction thereof, shall
19 be confined in a correctional facility for not less than three nor
20 more than fifteen years.

21 (b) *Unlawful assault.* — Any person who unlawfully but
22 not maliciously shoots, stabs, cuts or wounds or by any means
23 causes a police officer, probation officer, conservation officer,
24 humane officer, emergency medical service personnel,
25 firefighter, State Fire Marshal or employee, Division of
26 Forestry employee, county correctional employee or state
27 correctional employee, employee of an urban mass transporta-
28 tion system or Public Service Commission motor carrier
29 inspector acting in his or her official capacity bodily injury with
30 intent to maim, disfigure, disable or kill him or her and the

31 person committing the unlawful assault knows or has reason to
32 know that the victim is a police officer, probation officer,
33 conservation officer, humane officer, emergency medical
34 service personnel, firefighter, State Fire Marshal or employee,
35 Division of Forestry employee, county correctional employee,
36 state correctional employee, employee of an urban mass
37 transportation system or Public Service Commission motor
38 carrier inspector acting in his or her official capacity is guilty
39 of a felony and, upon conviction thereof, shall be confined in a
40 correctional facility for not less than two nor more than five
41 years.

42 (c) *Battery*. — Any person who unlawfully, knowingly and
43 intentionally makes physical contact of an insulting or provok-
44 ing nature with a police officer, probation officer, conservation
45 officer, humane officer, emergency medical service personnel,
46 firefighter, State Fire Marshal or employee, Division of
47 Forestry employee, county correctional employee, state
48 correctional employee, employee of a mass transportation
49 system or Public Service Commission motor carrier inspector
50 acting in his or her official capacity, or unlawfully and inten-
51 tionally causes physical harm to a police officer, probation
52 officer, conservation officer, humane officer, emergency
53 medical service personnel, firefighter, State Fire Marshal or
54 employee, Division of Forestry employee, county correctional
55 employee, state correctional employee, employee of an urban
56 mass transportation system or a Public Service Commission
57 motor carrier inspector acting in such capacity, is guilty of a
58 misdemeanor and, upon conviction thereof, shall be confined in
59 jail for not less than one month nor more than twelve months,
60 fined the sum of five hundred dollars, or both. If any person
61 commits a second such offense, he or she is guilty of a felony
62 and, upon conviction thereof, shall be confined in a correctional
63 facility for not less than one year nor more than three years or
64 fined the sum of one thousand dollars or both fined and
65 confined. Any person who commits a third violation of this

66 subsection is guilty of a felony and, upon conviction thereof,
67 shall be confined in a correctional facility not less than two
68 years nor more than five years or fined not more than two
69 thousand dollars or both fined and confined.

70 (d) *Assault.* — Any person who unlawfully attempts to
71 commit a violent injury to the person of a police officer,
72 probation officer, conservation officer, humane officer,
73 emergency medical service personnel, firefighter, State Fire
74 Marshal or employee, Division of Forestry employee, county
75 correctional employee, state correctional employee, employee
76 of a mass transportation system or Public Service Commission
77 motor carrier inspector acting in his or her official capacity, or
78 unlawfully commits an act which places a police officer,
79 probation officer, conservation officer, humane officer,
80 emergency medical service personnel, firefighter, Division of
81 Forestry employee, county correctional employee or state
82 correctional employee, employee of a mass transportation
83 system or Public Service Commission motor carrier inspector
84 acting in his or her official capacity in reasonable apprehension
85 of immediately receiving a violent injury, is guilty of a misde-
86 meanor and, upon conviction thereof, shall be confined in jail
87 for not less than twenty-four hours nor more than six months,
88 fined not more than two hundred dollars, or both fined and
89 confined.

90 (e) For purposes of this section:

91 (1) “Police officer” means any person employed by the
92 State Police, any person employed by the state to perform law-
93 enforcement duties, any person employed by a political
94 subdivision of this state who is responsible for the prevention
95 or detection of crime and the enforcement of the penal, traffic
96 or highway laws of this state or employed as a special police
97 officer as defined in section forty-one, article three of this
98 chapter.

99 (2) “Employee of an urban mass transportation system”
100 means any person employed by an urban mass transportation
101 system as such is defined in section three, article twenty-seven,
102 chapter eight of this code or by a system that receives federal
103 transit administration funding under 49 U. S. C. §5307 or
104 §5311.

105 (3) “Division of Forestry employee” means an officer,
106 agent, employee or servant, whether full-time or not, of the
107 Division of Forestry.

CHAPTER 70

(H. B. 3153 — By Delegates Boggs, Craig and R. M. Thompson)

[Passed April 9, 2005; in effect ninety days from passage]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend §61-3-28 of the Code of West Virginia, 1931, as amended; and to amend §61-3-41 of said code, all relating to creation of criminal offenses for damaging, stealing or injury to railroad property; defining terms; creating an offense for reckless disregard for railroad property; creating an offense for intentionally damaging railroad property; and providing penalties.

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; and that §61-3-41 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-28. Offense against railroad property and persons on
railroad property; definitions.

§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.

**§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, illness
3 or any impairment of physical injury.

4 (2) “Railroad” means any form of nonhighway ground
5 transportation that runs on rails or electromagnetic guideways,
6 including:

7 (i) Commuter or other short-haul railroad passenger service
8 in a metropolitan or suburban area; and

9 (ii) High-speed ground transportation systems that connect
10 metropolitan areas but does not include rapid transit operations
11 in an urban area that are not connected to the general railroad
12 system of transportation;

13 (3) “Railroad carrier” means a person providing railroad
14 transportation; railroad carrier including a right-of-way, track,
15 bridge, yard, shop, station, tunnel, viaduct, trestle, depot,
16 warehouse, terminal, railroad signal system, train control
17 system, centralized dispatching system, or any other structure,
18 appurtenance, or equipment owned, leased, or used in the
19 operation of any railroad carrier including a train, locomotive,
20 engine, railroad car, work equipment, rolling stock, or safety
21 device. “Railroad property” does not include administrative
22 buildings, administrative offices, or administrative office
23 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 a
27 reasonable person as being railroad property or is reasonably
28 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 into
31 trains, and where railroad cars, locomotives and other rolling
32 stock are kept when not in use or when awaiting repairs.

33 (b) Whoever willfully damages or attempts to damage
34 railroad property or willfully endangers or attempts to endanger
35 the safety of another, by:

36 (1) Taking, removing, altering, or otherwise vandalizing a
37 railroad sign, placard or marker;

38 (2) Throwing or dropping an object capable of causing
39 significant damage to railroad property at or on a locomotive,
40 railroad car or train;

41 (3) Shooting a firearm or other dangerous weapon at a
42 locomotive, railroad car or train;

43 (4) Removing appurtenances from, damaging, or otherwise
44 impairing the operation of any railroad signal system, including
45 a train control system, centralized dispatching system, or
46 highway-railroad grade crossing warning signal, on a railroad
47 owned, leased, or operated by any railroad carrier, and without
48 consent of the railroad carrier involved;

49 (5) Interfering or tampering with, or obstructing in any way,
50 any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle,
51 culvert, embankment, structure, or appliance pertaining to or
52 connected with any railroad carrier without consent of the
53 railroad carrier involved; or

54 (6) Taking, stealing, removing, changing, adding to,
55 altering, or in any manner interfering with any part of the
56 operating mechanism of any locomotive, engine, tender, coach,
57 car, caboose, or motor car used or capable of being used by any
58 railroad carrier in this state without consent of the railroad
59 carrier is guilty of a felony.

60 If railroad property damage does not exceed one thousand
61 dollars and no bodily injury occurs to another as a result of any
62 of the aforesaid acts, upon conviction thereof, the person shall
63 be fined not more than five thousand dollars, confined in a
64 regional jail for not more than one year, or both. If bodily injury
65 occurs to another not acting with or in connection with the
66 perpetrator as a result of any of the aforesaid acts or if railroad
67 property damage exceeds one thousand dollars, upon conviction
68 thereof, the person shall be fined not more than ten thousand
69 dollars, committed to the custody of the Commission of
70 Corrections for not less than one nor more than ten years, or
71 both.

72 (d) The provisions of this section do not apply to any
73 person employed by a railroad who is performing the duties
74 assigned by the railroad or who is otherwise performing within
75 the scope of his or her employment.

**§61-3-41. Employees conservators of the peace; special railroad
policemen; penalties.**

1 The conductor of every passenger car and flag person and
2 brake person employed on such car, as well as the conductor of
3 every train of railroad or traction cars, shall have all the powers
4 of a conservator of the peace while in charge of such car or
5 train.

6 Any railroad company owning, or leasing and operating, or
7 using any railroad or traction line or system lying wholly or
8 partially within this state, whether such railroad be operated by

9 steam or electric power, may apply to the Governor to appoint
10 such citizen or citizens of this state as such railroad company
11 may designate, to act as special police officers for such railroad
12 or traction company, with the consent of such citizen or
13 citizens; and the Governor may, upon such application, appoint
14 and commission such person or persons, or so many of them as
15 he may deem proper, as such special police officers. Every
16 police officer so appointed shall appear before some person
17 authorized to administer oaths and take and subscribe the oath
18 prescribed in the fifth section of the fourth article of the
19 Constitution, and shall file such oath with the clerk of the
20 county commission, or other tribunal in lieu thereof, of the
21 county in which he shall reside. He or she shall also file
22 certified copies of such oath in the office of the Secretary of
23 State, and in the office of the clerk of the county commission,
24 or other tribunal established in lieu thereof, of each county
25 through which such railroad or any portion thereof may extend.
26 Every police officer appointed under the provisions of this
27 section shall be a conservator of the peace within each county
28 in which any part of such railroad may be situated, and in which
29 such oath or a certified copy thereof shall have been filed with
30 the clerk of the county commission or other tribunal established
31 in lieu thereof; and, in addition thereto, he shall possess and
32 may exercise all the powers and authority, and shall be entitled
33 to all the rights, privileges and immunities within such counties,
34 as are now or hereafter may be vested in or conferred upon a
35 deputy sheriff of such county. Any appointment made by the
36 Governor under the provisions of this section may be revoked
37 by him or her for good cause shown, and such police officers
38 may be removed from office for official misconduct, incompe-
39 tence, habitual drunkenness, neglect of duty or gross immoral-
40 ity, in the same manner in which regularly elected or appointed
41 county officers may be removed from office. Whenever any
42 such railroad company shall desire to dispense with the services
43 of any police officer, it may file a notice to that effect, under its
44 corporate seal, attested by its secretary, in each of the several

45 offices in which such oath or certified copy thereof shall have
46 been filed; and, thereupon, the powers of the police officer shall
47 cease and determine. Police officers may wear such uniform
48 and badge of authority, or either, as the railroad company, upon
49 whose application they were appointed, may designate, and
50 such railroad company shall pay them for all services rendered
51 pursuant to his or her appointment.

CHAPTER 71

(Com. Sub. for S. B. 238 — By Senator Bailey)

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to including steel railroad track and track material under statutory provisions involving the purchase of scrap metals by various commercial entities; and modifying the criminal provision of the law to require knowing and fraudulent intent.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of nonferrous metals or steel railroad track and track materials by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

1 (a) Any person in the business of purchasing scrap metal,
2 any salvage yard owner or operator, or any public or commer-
3 cial recycling facility owner or operator, or any agent or
4 employee thereof, who purchases any form of copper, alumi-
5 num, brass, lead or other nonferrous metal of any kind, or steel
6 railroad track and track material, shall make a record of such
7 purchase. Such record shall accurately list the name, permanent
8 and business addresses and telephone number of the seller, the
9 motor vehicle license number of any vehicle used to transport
10 the nonferrous metal or steel to the place of purchase, the time
11 and date of the transaction and a complete description of the
12 kind and character of the nonferrous metal or steel railroad
13 track and track material purchased. The person purchasing the
14 nonferrous metal or steel railroad track and track material shall
15 also require from the seller, and retain in the record, a signed
16 certificate of ownership of the nonferrous metal or steel railroad
17 track and track material being sold or authorization from the
18 owner to sell. It shall be unlawful for any of the aforemen-
19 tioned persons to purchase any nonferrous metal or steel
20 railroad track and track material without obtaining the certifi-
21 cate of ownership, or authorization from the owner to sell, on
22 the part of the seller. Such record and certificate shall be
23 available for inspection by any law-enforcement officer and
24 must be maintained by the purchaser for not less than one year
25 after the date of the purchase.

26 (b) Should the transaction involve one hundred or more
27 pounds of copper, steel railroad track, track material or alumi-
28 num in any form, the purchaser of the copper, steel railroad
29 track, track material or aluminum, or his or her agent, shall
30 report in writing to the chief of police of the municipality or the
31 sheriff of the county wherein he or she is transacting business
32 and to the local detachment of the Division of Public Safety all
33 the information obtained. The report must be filed within
34 seventy-two hours after the transaction. The provisions of this

35 subsection do not apply to purchases made at wholesale under
36 contract or as a result of a bidding process.

37 (c) Nothing in this section applies to scrap purchases by
38 manufacturing facilities that melt, or otherwise alter the form of
39 scrap metal and transform it into a new product or to the
40 purchase or transportation of food and beverage containers or
41 other nonindustrial materials having a marginal value per
42 individual unit.

43 (d) Any person who knowingly or with fraudulent intent
44 violates any provision of this section, including the knowing
45 failure to make a report or the knowing falsification of any
46 required information, is guilty of a misdemeanor and, upon
47 conviction, shall be fined not less than five hundred nor more
48 than two thousand dollars.

CHAPTER 72

(Com. Sub. for S. B. 473 — By Senators Hunter and Minear)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §61-3A-1 and §61-3A-6 of the Code of West Virginia, 1931, as amended, all relating to the crime of cyber-shoplifting; including in the definition of “shoplifting” customer’s repudiation of a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant; and defining “card-not-present credit or debit transaction” to mean a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not

require the cardholder's signature or physical presentation of the credit or debit card to the merchant.

Be it enacted by the Legislature of West Virginia:

That §61-3A-1 and §61-3A-6 the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. SHOPLIFTING.

§61-3A-1. Shoplifting defined.

§61-3A-6. Definitions.

§61-3A-1. Shoplifting defined.

1 (a) A person commits the offense of shoplifting if, with
2 intent to appropriate merchandise without paying the mer-
3 chant's stated price for the merchandise, such person, alone or
4 in concert with another person, knowingly:

5 (1) Conceals the merchandise upon his or her person or in
6 another manner; or

7 (2) Removes or causes the removal of merchandise from
8 the mercantile establishment or beyond the last station for
9 payment; or

10 (3) Alters, transfers or removes any price marking affixed
11 to the merchandise; or

12 (4) Transfers the merchandise from one container to
13 another; or

14 (5) Causes the cash register or other sales recording device
15 to reflect less than the merchant's stated price for the merchan-
16 dise; or

17 (6) Removes a shopping cart from the premises of the
18 mercantile establishment; or

19 (7) Repudiates a card-not-present credit or debit transaction
20 after having taken delivery of merchandise ordered from the
21 merchant and does not return the merchandise or attempt to
22 make other arrangements with the vendor.

23 (b) A person also commits the offense of shoplifting if such
24 person, alone or in concert with another person, knowingly and
25 with intent obtains an exchange or refund or attempts to obtain
26 an exchange or refund for merchandise which has not been
27 purchased from the mercantile establishment.

§61-3A-6. Definitions.

1 (a) “Card-not-present credit or debit transaction” means a
2 credit or debit sale of merchandise by telephone, mail order,
3 internet or other means that does not require the cardholder’s
4 signature or physical presentation of the credit or debit card to
5 the merchant.

6 (b) “Conceal” means to hide, hold or carry merchandise so
7 that, although there may be some notice of its presence, it is not
8 visible through ordinary observation.

9 (c) “Merchant” means an owner or operator of any mercan-
10 tile establishment and includes the merchant’s employees,
11 servants, security agents or other agents.

12 (d) “Mercantile establishment” means any place where
13 merchandise is displayed, held or offered for sale, either at
14 retail or wholesale. “Mercantile establishment” does not
15 include adjoining parking lots or adjoining areas of common
16 use with other establishments.

17 (e) “Merchandise” means any goods, foodstuffs, wares or
18 personal property, or any part or portion thereof of any type or
19 description displayed, held or offered for sale, or a shopping
20 cart.

21 (f) “Value of the merchandise” means the merchant’s stated
22 price of the merchandise, or, in the event of altering, transfer-
23 ring or removing a price marking or causing a cash register or
24 other sales device to reflect less than the retail value of the
25 merchandise, as defined in section one of this article, the
26 difference between the merchant’s stated price of the merchan-
27 dise and the altered price.

CHAPTER 73

(Com. Sub. for H. B. 2991 — By Delegates Perry, Leach,
Miley, Pino, Roberts and Michael)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §61-5-8 of the Code of West Virginia, 1931, as amended, relating to adults and juveniles in custody or confinement; providing criminal penalties for aiding escape; specifying items that are unlawful to deliver to or be possessed by individuals in custody or confinement; providing criminal penalties for possession of certain items by adults or juveniles in custody or confinement in a jail, state correctional facility, juvenile facility or juvenile detention center; providing criminal penalties for transporting certain items onto the grounds of a jail, state correctional facility, juvenile facility or juvenile detention center; and providing definitions.

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 person
4 delivers anything into the place of custody or confinement of
5 the adult or juvenile with the intent to aid or facilitate the
6 adult's or juvenile's escape or attempted escape therefrom, or
7 if the other person forcibly rescues or attempts to rescue an
8 adult or a juvenile therefrom, the other person is guilty of a
9 felony and, upon conviction thereof, shall be confined in a state
10 correctional facility not less than one nor more than ten years.

11 (b) Where any adult or juvenile is lawfully detained in
12 custody or confinement in any jail, a state correctional facility
13 or a juvenile facility or juvenile detention center, if any other
14 person delivers any money or other thing of value, any written
15 or printed matter, any article of merchandise, food or clothing,
16 any medicine, telecommunication device, utensil or instrument
17 of any kind to the adult or juvenile without the express author-
18 ity and permission of the supervising officer and with knowl-
19 edge that the adult or juvenile is lawfully detained, the other
20 person is guilty of a misdemeanor and, upon conviction thereof,
21 shall be fined not less than fifty dollars nor more than five
22 hundred dollars and confined in jail not less than three nor more
23 than twelve months: *Provided*, That the provisions of this
24 section do not prohibit an attorney or his or her employees from
25 supplying any written or printed material to an adult or juvenile
26 which pertains to that attorney's representation of the adult or
27 juvenile.

28 (c) If any person transports any alcoholic liquor, nonintoxi-
29 cating beer, poison, implement of escape, dangerous material,
30 weapon or any controlled substance as defined by chapter
31 sixty-a of this code onto the grounds of any jail, state correc-

32 tional facility, juvenile facility or juvenile detention center
33 within this state and is unauthorized by law to do so, or is
34 unauthorized by the persons supervising the facility, the person
35 is guilty of a felony and, upon conviction thereof, shall be fined
36 not less than one thousand nor more than five thousand dollars
37 or confined in a state correctional facility not less than two
38 years nor more than ten years, or both, or, in the discretion of
39 the court, be confined in jail not more than one year and fined
40 not more than five hundred dollars.

41 (d) If any person delivers any alcoholic liquor, nonintoxi-
42 cating beer, poison, implement of escape, dangerous material,
43 weapon or any controlled substance as defined by chapter
44 sixty-a of this code to an adult or juvenile in custody or
45 confinement in any jail, state correctional facility, juvenile
46 facility or juvenile detention center within this state and is
47 unauthorized by law to do so, or is unauthorized by the persons
48 supervising the facility, the person is guilty of a felony and,
49 upon conviction thereof, shall be fined not less than one
50 thousand nor more than five thousand dollars or confined in a
51 state correctional facility not less than one year nor more than
52 five years, or both.

53 (e) Whoever purchases, accepts as a gift, or secures by
54 barter, trade or in any other manner, any article or articles
55 manufactured at or belonging to any jail, state correctional
56 facility, juvenile facility or juvenile detention center from any
57 adult or juvenile detained therein is guilty of a misdemeanor
58 and, upon conviction thereof, shall be fined not less than fifty
59 dollars nor more than five hundred dollars and confined in jail
60 not less than three nor more than twelve months: *Provided,*
61 That the provisions of this subsection do not apply to articles
62 specially manufactured in any facility under the authorization
63 of the persons supervising the facility and which are offered for
64 sale within or outside of the facility.

65 (f) Whoever persuades, induces or entices or attempts to
66 persuade, induce or entice any person who is in custody or
67 confined in any jail, state correctional facility, juvenile facility
68 or juvenile detention center to escape therefrom or to engage or
69 aid in any insubordination to the persons supervising the facility
70 is guilty of a misdemeanor and, upon conviction thereof, shall
71 be fined not less than fifty dollars nor more than five hundred
72 dollars and confined in jail not less than three nor more than
73 twelve months.

74 (g)(1) An inmate of a jail, state correctional facility,
75 juvenile facility or juvenile detention center having in his or her
76 possession any poison, implement of escape, dangerous
77 material, weapon or any controlled substance as defined by
78 chapter sixty-a of this code is guilty of a felony and, upon
79 conviction thereof, shall be fined not less than one thousand nor
80 more than five thousand dollars or confined in a state correc-
81 tional facility not less than one year nor more than five years,
82 or both, or, in the discretion of the court, be confined in jail not
83 more than one year and fined not more than five hundred
84 dollars.

85 (2) An inmate of a jail, state correctional facility, juvenile
86 facility or juvenile detention center having in his or her
87 possession any alcoholic liquor, nonintoxicating beer, money or
88 other thing of value, any written or printed matter, any article
89 of merchandise, food or clothing, any medicine, telecommuni-
90 cation device, utensil or instrument of any kind without the
91 express authority and permission of the supervising officer is
92 guilty of a misdemeanor and, upon conviction thereof, shall be
93 fined not less than fifty dollars nor more than five hundred
94 dollars and confined in jail not more than twelve months.

95 (h) As used in this section:

96 (1) "Dangerous material" means any incendiary material or
97 device, highly flammable or caustic liquid, explosive, bullet or

98 other material readily capable of causing death or serious bodily
99 injury.

100 (2) "Delivers" means to transfer an item to an adult or
101 juvenile who is detained in custody or confinement in any jail,
102 correctional facility, juvenile facility or juvenile detention
103 center, or a building appurtenant to those places. The term
104 includes bringing the item into a jail, correctional facility,
105 juvenile facility or juvenile detention center or a building
106 appurtenant to those places. The term includes putting an item
107 in a place where it may be obtained by an inmate.

108 (3) "Inmate" means an adult or juvenile who is detained in
109 custody or confinement in any jail, correctional facility,
110 juvenile facility or juvenile detention center, regardless of
111 whether the individual is temporarily absent due to medical
112 treatment, transportation, court appearance or other reason for
113 a temporary absence.

114 (4) "Implement of escape" means a tool, implement, device,
115 equipment or other item which an inmate is not authorized to
116 possess, capable of facilitating, aiding or concealing an escape
117 or attempted escape by an inmate.

118 (5) "Telecommunication device" means any type of
119 instrument, device, machine or equipment which is capable of
120 transmitting telephonic, electronic, digital, cellular or radio
121 communications or any part of an instrument, device, machine
122 or equipment which is capable of facilitating the transmission
123 of telephonic, electronic, digital, cellular or radio communica-
124 tions. The term includes, but is not limited to, cellular phones,
125 digital phones and modem equipment devices.

126 (6) "Weapon" means an implement readily capable of lethal
127 use and includes any firearm, knife, dagger, razor, other cutting
128 or stabbing implement or club. The term includes any item
129 which has been modified or adapted so that it can be used as a

130 firearm, knife, dagger, razor, other cutting or stabbing imple-
131 ment or club. For purposes of this definition, the term “firearm”
132 includes an unloaded firearm or the unassembled components
133 of a firearm.

CHAPTER 74

(H. B. 3098 — By Delegates Amores, Staton,
Spencer, Schadler and Hamilton)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §61-8D-1 and §61-8D-5 of the code of West Virginia, 1931, as amended, relating to sexual crimes committed against children; defining position of trust in relation to a child victim; expanding the existing felony offense of sexual exploitation or sexual abuse of a child under article eight-d of chapter sixty-one of the code to include offenses by persons who hold who a position of trust or authority in relation to a child; establishing related criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8D-1 and 61-8D-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

§61-8D-1. Definitions.

1 In this article, unless a different meaning plainly is re-
2 quired:

3 (1) “Abuse” means the infliction upon a minor of physical
4 injury by other than accidental means.

5 (2) “Child” means any person under eighteen years of age
6 not otherwise emancipated by law.

7 (3) “Controlled substance” means controlled substance as
8 that term is defined in subsection (d), section one hundred one,
9 article one, chapter sixty-a of this code.

10 (4) “Custodian” means a person over the age of fourteen
11 years who has or shares actual physical possession or care and
12 custody of a child on a full-time or temporary basis, regardless
13 of whether such person has been granted custody of the child by
14 any contract, agreement or legal proceeding. “Custodian” shall
15 also include, but not be limited to, the spouse of a parent,
16 guardian or custodian, or a person cohabiting with a parent,
17 guardian or custodian in the relationship of husband and wife,
18 where such spouse or other person shares actual physical
19 possession or care and custody of a child with the parent,
20 guardian or custodian.

21 (5) “Guardian” means a person who has care and custody
22 of a child as the result of any contract, agreement or legal
23 proceeding.

24 (6) “Neglect” means the unreasonable failure by a parent,
25 guardian, or any person voluntarily accepting a supervisory role
26 towards a minor child to exercise a minimum degree of care to
27 assure said minor child’s physical safety or health.

28 (7) “Parent” means the biological father or mother of a
29 child, or the adoptive mother or father of a child.

30 (8) "Sexual contact" means sexual contact as that term is
31 defined in section one, article eight-b, chapter sixty-one of this
32 code.

33 (9) "Sexual exploitation" means an act whereby:

34 (A) A parent, custodian, guardian or other person in a
35 position of trust to a child, whether for financial gain or not,
36 persuades, induces, entices or coerces the child to engage in
37 sexually explicit conduct as that term is defined in section one,
38 article eight-c, chapter sixty-one of this code; or

39 (B) A parent, guardian, custodian or other person in a
40 position of trust in relation to a child persuades, induces, entices
41 or coerces the child to display his or her sex organs for the
42 sexual gratification of the parent, guardian, custodian, person in
43 a position of trust or a third person, or to display his or her sex
44 organs under circumstances in which the parent, guardian,
45 custodian or other person in a position of trust knows such
46 display is likely to be observed by others who would be
47 affronted or alarmed.

48 (10) "Sexual intercourse" means sexual intercourse as that
49 term is defined in section one, article eight-b, chapter sixty-one
50 of this code.

51 (11) "Sexual intrusion" means sexual intrusion as that term
52 is defined in section one, article eight-b, chapter sixty-one of
53 this code.

54 (12) A "person in a position of trust in relation to a child"
55 refers to any person who is acting in the place of a parent and
56 charged with any of a parent's rights, duties or responsibilities
57 concerning a child or someone responsible for the general
58 supervision of a child's welfare, or any person who by virtue of
59 their occupation or position is charged with any duty or
60 responsibility for the health, education, welfare, or supervision
61 of the child.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

1 (a) In addition to any other offenses set forth in this code,
2 the Legislature hereby declares a separate and distinct offense
3 under this subsection, as follows: If any parent, guardian or
4 custodian of or other person in a position of trust in relation to
5 a child under his or her care, custody or control, shall engage in
6 or attempt to engage in sexual exploitation of, or in sexual
7 intercourse, sexual intrusion or sexual contact with, a child
8 under his or her care, custody or control, notwithstanding the
9 fact that the child may have willingly participated in such
10 conduct, or the fact that the child may have consented to such
11 conduct or the fact that the child may have suffered no apparent
12 physical injury or mental or emotional injury as a result of such
13 conduct, then such parent, guardian, custodian or person in a
14 position of trust shall be guilty of a felony and, upon conviction
15 thereof, shall be imprisoned in the penitentiary not less than ten
16 nor more than twenty years, or fined not less than five hundred
17 nor more than five thousand dollars and imprisoned in the
18 penitentiary not less than ten years nor more than twenty years.

19 (b) If any parent, guardian, custodian or other person in a
20 position of trust in relation to the child shall knowingly procure
21 another person to engage in or attempt to engage in sexual
22 exploitation of, or sexual intercourse, sexual intrusion or sexual
23 contact with, a child under the care, custody or control of such
24 parent, guardian, custodian or person in a position of trust when
25 such child is less than sixteen years of age, notwithstanding the
26 fact that the child may have willingly participated in such
27 conduct or the fact that the child may have suffered no apparent
28 physical injury or mental or emotional injury as a result of such
29 conduct, such parent, guardian, custodian or person in a

30 position of trust shall be guilty of a felony and, upon conviction
31 thereof, shall be imprisoned in the penitentiary not less than
32 five years nor more than fifteen years, or fined not less than one
33 thousand nor more than ten thousand dollars and imprisoned in
34 the penitentiary not less than five years nor more than fifteen
35 years.

36 (c) If any parent, guardian, custodian or other person in a
37 position of trust in relation to the child shall knowingly procure
38 another person to engage in or attempt to engage in sexual
39 exploitation of, or sexual intercourse, sexual intrusion or sexual
40 contact with, a child under the care, custody or control of such
41 parent, guardian, custodian or person in a position of trust when
42 such child is sixteen years of age or older, notwithstanding the
43 fact that the child may have consented to such conduct or the
44 fact that the child may have suffered no apparent physical
45 injury or mental or emotional injury as a result of such conduct,
46 then such parent, guardian, custodian or person in a position of
47 trust shall be guilty of a felony and, upon conviction thereof,
48 shall be imprisoned in the penitentiary not less than one year
49 nor more than five years.

50 (d) The provisions of this section shall not apply to a
51 custodian or person in a position of trust whose age exceeds the
52 age of the child by less than four years.

CHAPTER 75

**(Com. Sub. for H. B. 2523 — By Delegates Perry, Pino, Long,
Tabb, Hrutkay and Armstead)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-10-32, relating to making it a crime for released inmates to contact correctional employees or members of the parole board 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 §61-10-32, to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-32. Unlawful contact with a Division of Corrections employee or member of the parole board; penalty.

1 (a) It shall be unlawful for a former inmate of the Division
2 of Corrections to make a telephone call to a Division of
3 Corrections employee or member of the parole board when the
4 employee has requested in writing to that former inmate that he
5 or she not call and the former inmate has actually been served
6 with a copy of the written request.

7 (b) It shall be unlawful for a former inmate of the Division
8 of Corrections to willfully and repeatedly follow a Division of
9 Corrections employee or member of the parole board with
10 whom he or she seeks to establish a personal or social relation-
11 ship when the Division of Corrections employee or member of
12 the parole board has expressed to the former inmate that he or
13 she wishes not to have contact with the former inmate.

14 (c) It shall be unlawful for a former inmate of the Division
15 of Corrections to harass or make credible threats against a
16 Division of Corrections employee or member of the parole
17 board.

18 (d) Any offense committed under subsection (a) may be
19 deemed to have occurred at the place at which the telephone
20 call was made, or the place at which the telephone call was
21 received.

22 (e) Any person who violates any provision of this section
23 shall be guilty of a misdemeanor and, upon conviction thereof,
24 shall, for a first offense, be fined not more than five hundred
25 dollars. Any person violating this section for a second offense
26 shall be imprisoned not less than ten days nor more than six
27 months, or both fined and imprisoned.

28 (f) For purposes of this section:

29 (1) "Harass" means willful conduct directed at a specific
30 person or persons which would cause a reasonable person
31 mental injury or emotional distress;

32 (2) "Credible threat" means a threat of bodily injury made
33 with apparent ability to carry out the threat and with the result
34 that a reasonable person would believe that the threat would be
35 carried out;

36 (3) "Bodily injury" means substantial physical pain, illness
37 or any impairment of physical condition;

38 (4) "Immediate family" means a spouse, parent, stepparent,
39 mother-in-law, father-in-law, child, stepchild, sibling, or any
40 person who regularly resides in the household or within the
41 prior six months regularly resided in the household.

42 (g) Upon conviction, the court may issue an order restrain-
43 ing the defendant from any contact with the victim for a period
44 not to exceed ten years. The length of any restraining order
45 shall be based upon the seriousness of the violation before the
46 court, the probability of future violations, and the safety of the
47 victim or his immediate family. The duration of the restraining

48 order may be longer than five years only in cases when a longer
49 duration is necessary to protect the safety of the victim or his or
50 her immediate family.

51 (h) It is a condition of bond for any person accused of the
52 offense described in this section that the person is to have no
53 contact, direct or indirect, verbal or physical with the alleged
54 victim.

CHAPTER 76

(H. B. 3219 — By Delegates Amores, Webster, Caputo,
Brown, Hatfield and Marshall)

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to compensation awards to victims of crimes, patient; amending the definition of claimant so as to include persons who are assignees of a crime victim, hold power of attorney with respect to the crime victim, or otherwise have been authorized to act on a victim's behalf.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§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: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally injuri-
7 ous act 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 victim,
13 or of a dependent of a victim, which obligations are incurred as
14 a result of the criminally injurious conduct that is the subject of
15 the claim;

16 (4) A person who is authorized to act on behalf of a victim,
17 dependent or a third person who is not a collateral source,
18 including ,but not limited to, assignees, persons holding power
19 of attorney or other persons who hold authority to make or
20 submit claims in place of or on behalf of a victim, a dependent
21 or third person who is not a collateral source; and, in the event
22 that the victim, dependent or third person who is not a collateral
23 source is a minor or other legally incompetent person, the duly
24 qualified fiduciary of the minor; and

25 (5) A person who is a secondary victim in need of mental
26 health counseling due to the person's exposure to the crime
27 committed. An award to a secondary victim may not exceed one
28 thousand dollars.

29 (b) "Collateral source" means a source of benefits or
30 advantages for economic loss otherwise compensable that the
31 victim or claimant has received, or that is readily available to
32 him or her, from any of the following sources:

33 (1) The offender, including any restitution received from
34 the offender pursuant to an order by a court of law sentencing
35 the offender or placing him or her on probation following a
36 conviction in a criminal case arising from the criminally
37 injurious act for which a claim for compensation is made;

38 (2) The government of the United States or any of its
39 agencies, a state or any of its political subdivisions or an
40 instrumentality of two or more states;

41 (3) Social Security, Medicare and Medicaid;

42 (4) State-required, temporary, nonoccupational disability
43 insurance; other disability insurance;

44 (5) Workers' Compensation;

45 (6) Wage continuation programs of any employer;

46 (7) Proceeds of a contract of insurance payable to the
47 victim or claimant for loss that was sustained because of the
48 criminally injurious conduct;

49 (8) A contract providing prepaid hospital and other health
50 care services or benefits for disability; and

51 (9) That portion of the proceeds of all contracts of insur-
52 ance payable to the claimant on account of the death of the
53 victim which exceeds twenty-five thousand dollars.

54 (c) "Criminally injurious conduct" means conduct that
55 occurs or is attempted in this state or in any state not having a
56 victim compensation program which by its nature poses a
57 substantial threat of personal injury or death and is punishable
58 by fine or imprisonment or death or would be so punishable but
59 for the fact that the person engaging in the conduct lacked
60 capacity to commit the crime under the laws of this state.
61 Criminally injurious conduct also includes an act of terrorism,

62 as defined in 18 U.S.C. §2331, committed outside of the United
63 States against a resident of this state. Criminally injurious
64 conduct does not include conduct arising out of the ownership,
65 maintenance or use of a motor vehicle, except when the person
66 engaging in the conduct intended to cause personal injury or
67 death, or except when the person engaging in the conduct
68 committed negligent homicide, driving under the influence of
69 alcohol, controlled substances or drugs or reckless driving.

70 (d) "Dependent" means an individual who received over
71 half of his or her support from the victim. For the purpose of
72 determining whether an individual received over half of his or
73 her support from the victim, there shall be taken into account
74 the amount of support received from the victim as compared to
75 the entire amount of support which the individual received from
76 all sources, including support which the individual himself or
77 herself supplied. The term "support" includes, but is not limited
78 to, food, shelter, clothing, medical and dental care and educa-
79 tion. The term "dependent" includes a child of the victim born
80 after his or her death.

81 (e) "Economic loss" means economic detriment consisting
82 only of allowable expense, work loss and replacement services
83 loss. If criminally injurious conduct causes death, economic
84 loss includes a dependent's economic loss and a dependent's
85 replacement services loss. Noneconomic detriment is not
86 economic loss; however, economic loss may be caused by pain
87 and suffering or physical impairment. For purposes of this
88 article, the term "economic loss" includes a lost scholarship as
89 defined in this section.

90 (f)(1) "Allowable expense" means reasonable charges
91 incurred or to be incurred for reasonably needed products,
92 services and accommodations, including those for medical care,
93 mental health counseling, prosthetic devices, eye glasses,
94 dentures, rehabilitation and other remedial treatment and care.

95 (2) Allowable expense includes a total charge not in excess
96 of six thousand dollars for expenses in any way related to
97 funeral, cremation and burial. It does not include that portion of
98 a charge for a room in a hospital, clinic, convalescent home,
99 nursing home or any other institution engaged in providing
100 nursing care and related services in excess of a reasonable and
101 customary charge for semiprivate accommodations, unless
102 accommodations other than semiprivate accommodations are
103 medically required.

104 (3) Allowable expense also includes:

105 (A) A charge, not to exceed one thousand dollars, for crime
106 scene cleanup;

107 (B) Victim relocation costs, not to exceed one thousand
108 dollars; and

109 (C) Reasonable travel expenses, not to exceed one thousand
110 dollars, for a claimant to attend court proceedings that are
111 conducted for the prosecution of the offender.

112 (g) "Work loss" means loss of income from work that the
113 injured person would have performed if he or she had not been
114 injured and expenses reasonably incurred or to be incurred by
115 him or her to obtain services in lieu of those he or she would
116 have performed for income, reduced by any income from
117 substitute work actually performed or to be performed by him
118 or her, or by income he or she would have earned in available
119 appropriate substitute work that he or she was capable of
120 performing but unreasonably failed to undertake.

121 (h) "Replacement services loss" means expenses reasonably
122 incurred or to be incurred in obtaining ordinary and necessary
123 services in lieu of those the injured person would have per-
124 formed, not for income but for the benefit of himself or herself
125 or his or her family, if he or she had not been injured.

126 (i) "Dependent's economic loss" means loss after a victim's
127 death of contributions or things of economic value to his or her
128 dependents, not including services they would have received
129 from the victim if he or she had not suffered the fatal injury,
130 less expenses of the dependents avoided by reason of the
131 victim's death.

132 (j) "Dependent's replacement service loss" means loss
133 reasonably incurred or to be incurred by dependents after a
134 victim's death in obtaining ordinary and necessary services in
135 lieu of those the victim would have performed for their benefit
136 if he or she had not suffered the fatal injury, less expenses of
137 the dependents avoided by reason of the victim's death and not
138 subtracted in calculating dependent's economic loss.

139 (k) "Victim" means a person who suffers personal injury or
140 death as a result of any one of the following: (1) Criminally
141 injurious conduct; (2) the good faith effort of the person to
142 prevent criminally injurious conduct; or (3) the good faith effort
143 of the person to apprehend a person that the injured person has
144 observed engaging in criminally injurious conduct or who the
145 injured person has reasonable cause to believe has engaged in
146 criminally injurious conduct immediately prior to the attempted
147 apprehension.

148 (l) "Contributory misconduct" means any conduct of the
149 claimant, or of the victim through whom the claimant claims an
150 award, that is unlawful or intentionally tortious and that,
151 without regard to the conduct's proximity in time or space to
152 the criminally injurious conduct, has causal relationship to the
153 criminally injurious conduct that is the basis of the claim and
154 shall also include the voluntary intoxication of the claimant,
155 either by the consumption of alcohol or the use of any con-
156 trolled substance when the intoxication has a causal connection
157 or relationship to the injury sustained. The voluntary intoxica-
158 tion of a victim is not a defense against the estate of a deceased
159 victim.

160 (m) "Lost scholarship" means a scholarship, academic
 161 award, stipend or other monetary scholastic assistance which
 162 had been awarded or conferred upon a victim in conjunction
 163 with a postsecondary school educational program and, which
 164 the victim is unable to receive or use, in whole or in part, due
 165 to injuries received from criminally injurious conduct.

CHAPTER 77

(H. B. 2482 — By Delegate Pino)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §62-8-1 of the Code of West Virginia, 1931, as amended, relating to including jails within the context certain criminal acts by incarcerated persons; providing a specific crime for setting fire to a correctional facility or jail; and including the Executive Director of the Regional Jail and Correctional Facility Authority relative to the applicability of the phrase "a person imprisoned or otherwise in custody of" to the statutory provisions.

Be it enacted by the Legislature of West Virginia:

That §62-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-1. Offenses by inmates; conspiracy.

1 A person imprisoned or otherwise in the custody of the
 2 Commissioner of Corrections or the Executive Director of the

3 Regional Jail and Correctional Facility Authority is guilty of a
4 felony if he or she kills, wounds or inflicts other bodily injury
5 upon any person at any correctional facility; or breaks, cuts or
6 injures, or sets fire to any building, fixture or fastening of any
7 correctional facility, or jail or any part thereof, for the purpose
8 of escaping or aiding any other inmate to escape therefrom, or
9 renders any correctional facility or jail less secure as a place of
10 confinement; or makes, procures, secretes or has in his or her
11 possession, any instrument, tool or other thing for such purpose,
12 or with intent to kill, wound or inflict bodily injury; or resists
13 the lawful authority of an officer or guard of any correctional
14 facility or jail for such purpose or with such intent. Any three
15 or more inmates so confined, or in such custody, who conspire
16 together to commit any offense mentioned in this section are
17 each guilty of a felony.

CHAPTER 78

(S. B. 550 — By Senators Prezioso, Foster, Hunter and Jenkins)

[Passed April 8, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-14, relating to designation of rural hospitals for purposes of the Critical Access Hospital Program.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5B-14, to read as follows:

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.**§16-5B-14. The Critical Access Hospital Designation Act.**

1 A hospital located in an urban area (Metropolitan Statistical
2 Areas (MSA) County), can be considered rural for the purposes
3 of a designation as a critical access hospital pursuant to 42 U.
4 S. C. §1395i-4(c)(2) if it meets the following criteria:

5 (1) Is enrolled as both a Medicaid and Medicare provider
6 and accepts assignment for all Medicaid and Medicare patients;

7 (2) Provides emergency health care services to indigent
8 patients;

9 (3) Maintains 24-hour emergency services; and

10 (4) Is located in a county that has a rural population of fifty
11 percent or greater as determined by the most recent United
12 States decennial census.

CHAPTER 79

**(Com. Sub. for H. B. 2592 — By Delegates Beane,
Spencer, Cann and Michael)**

[Passed March 30, 2005; in effect July 1, 2005.]

[Approved by the Governor April 18, 2005.]

AN ACT to amend and reenact §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-22A-9a, all relating to the Design-Build

Procurement Act; definitions; authorizing reimbursement of expenses for Design-Build Board members; clarifying the duties of the Board; modifying requirements for approval of design-build projects; clarifying that authority to enter into design-build contracts terminates when Board terminates; requiring monthly progress reports on design-build projects; requiring annual reports; revising rule-making authority and requirements; specifying requirements for performance criteria developers; establishing requirements for issuing invitations for qualifications and proposals; providing for selection of qualified design-builders; revising proposal requirements; revising submission requirements; and changing the continuation date for the Board.

Be it enacted by the Legislature of West Virginia:

That §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said article be amended by adding thereto a new section, designated §5-22A-9a, all to read as follows:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

- §5-22A-2. Definitions.
- §5-22A-3. Public policy; conditions for contract.
- §5-22A-4. Design-build board and members; appointments; expense reimbursement; meetings.
- §5-22A-5. Duties of board to approve and monitor projects.
- §5-22A-6. Design-build rules.
- §5-22A-7. Design-builder qualifications; duties and powers.
- §5-22A-8. Development of performance criteria.
- §5-22A-9a. Invitation for qualifications; selection of design-builders.
- §5-22A-10. Invitation for proposals.
- §5-22A-11. Proposals.
- §5-22A-12. Acceptance of design-build proposal.
- §5-22A-15. Continuation of design-build board.

§5-22A-2. Definitions.

- 1 For the purpose of this article:

2 (1) "Agency" means all state departments, agencies,
3 authorities, quasi-public corporations and all political subdivi-
4 sions, including cities, counties, boards of education and public
5 service districts and the individual representatives of the agency
6 appointed to oversee or supervise the project.

7 (2) "Board" means the Design-Build Board established
8 pursuant to section four of this article to determine whether a
9 public project satisfies the requirements of this article.

10 (3) "Design-build" is defined as providing responsibility
11 within a single contract for design, construction or alteration of
12 a building or buildings, together with incidental approaches,
13 structures and facilities to be constructed, in which services
14 within the scope of the practice of professional engineering or
15 architecture, as defined by the laws of the State of West
16 Virginia, are performed by an engineer or architect duly
17 licensed in the State of West Virginia and in which services
18 within the scope of construction contracting, as defined by the
19 laws of the State of West Virginia, are performed by a contrac-
20 tor qualified and licensed under the applicable statutes. The
21 design-build method of construction may not be used for any
22 other construction projects, such as highway, water or sewer
23 projects.

24 (4) "Design-build contract" means the contract between an
25 agency and a design-builder to furnish the architecture, engi-
26 neering, and related services as required, for a given public
27 project, and to furnish the labor, materials and other construc-
28 tion of services for the same public project. A design-build
29 contract may be conditional upon subsequent refinements in
30 scope and price, and may permit the agency to make changes in
31 the scope of the project without invalidating the design-build
32 contract.

33 (5) "Design-builder" means the entity, whether natural
34 person, partnership, joint venture, corporation, professional

35 corporation, business association or other legal entity, that
36 proposes to design and construct any public project governed by
37 the procedures of section seven, article six of this chapter and
38 this article.

39 (6) “Firm” means any individual, firm, partnership,
40 corporation, limited liability company, limited liability partner-
41 ship, association, joint venture or other legal entity permitted by
42 law to practice engineering, architecture or construction
43 contracting in the State of West Virginia.

44 (7) “Invitation for proposals” means the document or
45 publication by which an agency solicits proposals for a design-
46 build project.

47 (8) “Invitation for qualifications” means the document or
48 publication by which an agency solicits a statement of qualifi-
49 cations from potential design-builders in order to select three to
50 five design-builders to respond to the agency’s invitation for
51 proposal.

52 (9) “Performance criteria” means the requirements for the
53 public project, including as appropriate, aesthetics, capacity,
54 durability, production standard, ingress and egress requirements
55 or other criteria for the intended use of the public project,
56 expressed in performance-oriented drawings and specifications
57 suitable to allow the design-builder to make a proposal.

58 (10) “Performance criteria developer” means an architect
59 or engineer licensed under the laws of this state and, if applica-
60 ble, the architect’s or engineer’s employer, company, partners,
61 joint venturers, affiliates or subcontractors retained by the
62 agency to develop performance criteria and to serve as the
63 agency’s technical advisor.

64 (11) “Project” means that project described in the public
65 announcement.

66 (12) "Proposal" means an offer to enter into a design-build
67 contract, as further defined in this article.

68 (13) "Qualified design-builder" means one of the three to
69 five design-builders selected by the agency to respond to the
70 invitation for proposals.

71 (14) "Responsive proposal" means a proposal that scores a
72 minimum of seventy points out of a possible one hundred points
73 in the qualitative evaluation.

74 (15) "Statement of qualifications" means descriptive
75 information or other data submitted by a design-builder
76 indicating its ability to satisfy the requirements set forth in the
77 invitation for qualifications.

78 (16) "Substantial completion" means the stage in the
79 progress of the work when the work or designated portion
80 thereof is sufficiently complete in accordance with the design-
81 build contract so the agency can occupy or utilize the work for
82 its intended use.

83 (17) "Technical review committee" means the group of
84 individuals who have education and experience in the design,
85 construction, operation, administration, and finance require-
86 ments of the project and users of the project selected by the
87 agency to review, evaluate and score the statement of qualifica-
88 tions and invitation for proposal.

89 (18) "Work" means the design, construction and services
90 required by the design-build contract, whether completed or
91 partially completed, and includes all other labor, materials,
92 equipment and services provided or to be provided by the
93 design-builder to fulfill the design-builder's obligations. The
94 work may constitute the whole or a part of the project.

§5-22A-3. Public policy; conditions for contract.

1 (a) Recognizing that the design-bid-build method provides
2 a viable delivery method for public projects, it is the public
3 policy of this state to permit an agency to enter into design-
4 build contracts for public projects.

5 (b) An agency may not enter into a design-build contract for
6 a public project unless:

7 (1) The Department of Administration promulgates and
8 publishes legislative rules pursuant to section six of this article,
9 and consistent with this article for the solicitation and award of
10 design-build contracts and adheres to this article and those
11 rules;

12 (2) The agency, for each public project or projects procured
13 pursuant to this article, determines that it is in the best interest
14 of the public to enter into a design-build contract to complete
15 the public project or projects and adheres to this article and the
16 rules; and

17 (3) The Board established pursuant to section four of this
18 article determines that the public project is appropriate as a
19 design-build project utilizing the mandatory criteria as provided
20 in section five of this article.

21 (c) When the Design-Build Board, established pursuant to
22 section four of this article, is terminated pursuant to the Acts of
23 the Legislature, no agency may enter into a design-build
24 contract: *Provided*, That agencies may pursue and complete any
25 design-build projects approved by the Board prior to its
26 termination date.

**§5-22A-4. Design-Build Board and members; appointments;
expense reimbursement; meetings.**

1 (a) The Design-Build Board is continued within the
2 Department of Administration and is composed of the following
3 nine members who are appointed by the Governor with the
4 advice and consent of the Senate: Two contractors licensed in
5 the State of West Virginia; one architect licensed in the State of
6 West Virginia; one professional engineer licensed in the State
7 of West Virginia; the Secretary of the Department of Adminis-
8 tration, ex officio; one representative from labor; and three
9 other members of the public at large. Members of the Board are
10 not entitled to compensation for services performed as mem-
11 bers, but may be reimbursed for actual and necessary expenses
12 incurred for each day in which he or she is engaged in the
13 discharge of official business, in accordance with rules promul-
14 gated pursuant to section eleven, article three, chapter twelve of
15 this code and travel management policies adopted by the
16 Department of Administration. Each member of the Board shall
17 take and subscribe to the oath or affirmation required pursuant
18 to section five, article IV of the Constitution of West Virginia.

19 (b) Terms of office are for three years, staggered in accor-
20 dance with the initial appointments under prior enactment of
21 this section, each term ending on the same day of the same
22 month of the year as did the term which it succeeds. Each
23 member holds office from the date of his or her appointment or
24 until his or her successor qualifies for office. When a vacancy
25 occurs as a result of death, resignation or removal in the
26 membership of the Board, the Governor shall fill the vacancy
27 by an appointment within thirty days of the vacancy for the
28 unexpired portion of the term in the same manner as original
29 appointments.

30 (c) The Board shall elect a chairperson and other necessary
31 officers. The Board shall adopt rules for its procedures. Five
32 members of the Board is a quorum. A majority of the total
33 membership is necessary to act at all times. Meetings of the
34 Board shall be held upon the call of the Secretary of the

35 Department of Administration, the call of the chairperson or the
36 call of any two members of the Board: *Provided*, That the Board
37 shall meet at least four times each calendar year and all
38 meetings of the Board must be held in accordance with the open
39 governmental proceedings act as set out in article nine-a,
40 chapter six of this code.

§5-22A-5. Duties of board to approve and monitor projects.

1 (a) Upon receipt of information that an agency wants to
2 pursue the design-build method of project delivery, the Board,
3 with the administrative support of the Secretary of the Depart-
4 ment of Administration, shall notify the agency that failure to
5 comply with the requirements of this article is a violation of
6 state law. The Board shall notify the Secretary of the Depart-
7 ment of Administration of any agency knowingly proceeding
8 without meeting the requirements of this article.

9 (b) Prior to an agency issuing an invitation for qualifica-
10 tions for public projects, the Board must determine that the
11 public project is appropriate as a design-build project in
12 accordance with all of the following:

13 (1) The agency has the appropriate legal authority to enter
14 into a design-build contract;

15 (2) The agency requires a project design and construction
16 time line that is faster than the traditional design-bid-build
17 process would allow;

18 (3) The project requires close coordination of design and
19 construction expertise or an extreme amount of coordination;

20 (4) The agency requires early cost commitments;

21 (5) The agency provides a written plan for funding the
22 project including, but not limited to, the funding necessary to
23 pay for design services and construction costs; and

24 (6) The agency has completed and submitted a written
25 application for approval to the Board and requested a meeting
26 with the Board to present its request for approval from the
27 Board.

28 (c) Upon project approval under subsection (b) of this
29 section, the agency shall submit to the Board monthly reports
30 detailing the progress of the approved project. The reports shall
31 continue until the start of construction to ensure that the agency
32 has complied with any requirements established by the Board
33 in its approval of the project. If any requirement is not satisfied,
34 the Board may withdraw its approval of the project at any time
35 prior to the start of construction. If the Board withdraws its
36 approval, the agency may not proceed with the project as a
37 design-build project until the requirements set forth in the
38 board's approval and the requirements of this article are met, as
39 determined by the Board.

40 (d) On or before the first day of January of each year, the
41 Board shall file an annual report with the Joint Committee on
42 Government and Finance, and a copy of the report with the
43 Legislative Librarian, setting forth a description of the projects
44 approved during the preceding year, including copies of
45 monthly monitoring reports submitted to the Board pursuant to
46 subsection (c) of this section.

§5-22A-6. Design-build rules.

1 The Department of Administration shall propose rules for
2 legislative approval pursuant to article three, chapter twenty-
3 nine-a of this code and consistent with this article for the award
4 of design-build contracts, which provide, at a minimum:

5 (1) The procedures to select or designate a performance
6 criteria developer and prepare performance criteria;

7 (2) The application process for approval of a design-build
8 project;

- 9 (3) The procedures for selecting the most qualified design-
10 builders prior to the release of the invitation for proposals;
- 11 (4) The procedures for the preparation and contents of
12 invitations for proposals;
- 13 (5) The procedures for preparing and submitting proposals;
- 14 (6) The procedures for evaluating proposals;
- 15 (7) The procedures for negotiations between the agency and
16 those submitting proposals prior to the acceptance of a pro-
17 posal, if any such negotiations are contemplated;
- 18 (8) The procedures for awarding and executing design-build
19 contracts;
- 20 (9) The procedures for awarding design-build contracts in
21 the event of public emergencies as defined in the applicable
22 statutes; and
- 23 (10) The procedures for acting on formal protests relating
24 to the solicitation or award of design-build contracts.

§5-22A-7. Design-builder qualifications; duties and powers.

- 1 (a) Each design-builder shall be licensed to do business in
2 this state and be a licensed architect or engineer or a general
3 contractor.
- 4 (b) Each design-builder may:
- 5 (1) Assign or sublet the responsibility for professional
6 design services to an architect or engineer licensed in this state.
7 The architect or engineer shall carry, at all times, professional
8 design liability insurance in an appropriate amount as desig-
9 nated by the agency. The architect or engineer may be a full or
10 part-time employee of the design-builder; and

11 (2) Assign or sublet responsibility for construction or other
12 services requiring a contractor's license to persons or entities
13 licensed or otherwise qualified to provide those services in this
14 state.

15 (c) Each design-builder may contract to provide profes-
16 sional services or construction services to the agency that the
17 design-builder is not licensed, registered or otherwise autho-
18 rized to provide so long as those services are assigned or sublet
19 to a firm that is registered, licensed and qualified to provide
20 those services.

§5-22A-8. Development of performance criteria.

1 (a) Each invitation for proposal must contain performance
2 criteria prepared by an architect or engineer licensed under the
3 laws of this state, referred to as the "performance criteria
4 developer." The agency shall select the performance criteria
5 developer in accordance with the requirements of article one,
6 chapter five-g of this code, and shall retain the performance
7 criteria developer through final completion of the project to
8 monitor adherence to the performance criteria.

9 (b) The agency may use its own employees to determine
10 whether the agency should seek to construct a project using the
11 design-build method of construction. The agency may use an
12 employee as its performance criteria developer on projects for
13 which construction costs are estimated to be one million dollars
14 or less.

15 (c) The performance criteria developer and his or her
16 employer, company, partners, joint venturers, affiliates or
17 consultants may not submit a proposal to enter into the design-
18 build contract and may not perform services under the design-
19 build contract.

20 (d) The performance criteria developer may delegate the
21 development of specific aspects of the design criteria to an
22 architect or engineer licensed by this state and his or her
23 employer, company, partners, joint venturers, affiliates or other
24 consultants.

§5-22A-9a. Invitation for qualifications; selection of design-builders.

1 (a) The agency shall publish an invitation for qualifications
2 which provides, at a minimum:

3 (1) A descriptive narrative of the type, scope and size of the
4 proposed work;

5 (2) The evaluation criteria for selecting the three to five
6 qualified design-builders; and

7 (3) A request for descriptive information or data supporting
8 a design-builder's claim to be able to perform the work,
9 including, but not limited to:

10 (A) Licensing, insurance and evidence of good standing
11 with the State of West Virginia and the agency;

12 (B) Bonding ability;

13 (C) Experience and technical expertise;

14 (D) History of past performance;

15 (E) Qualifications, experience and licenses of key manage-
16 ment and professional staff including contractors, architects and
17 engineers;

18 (F) Staffing capabilities;

19 (G) Current workload;

20 (H) Quality control and quality assurance policies and
21 programs; and

22 (I) Safety record, including employee modification rating
23 for the past three years.

24 (b) The agency shall review the statements of qualifications
25 and select not fewer than three nor more than five of the most
26 qualified design-builders to participate in the invitation for
27 proposals. If fewer than three design-builders are determined to
28 be qualified, the agency shall seek approval of the Design-Build
29 Board to continue with the selection process.

30 (c) The agency shall make the results of the selection
31 available to the design-builders within ten working days of the
32 selection.

§5-22A-10. Invitation for proposals.

1 (a) The agency shall prepare an invitation for proposals for
2 the qualified design-builders, which must provide at a mini-
3 mum:

4 (1) The identity of the agency which will award the design-
5 build contract;

6 (2) The procedures to be followed for submitting proposals,
7 the criteria for evaluation of proposals and their relative weight,
8 and the procedures for making awards, including a reference to
9 the requirements of this article, the legislative rules promul-
10 gated pursuant to section six of this article and any specific
11 requirements of the agency;

12 (3) The proposed terms and conditions for the design-build
13 contract;

14 (4) The performance criteria;

15 (5) The description of the drawings, specifications or other
16 information to be submitted with the proposal, with guidance as
17 to the form and level of completeness of the drawings, specifi-
18 cations or submittals that will be acceptable;

19 (6) A schedule for planned commencement and completion
20 of the design-build contract;

21 (7) Budget limits for the design-build contract, if any;

22 (8) Requirements or restrictions for the subletting of
23 specific portions of the design-build contract, if any; and

24 (9) Requirements for performance bonds, payment bonds,
25 insurance, professional liability insurance and workers'
26 compensation coverage: *Provided*, That no officer or employee
27 of this state or of any public agency, public authority, public
28 corporation, or other public entity, and no person acting or
29 purporting to act on behalf of such officer or employee or
30 public entity shall require that any performance bond, payment
31 bond, or bid bond required or permitted by this section be
32 obtained from any particular surety company, agent, broker, or
33 producer.

34 (b) The agency shall provide, as applicable, additional
35 information to the design-builder, including, but not limited to,
36 surveys, soils reports, drawings or information regarding
37 existing structures, environmental studies, photographs or
38 references to public records, or other pertinent information.

§5-22A-11. Proposals.

1 (a) Proposals shall be submitted in two separate, clearly
2 identified, sealed packages, with the first containing the
3 technical submission and the second containing the cost
4 submission. If the technical submission and cost submission are
5 not submitted in two separate, clearly identified sealed pack-
6 ages, the Board shall disqualify the submission.

7 (b) Proposals may not be opened until expiration of the
8 time established for making proposals as set forth in the
9 invitation for proposals.

10 (c) The design-builder shall furnish a bid bond not to
11 exceed five percent of the maximum cost of the design-build
12 contract. In the event the proposal is accepted and the design-
13 builder fails to execute the design-build contract, the bid bond
14 will be forfeited.

15 (d) To the extent required in the invitation for proposal, the
16 design-builder shall identify each firm to whom the design-
17 builder proposes to sublet obligations under the design-build
18 contract. At a minimum, the design-builder shall identify each
19 firm responsible for the design and primary construction and
20 their affiliation to the design-builder.

21 (e) The design-builder shall specify in the proposal the cost
22 of the design-build contract that will not be exceeded if the
23 proposal is accepted without change. After award of the
24 proposal, the maximum cost of the proposal may be converted
25 to fixed prices by negotiated agreement between the agency and
26 the design-builder.

27 (f) Prior to the award of the design-build contract, all
28 drawings, specifications and other information submitted in the
29 proposal shall remain the property of the design-builder
30 submitting the proposal. Additionally, prior to the award of the
31 design-build contract, the agency shall maintain the secrecy and
32 confidentiality of all information contained in the proposal.
33 Once a proposal is accepted, the disclosure of the proposal and
34 the information in the proposal, and the ownership of the
35 drawings, specifications and information therein, shall be
36 determined in accordance with existing law and the terms of the
37 design-build contract.

38 (g) Proposals may not be amended during the review
39 process.

40 (h) At the discretion of the agency, a stipend may be paid
41 to the design-builders not ultimately selected.

§5-22A-12. Acceptance of design-build proposal.

1 (a) The design-builder shall submit the proposal to the
2 agency as required in the invitation for proposals. Clarifications
3 may be required to ensure conformance of proposals with the
4 performance criteria. In seeking clarifications, the performance
5 criteria developer may not reveal any aspect of any proposal to
6 any other design-builder. The performance criteria developer
7 must certify that the proposal complies with the performance
8 criteria.

9 (b) In the event the agency receives fewer than three
10 proposals, the Board shall, in consultation with the Secretary of
11 the Department of Administration, determine whether the
12 agency may proceed or shall start the invitations for qualifica-
13 tions process over.

14 (c) After receiving the proposals, the technical review
15 committee shall evaluate and score the technical submissions
16 based upon the criteria and procedures set forth in the invitation
17 for proposals.

18 (d) The agency shall submit the technical submissions,
19 including the scores of the technical submissions, to the Board.
20 The agency shall make the scores of the technical submissions
21 available for public review.

22 (e) The Board shall ascertain that the technical submissions
23 comply with the requirements of this article and shall notify the
24 agency of its approval. The agency shall open the cost submis-
25 sions and accept the proposal that receives the best score, as set

26 forth in the legislative rules promulgated pursuant to section six
27 of this article.

28 (f) The agency shall notify the design-builder in writing that
29 its proposal was accepted. At the same time notice of accep-
30 tance is delivered, the agency shall also inform, in writing, the
31 design-builders whose proposals were not accepted. When a
32 design-builder receives notification that its proposal was not
33 accepted, the design-builder may, within three days after receipt
34 of such notification, request in writing a copy of the scores and
35 all other factors used or considered in the selection process.

§5-22A-15. Continuation of Design-Build Board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Design-Build Board shall continue to exist until the
3 first day of July, two thousand eight, unless sooner terminated,
4 continued or reestablished.

CHAPTER 80

(S. B. 639 — By Senators Fanning, Harrison and Minard)

[Passed April 8, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, all relating to digital signatures generally; defining certain terms; providing for use of an electronic postmark; authorizing promulgation of an emergency rule; and authorizing use of a federal certificate authority and repository program.

Be it enacted by the Legislature of West Virginia:

That §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND TRANSACTIONS.

§39A-3-1. Definitions.

§39A-3-2. Acceptance of electronic signature by governmental entities in satisfaction of signature requirement.

§39A-3-3. Duties of the Secretary of State; state agencies use of electronic signatures.

§39A-3-1. Definitions.

1 (1) "Certificate" means a computer-based record that:

2 (A) Identifies the certification authority issuing it;

3 (B) Names or identifies its subscriber;

4 (C) Contains the subscriber's public key; and

5 (D) Is digitally signed by the certification authority
6 issuing it.

7 (2) "Certification authority" means a person who issues a
8 certificate.

9 (3) "Digital mark" consists of an electronic code indicating
10 approval or confirmation which is entered into a protected
11 digital record following access protocols which identify the user
12 and require a password, personal identification number,
13 encrypted card or other security device which restricts access to
14 one or more authorized individuals; and

15 (4) "Digital signature" consists of a message transformed
16 using an asymmetric cryptosystem so that a person having the

17 initial message and the signer's public key can accurately
18 determine:

19 (A) Whether the transformed message was created using the
20 private key that corresponds to the signer's public key; and

21 (B) Whether the initial message has been altered since the
22 message was transformed.

23 (5) "Electronic postmark" means an electronic service
24 provided by the United States Postal Service that provides
25 evidentiary proof that an electronic document existed in a
26 certain form at a certain time and that an electronic document
27 was opened or the contents of the electronic document were
28 displayed at a time and date documented by the United States
29 Post Office.

30 (6) "Federal certificate authority and repository program"
31 means an official program established by an agency of the
32 United States government for the issuance and authentication
33 of digital signature certificates or other secure electronic
34 authorizations to individuals for use in electronic transactions.

**§39A-3-2. Acceptance of electronic signature by governmental
entities in satisfaction of signature requirement.**

1 (a) Any governmental entity may, by appropriate official
2 action, authorize the acceptance of electronic signatures in lieu
3 of original signatures on messages or filings requiring one or
4 more original signatures, subject to the requirements and
5 limitations of section three of this article.

6 (b) Any governmental entity may elect to participate and
7 utilize the Secretary of State's digital signature authority and
8 registry. Upon acceptance of and registration with the Secretary
9 of State's digital signature authority and registry, the govern-

10 mental entity's electronic transactions are bound to the regula-
11 tion of the authority and registry and the rules promulgated
12 thereunder. Any governmental entity not required to partici-
13 pate, but which elects to participate, may withdraw at any time
14 from the program upon notification of the Secretary of State
15 and all others who utilize that entity's digital signature pro-
16 gram.

17 (c) Any governmental entity may adopt, in the manner
18 provided by law, an ordinance, rule or official policy designat-
19 ing the documents on which electronic signatures, electronic
20 postmarks or both are authorized and the type or types of
21 electronic signatures which may be accepted for each type of
22 document. Those governmental entities not subject to the
23 provisions of chapter twenty-nine-a of this code which propose
24 to authorize the acceptance of electronic signatures, electronic
25 postmarks or both on documents filed with that entity shall give
26 public notice of the proposed adoption in a manner prescribed
27 by law, an ordinance, rule or official policy, but in no case for
28 less than thirty days before adoption.

29 (d) Any governmental entity which intends to extend,
30 modify or revoke the authority to accept electronic signatures
31 or postmarks shall do so by the same means and with the same
32 notice as required in this section for adoption.

**§39A-3-3. Duties of the Secretary of State; state agencies use of
electronic signatures.**

1 (a) The Secretary of State shall propose emergency and
2 legislative rules for promulgation in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code to
4 establish standards and processes to facilitate the use of
5 electronic signatures in all governmental transactions by state
6 agencies subject to chapter twenty-nine-a of this code. The
7 rules shall include minimum standards for secure transactions

8 to promote confidence and efficiency in legally binding
9 electronic document transactions. The rules may be amended
10 from time to time to keep the rules current with new develop-
11 ments in technology and improvements in secured transaction
12 processes.

13 (b) The Secretary of State is designated the certification
14 authority and repository for all governmental agencies which
15 are subject to chapter twenty-nine-a of this code and shall
16 regulate transactions and digital signature verifications. The
17 Secretary may enter into reciprocal agreements with all state
18 and federal governmental entities to promote the efficient
19 governmental use of electronic transactions. The Secretary of
20 State may propose legislative rules for issuing certificates that
21 bind public keys to individuals, and other electronic transaction
22 authentication devices as provided in this article. The Secretary
23 of State is further authorized to contract with a public or private
24 entity to serve as certification authority for the State of West
25 Virginia. The certification authority may contract with persons
26 to provide certification services. Any contract entered into
27 must require the certification authority to meet the requirements
28 of this article and any rules promulgated by the Secretary of
29 State.

30 (c) Nothing contained in this article may be construed to
31 mandate any specific form of technology, process or standard
32 to be the only technology, process or standard which may be
33 utilized by state entities. Nor may anything contained in this
34 article be construed to limit the Secretary of State in adopting
35 by legislative rule, alternative technologies to authorize
36 electronic signatures and electronic postmarks.

37 (d) Nothing contained in this article may be construed to
38 authorize the use of electronic signatures, electronic postmarks,
39 or both, to effect service of a summons and complaint.

CHAPTER 81

(H. B. 2368 — By Delegate Stalnaker)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §19-20A-5 of the Code of West Virginia, 1931, as amended, relating to vaccination of dogs and cats; increasing the veterinary fee for vaccinating dogs and cats for rabies from four dollars to eight dollars each.

Be it enacted by the Legislature of West Virginia:

That §19-20A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-5. Type of vaccine to be furnished; fee.

1 It shall be the duty of the veterinarian, or person vaccinat-
2 ing each animal to furnish vaccine of a type capable of estab-
3 lishing and maintaining immunity for a period of not less than
4 twenty-four months and he or she shall charge and collect a fee
5 of not more than eight dollars for each animal vaccinated, if
6 done at a clinic established by a county commission or, if
7 vaccinated at any other place, he or she shall charge and collect
8 a reasonable fee for his or her services.

CHAPTER 82

(H. B. 2078 — By Delegate Caputo)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20B-1, §19-20B-2, §19-20B-3, §19-20B-4, §19-20B-5 and §19-20B-6, all relating to requiring the spaying or neutering of dogs and cats adopted by shelters; requiring all shelters to require that dogs or cats adopted be spayed or neutered; establishing time-frames for spaying or neutering; requiring a deposit for adoptions in which the dog or cat has not yet been spayed or neutered upon adoption; providing for return of deposit upon proof of spaying or neutering; providing for use of deposit upon failure to reclaim deposit; allowing agency to petition for return of any dog or cat not timely neutered or spayed; and establishing penalties for noncompliance.

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 §19-20B-1, §19-20B-2, §19-20B-3, §19-20B-4, §19-20B-5 and §19-20B-6, all to read as follows:

ARTICLE 20B. SPAYING OR NEUTERING OF DOGS AND CATS.

§19-20B-1. Short title.

§19-20B-2. Requirement for adoption.

§19-20B-3. Deposit.

§19-20B-4. Petition for compliance.

§19-20B-5. Penalty.

§19-20B-6. Dogs or cats claimed by owner.

§19-20B-1. Short title.

1 This article may be cited as the “West Virginia
2 Spay/Neuter Act.”

§19-20B-2. Requirement for adoption.

1 (a) No person may adopt a dog or cat from an agency,
2 including, but not limited to, an animal shelter, animal control
3 agency or humane shelter operated by a municipality, county,
4 or other governmental agency within the state, or a private
5 organization operating a shelter from which animals are
6 adopted or reclaimed, unless:

7 (1) The dog or cat has already been spayed or neutered;

8 (2) The dog or cat has been spayed or neutered by a
9 licensed veterinarian while in the custody of the agency; or

10 (3) The new owner signs a written agreement with the
11 agency stating that the new owner will have the dog or cat
12 spayed or neutered by a licensed veterinarian:

13 (A) Within thirty days of the date of the adoption, if the dog
14 or cat is sexually mature; or

15 (B) Within thirty days after the dog or cat reaches six
16 months of age, if the dog or cat is not sexually mature at the
17 time of the adoption.

18 (b) Any agency as set forth in subsection (a) of this section
19 which has written policy of not permitting the adopted dog or
20 cat from being released from the custody of the agency to the
21 new owner until the dog or cat has been spayed or neutered,
22 does not have to comply with the provisions of subdivision (3),
23 subsection (a) of this section.

24 (c) Nothing in this section precludes the spaying or neuter-
25 ing of a sexually immature dog or cat at the discretion of a
26 licensed veterinarian with the consent of the new owner.

§19-20B-3. Deposit.

1 (a) If the dog or cat being adopted has not been spayed or
2 neutered, the agency may require a deposit of not more than
3 fifty dollars from the new owner prior to the adoption to ensure
4 that the dog or cat is spayed or neutered. The new owner shall
5 receive a refund of the deposit from the agency upon providing
6 confirmation of the spaying or neutering.

7 (b) If the new owner fails to have the dog or cat spayed or
8 neutered within the time frame established in section two of this
9 article, or if the spaying or neutering is timely performed, but
10 the new owner fails to request the return of the deposit within
11 an additional thirty days after the date by which the spaying or
12 neutering is required to be performed, the deposit shall be
13 forfeited to the agency holding the deposit and shall be used by
14 the agency to conduct programs to spay or neuter dogs and cats
15 or to conduct educational programs in support of the spaying
16 and neutering of dogs and cats.

§19-20B-4. Petition for compliance.

1 If a person fails to comply with the provisions of this
2 article, the agency may file a petition with a court of competent
3 jurisdiction seeking compliance or requesting return of the dog
4 or cat to the agency from which it was adopted.

§19-20B-5. Penalty.

1 A person failing to have a dog or cat spayed or neutered
2 within the time frame established in section two of this article
3 is guilty of a misdemeanor and, upon conviction thereof, shall

- 4 be fined not less than one hundred fifty dollars nor more than
- 5 two hundred fifty dollars.

§19-20B-6. Dogs or cats claimed by owner.

- 1 Nothing in this article authorizes an agency to spay or
- 2 neuter a dog or cat if the dog or cat is claimed by and returned
- 3 to its lawful owner within five days of being taken into custody
- 4 by the agency.

CHAPTER 83

**(Com. Sub. for H. B. 3178 — By Delegates Brown,
Amores, Staton, Webster, Hrutkay and Mahan)**

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §48-5-608 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-27-401, §48-27-503, §48-27-504, §48-27-902 and §48-27-1001 of said code, all relating to domestic violence generally; extending protection to any residence; expanding bases for temporary protective orders; and providing authority to arrest for violations of out of state court orders.

Be it enacted by the Legislature of West Virginia:

That §48-5-608 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §48-27-401, §48-27-503, §48-27-504, §48-27-902 and §48-27-1001 of said code be amended and reenacted, all to read as follows:

Article**5. Divorce.****27. Prevention and Treatment of Domestic Violence.****ARTICLE 5. DIVORCE.****§48-5-608. Injunctive relief or protective orders.**

1 (a) When allegations of abuse have been proved, the court
2 shall enjoin the offending party from molesting or interfering
3 with the other, or otherwise imposing any restraint on the
4 personal liberty of the other or interfering with the custodial or
5 visitation rights of the other. The order may permanently enjoin
6 the offending party from entering the school, business or place
7 of employment of the other for the purpose of molesting or
8 harassing the other or from entering or being present in the
9 immediate environs of the residence of the petitioner or from
10 contacting the other, in person or by telephone, for the purpose
11 of harassment or threats; or from harassing or verbally abusing
12 the other. The relief afforded by the provisions of this subsection
13 may be ordered whether or not there are grounds for relief
14 under subsection (c) of this section and whether or not an order
15 is entered pursuant to such subsection.

16 (b) Any order entered by the court to protect a party from
17 abuse may grant any other relief authorized to be awarded by
18 the provisions of article twenty-seven of this chapter, if the
19 party seeking the relief has established the grounds for that
20 relief as required by the provisions of said article. The relief
21 afforded by the provisions of this subsection may be ordered
22 whether or not there are grounds for relief under subsection (c)
23 of this section and whether or not an order is entered pursuant
24 to subsection (c) of this section.

25 (c) The court, in its discretion, may enter a protective order,
26 as provided by the provisions of article twenty-seven of this
27 chapter, as part of the final relief in a divorce action, either as
28 a part of a order for final relief or in a separate written order. A

29 protective order entered pursuant to the provisions of this
30 subsection shall remain in effect for the period of time ordered
31 by the court not to exceed one hundred eighty days: *Provided,*
32 That the court may extend the protective order for whatever
33 period the court deems necessary to protect the safety of the
34 petitioner and others threatened or at risk, if the court deter-
35 mines:

36 (A) That a violation of a protective order entered during or
37 extended by the divorce action has occurred; or

38 (B) Upon a motion for modification, that a violation of a
39 provision of a final order entered pursuant to this section has
40 occurred.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-401. Interaction between domestic proceedings.

§48-27-503. Permissive provisions in protective order.

§48-27-504. Provisions in protective order for person witnessing or reporting domestic violence.

§48-27-902. Violations of protective orders; criminal complaints.

§48-27-1001. Arrest for violations of protective orders.

§48-27-401. Interaction between domestic proceedings.

1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article until an
3 order is entered in the divorce action pursuant to Part 5-501, *et*
4 *seq.*;

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to Part 5-501, *et*
12 *seq.*;

13 (c) Except as provided in section 5-509 of this chapter and
14 section 27-402 of this article for a petition and a temporary
15 emergency protective order, no person who is a party to a
16 pending action for divorce, separate maintenance or annulment
17 in which an order has been entered pursuant to Part 5-501, *et*
18 *seq.* of this chapter, shall be entitled to file for or obtain relief
19 against another party to that action under this article until after
20 the entry of a final order which grants or dismisses the action
21 for divorce, annulment or separate maintenance.

22 (d) Notwithstanding the provisions set forth in section
23 27-505, when an action seeking a divorce, an annulment or
24 separate maintenance, the allocation of custodial responsibility
25 or a habeas corpus action to establish custody, the establishment
26 of paternity, the establishment or enforcement of child support,
27 or other relief under the provisions of this chapter is filed or is
28 reopened by petition, motion or otherwise, then any order
29 issued pursuant to this article which is in effect on the day the
30 action is filed or reopened shall remain in full force and effect
31 by operation of this statute until: (1) A temporary order other
32 than a procedural order or a final order is entered pursuant to
33 the provisions of Part 5-501, *et seq.* or Part 6-601 *et seq.* of this
34 chapter; or (2) an order is entered modifying such order issued
35 pursuant to this article; or (3) the entry of a final order granting
36 or dismissing the action.

§48-27-503. Permissive provisions in protective order.

1 The terms of a protective order may include:

2 (1) Granting possession to the petitioner of the residence or
3 household jointly resided in at the time the abuse occurred;

4 (2) Ordering the respondent to refrain from entering or
5 being present in the immediate environs of the residence of the
6 petitioner;

- 7 (3) Awarding temporary custody of or establishing tempo-
8 rary visitation rights with regard to minor children named in the
9 order;
- 10 (4) Establishing terms of temporary visitation with regard
11 to the minor children named in the order including, but not
12 limited to, requiring third party supervision of visitations if
13 necessary to protect the petitioner and/or the minor children;
- 14 (5) Ordering the noncustodial parent to pay to the caretaker
15 parent a sum for temporary support and maintenance of the
16 petitioner and children, if any;
- 17 (6) Ordering the respondent to pay to the petitioner a sum
18 for temporary support and maintenance of the petitioner, where
19 appropriate;
- 20 (7) Ordering the respondent to refrain from entering the
21 school, business or place of employment of the petitioner or
22 household or family members for the purpose of violating the
23 protective order;
- 24 (8) Ordering the respondent to participate in an intervention
25 program for perpetrators;
- 26 (9) Ordering the respondent to refrain from contacting,
27 telephoning, communicating, harassing or verbally abusing the
28 petitioner;
- 29 (10) Providing for either party to obtain personal property
30 or other items from a location, including granting temporary
31 possession of motor vehicles owned by either or both of the
32 parties, and providing for the safety of the parties while this
33 occurs, including ordering a law-enforcement officer to
34 accompany one or both of the parties;
- 35 (11) Ordering the respondent to reimburse the petitioner or
36 other person for any expenses incurred as a result of the

37 domestic violence, including, but not limited to, medical
38 expenses, transportation and shelter; and

39 (12) Ordering the petitioner and respondent to refrain from
40 transferring, conveying, alienating, encumbering, or otherwise
41 dealing with property which could otherwise be subject to the
42 jurisdiction of the court or another court in an action for divorce
43 or support, partition or in any other action affecting their
44 interests in property.

**§48-27-504. Provisions in protective order for person witnessing
or reporting domestic violence.**

1 When the person to be protected is a person who reported
2 or was a witness to the domestic violence, the terms of a
3 protective order may order:

4 (1) The respondent to refrain from abusing, contacting,
5 telephoning, communicating, harassing, verbally abusing or
6 otherwise intimidating the person to be protected;

7 (2) The respondent to refrain from entering the school,
8 business or place of employment of the person to be protected
9 for the purpose of violating the protective order; and

10 (3) The respondent to refrain from entering or being present
11 in the immediate environs of the residence of the petitioner.

§48-27-902. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location:

3 (1) In knowing and willful violation of the terms of an
4 emergency or final protective order under the provisions of this
5 article or sections 5-509 or 5-608 of this chapter granting the
6 relief pursuant to the provisions of this article;

7 (2) In knowing and willful violation of the terms of a
8 protection order from another jurisdiction that is required to be
9 enforced pursuant to section 3, article 28 of this chapter; or

10 (3) In knowing and willful violation of the terms of a
11 condition of bail, probation or parole imposed in another state
12 which has the express intent or effect of protecting the personal
13 safety of a particular person or persons in violation of section
14 28-7(a)(3) of this chapter then any person authorized to file a
15 petition pursuant to the provisions of section 27-305 or the legal
16 guardian or guardian ad litem may file a petition for civil
17 contempt as set forth in section 27-901.

18 (b) When any such violation of a valid order has occurred,
19 the petitioner may file a criminal complaint. If the court finds
20 probable cause upon the complaint, the court shall issue a
21 warrant for arrest of the person charged.

§48-27-1001. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any respon-
2 dent abuse the petitioner or minor children or the respondent's
3 physical presence at any location in knowing and willful
4 violation of the terms of an emergency or final protective order
5 issued under the provisions of this article or section 5-509 or 5-
6 608 of this chapter granting the relief pursuant to the provisions
7 of this article, in knowing and willful violation of the terms of
8 a protection order from another jurisdiction that is required to
9 be enforced pursuant to section four, article twenty-eight of this
10 chapter, he or she shall immediately arrest the respondent.

11 (b) When a family or household member is alleged to have
12 committed a violation of the provisions of section 27-903 or 28-
13 7, a law-enforcement officer may arrest the perpetrator for said
14 offense where:

15 (1) The law-enforcement officer has observed credible
16 corroborative evidence, as defined in subsection 27-1002(b),
17 that the offense has occurred; and

18 (2) The law-enforcement officer has received, from the
19 victim or a witness, a verbal or written allegation of the facts
20 constituting a violation of section 27-903; or

21 (3) The law-enforcement officer has observed credible
22 evidence that the accused committed the offense.

23 (c) Any person who observes a violation of a protective
24 order as described in this section, or the victim of such abuse or
25 unlawful presence, may call a local law-enforcement agency,
26 which shall verify the existence of a current order, and shall
27 direct a law-enforcement officer to promptly investigate the
28 alleged violation.

29 (d) Where there is an arrest, the officer shall take the
30 arrested person before a circuit court or a magistrate and, upon
31 a finding of probable cause to believe a violation of an order as
32 set forth in this section has occurred, the court or magistrate
33 shall set a time and place for a hearing in accordance with the
34 West Virginia rules of criminal procedure.

CHAPTER 84

(Com. Sub. for S. B. 435 — By Senators Kessler and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-3c

and §17B-3-9 of said code, all relating to consequences of not paying fines and fees; requiring notice of possibility of withholding of income tax refund under certain circumstances; providing that Tax Commissioner may withhold income tax refund under certain circumstances; providing for distribution of income tax refund withheld; providing Tax Commissioner's administrative fee; providing Tax Commissioner authority to promulgate rules; authorizing reissuance of notice by municipal court under certain circumstances; providing for continuance of driver's license suspension under certain circumstances; creating fund for administrative fee and providing for expenditures from the fund; providing for consequences of erroneous imposition of fines or fees; and increasing fees.

Be it enacted by the Legislature of West Virginia:

That §8-10-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-3c and §17B-3-9 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 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

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

- 1 (a) If costs, fines, forfeitures or penalties imposed by the
- 2 municipal court upon conviction of a person for a criminal
- 3 offense as defined in section three-c, article three, chapter
- 4 seventeen-b of this code are not paid in full within one hundred
- 5 eighty days of the judgment, the municipal court clerk or, upon
- 6 a judgment rendered on appeal, the circuit clerk shall notify the

7 Division of Motor Vehicles of the failure to pay: *Provided,*
8 That at the time the judgment is imposed, the judge shall
9 provide the person with written notice that failure to pay the
10 same as ordered may result in the withholding of any income
11 tax refund due the licensee and shall result in the suspension of
12 the person's license or privilege to operate a motor vehicle in
13 this state and that the suspension could result in the cancellation
14 of, the failure to renew or the failure to issue an automobile
15 insurance policy providing coverage for the person or the
16 person's family: *Provided, however,* That the failure of the
17 judge to provide notice does not affect the validity of any
18 suspension of the person's license or privilege to operate a
19 motor vehicle in this state. For purposes of this section,
20 payment shall be stayed during any period an appeal from the
21 conviction which resulted in the imposition of costs, fines,
22 forfeitures or penalties is pending.

23 Upon notice, the Division of Motor Vehicles shall suspend
24 the person's driver's license or privilege to operate a motor
25 vehicle in this state until such time that the costs, fines, forfei-
26 tures or penalties are paid.

27 (b) Notwithstanding the provisions of this section to the
28 contrary, the notice of the failure to pay costs, fines, forfeitures
29 or penalties may not be given where the municipal court, upon
30 application of the person upon whom the costs, fines, forfei-
31 tures or penalties were imposed filed prior to the expiration of
32 the period within which these are required to be paid, enters an
33 order finding that the person is financially unable to pay all or
34 a portion of the costs, fines, forfeitures or penalties: *Provided,*
35 That where the municipal court, upon finding that the person is
36 financially unable to pay a portion of the costs, fines, forfeitures
37 or penalties, requires the person to pay the remaining portion,
38 the municipal court shall notify the Division of Motor Vehicles
39 of the person's failure to pay if not paid within the period of
40 time ordered by the court.

41 (c) If a person charged with a criminal offense fails to
42 appear or otherwise respond in court, the municipal court clerk
43 shall notify the Division of Motor Vehicles within fifteen days
44 of the scheduled date to appear unless the person sooner
45 appears or otherwise responds in court to the satisfaction of the
46 judge. Upon notice, the Division of Motor Vehicles shall
47 suspend the person's driver's license or privilege to operate a
48 motor vehicle in this state until such time that the person
49 appears as required.

50 (d) On and after the first day of July, two thousand eight, if
51 the licensee fails to respond to the Division of Motor Vehicles
52 order of suspension within ninety days of receipt of the certified
53 letter, the municipal court of original jurisdiction shall notify
54 the Tax Commissioner that the licensee has failed to pay the
55 costs, fines, forfeitures or penalties assessed by the court or has
56 failed to respond to the citation. The notice provided by the
57 municipal court to the Tax Commissioner must include the
58 licensee's social security number. The Tax Commissioner, or
59 his or her designee, shall withhold from any personal income
60 tax refund due and owing to a licensee the costs, fines, forfei-
61 tures or penalties due to the municipality, the Tax Commis-
62 sioner's administration fee for the withholding and any and all
63 fees that the municipal court would have collected had the
64 licensee appeared: *Provided*, That the Tax Commissioner's
65 administration fee may not exceed twenty-five dollars:
66 *Provided, however*, That the Tax Commissioner may change
67 this maximum amount limitation for this fee for fiscal years
68 beginning on or after the first day of July, two thousand eight,
69 by legislative rule promulgated in accordance with the provi-
70 sions of article three, chapter twenty-nine-a of this code:
71 *Provided further*, That the administrative fees deducted shall be
72 deposited in the special revolving fund hereby created in the
73 state treasury, which shall be designated as the "municipal fines
74 and fees collection fund", and the Tax Commissioner shall

75 make such expenditures from the fund as he or she deems
76 appropriate for the administration of this subsection. After
77 deduction of the Tax Commissioner's administration fee, the
78 Tax Commissioner shall remit to the municipality all remaining
79 amounts withheld pursuant to this section and the municipal
80 court shall distribute applicable costs, fines, forfeitures or
81 penalties owed to the municipality, the Regional Jail Authority
82 Fund, the Crime Victims Compensation Fund, the Community
83 Corrections Fund, the Governor's subcommittee on law-
84 enforcement training or any other fund or payee that may be
85 applicable. After the costs, fines, forfeitures or penalties are
86 withheld, the Tax Commissioner shall refund any remaining
87 balance due the licensee. If the refund is not sufficient to cover
88 all the costs, fines, forfeitures or penalties being withheld
89 pursuant to this section, the Tax Commissioner's administration
90 fee shall be retained by the Tax Commissioner and the remain-
91 ing money withheld shall be remitted by the Tax Commissioner
92 to the municipality. The municipality shall then allocate the
93 money so remitted to the municipality in the following manner:
94 (1) Any costs, fines, forfeitures or penalties due to the munici-
95 pality; (2) seventy-five percent of the remaining balance shall
96 be paid to the appropriate Regional Jail Authority Fund; (3)
97 fifteen percent of the remaining balance shall be paid to the
98 Crime Victims Compensation Fund; (4) six percent of the
99 remaining balance shall be paid into the Community Correc-
100 tions Fund; and (5) the final four percent shall be paid to the
101 Governor's subcommittee on law-enforcement training. When
102 the costs, fines, forfeitures or penalties exceed the licensee's
103 income tax refund, the Tax Commissioner shall withhold the
104 remaining balance in subsequent years until such time as the
105 costs, fines, forfeitures or penalties owed are paid in full. The
106 Tax Commissioner shall remit the moneys that he or she
107 collects to the appropriate municipality no later than the first
108 day of July of each year. If the municipal court or the munici-
109 pality subsequently determines that any such costs, fines,

110 forfeitures or penalties were erroneously imposed, the municipi-
111 pality shall promptly notify the tax commissioner. If the
112 refunds have not been withheld and remitted, the tax commis-
113 sioner may not withhold and remit payment to the municipality
114 and shall so inform the municipality. If the refunds have
115 already been withheld and remitted to the municipality, the tax
116 commissioner shall so inform the municipality. In either event,
117 all refunds for erroneously imposed costs, fines, forfeitures or
118 penalties shall be made by the municipality and not by the tax
119 commissioner.

120 (e) *Rules and effective date.* — The Tax Commissioner may
121 promulgate such rules as may be useful or necessary to carry
122 out the purpose of this section and to implement the intent of
123 the Legislature, to be effective on the first day of July, two
124 thousand eight. Rules shall be promulgated in accordance with
125 the provisions of article three, chapter twenty-nine-a of this
126 code.

127 (f) On or before the first day of July, two thousand five, the
128 municipal court may elect to reissue notice as provided in
129 subsections (a) and (c) of this section to the Division of Motor
130 Vehicles for persons who remain noncompliant: *Provided*, That
131 the person was convicted or failed to appear on or after the first
132 day of January, one thousand nine hundred ninety-three. If the
133 original notification cannot be located, the Division of Motor
134 Vehicles shall accept an additional or duplicate notice from the
135 municipal court clerk.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.

§17B-3-9. Surrender and return of license not required.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.

1 (a) The Division shall suspend the license of any resident
2 of this state or the privilege of a nonresident to drive a motor
3 vehicle in this state upon receiving notice from a circuit court,
4 magistrate court or municipal court of this state, pursuant to
5 section two-b, article three, chapter fifty of this code or section
6 two-b, article ten, chapter eight of said code or section seven-
7 teen, article four, chapter sixty-two of said code, that such
8 person has defaulted on the payment of costs, fines, forfeitures,
9 penalties or restitution imposed on the person by the circuit
10 court, magistrate court or municipal court upon conviction for
11 any criminal offense by the date such court had required such
12 person to pay the same, or that such person has failed to appear
13 in court when charged with such an offense. For the purposes
14 of this section; section two-b, article three, chapter fifty of said
15 code; section two-b, article ten, chapter eight of said code; and
16 section seventeen, article four, chapter sixty-two of said code,
17 "criminal offense" shall be defined as any violation of the
18 provisions of this code, or the violation of any municipal
19 ordinance, for which the violation thereof may result in a fine,
20 confinement in jail or imprisonment in the a correctional
21 facility of this state: *Provided*, That any parking violation or
22 other violation for which a citation may be issued to an unat-
23 tended vehicle shall not be considered a criminal offense for the
24 purposes of this section; section two-b, article ten, chapter eight
25 of said code; section two-b, article three, chapter fifty of said
26 code; or section seventeen, article four, chapter sixty-two of
27 said code.

28 (b) A copy of the order of suspension shall be forwarded to
29 such person by certified mail, return receipt requested. No
30 order of suspension becomes effective until ten days after
31 receipt of a copy of such order. The order of suspension shall

32 advise the person that because of the receipt of notice of the
33 failure to pay costs, fines, forfeitures or penalties, or the failure
34 to appear, a presumption exists that the person named in the
35 order of suspension is the same person named in the notice.
36 The Commissioner may grant an administrative hearing which
37 substantially complies with the requirements of the provisions
38 of section two, article five-a, chapter seventeen-c of this code
39 upon a preliminary showing that a possibility exists that the
40 person named in the notice of conviction is not the same person
41 whose license is being suspended. Such request for hearing
42 shall be made within ten days after receipt of a copy of the
43 order of suspension. The sole purpose of this hearing shall be
44 for the person requesting the hearing to present evidence that he
45 or she is not the person named in the notice. In the event the
46 Commissioner grants an administrative hearing, the Commis-
47 sioner shall stay the license suspension pending the Commis-
48 sioner's order resulting from the hearing.

49 (c) A suspension under this section and section three-a of
50 this chapter will continue until the person provides proof of
51 compliance from the municipal, magistrate or circuit court and
52 pays the reinstatement fee as provided in section nine of this
53 article. The reinstatement fee is assessed upon issuance of the
54 order of suspension regardless of the effective date of suspen-
55 sion.

§17B-3-9. Surrender and return of license not required.

1 The Division, upon suspending or revoking a license, may
2 not require that the license be surrendered to and be retained by
3 the Division. The surrender of a license may not be a precondition
4 to the commencement and tolling of any applicable period
5 of suspension or revocation: *Provided*, That before the license
6 may be reinstated, the licensee shall pay a fee of fifty dollars,
7 in addition to all other fees and charges, which shall be col-
8 lected by the Division and deposited in a special revolving fund

9 to be appropriated to the Division for use in the enforcement of
10 the provisions of this section.

CHAPTER 85

(Com. Sub. for H. B. 2444 — By Delegates Amores,
Palumbo, Pethtel, Stemple and Craig)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-3a, all relating to compliance with federal funding requirements regarding driving under the influence offenders; limiting work release to convictions for a first offense; and the creation of mandatory periods of electronically monitored home confinement.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-3a of said code be amended and reenacted, all to read as follows:

Article

5. Serious Traffic Offenses.

5A. Administration Procedures For suspension And Revocation Of Licenses For Driving Under The Influence Of Alcohol, Controlled Substances Or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of eight
9 hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or fails
11 to perform any duty imposed by law in the driving of the
12 vehicle, which act or failure proximately causes the death of
13 any person within one year next following the act or failure;
14 and

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others, and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the
18 death, is guilty of a felony and, upon conviction thereof, shall
19 be imprisoned in a state correctional facility for not less than
20 one nor more than ten years and shall be fined not less than one
21 thousand dollars nor more than three thousand dollars.

22 (b) Any person who:

23 (1) Drives a vehicle in this state while he or she:

24 (A) Is under the influence of alcohol; or

25 (B) Is under the influence of any controlled substance; or

26 (C) Is under the influence of any other drug; or

27 (D) Is under the combined influence of alcohol and any
28 controlled substance or any other drug; or

29 (E) Has an alcohol concentration in his or her blood of eight
30 hundredths of one percent or more, by weight; and

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure, is
35 guilty of a misdemeanor and, upon conviction thereof, shall be
36 confined in the county or regional jail for not less than ninety
37 days nor more than one year and shall be fined not less than
38 five hundred dollars nor more than one thousand dollars.

39 (c) Any person who:

40 (1) Drives a vehicle in this state while he or she:

41 (A) Is under the influence of alcohol; or

42 (B) Is under the influence of any controlled substance; or

43 (C) Is under the influence of any other drug; or

44 (D) Is under the combined influence of alcohol and any
45 controlled substance or any other drug; or

46 (E) Has an alcohol concentration in his or her blood of eight
47 hundredths of one percent or more, by weight; and

48 (2) When so driving does any act forbidden by law or fails
49 to perform any duty imposed by law in the driving of the
50 vehicle, which act or failure proximately causes bodily injury
51 to any person other than himself or herself, is guilty of a
52 misdemeanor and, upon conviction thereof, shall be confined in

53 the county or regional jail for not less than one day nor more
54 than one year, which jail term is to include actual confinement
55 of not less than twenty-four hours, and shall be fined not less
56 than two hundred dollars nor more than one thousand dollars.

57 (d) Any person who:

58 (1) Drives a vehicle in this state while he or she:

59 (A) Is under the influence of alcohol; or

60 (B) Is under the influence of any controlled substance; or

61 (C) Is under the influence of any other drug; or

62 (D) Is under the combined influence of alcohol and any
63 controlled substance or any other drug; or

64 (E) Has an alcohol concentration in his or her blood of eight
65 hundredths of one percent or more, by weight;

66 (2) Is guilty of a misdemeanor and, upon conviction
67 thereof, shall be confined in the county or regional jail for not
68 less than one day nor more than six months, which jail term is
69 to include actual confinement of not less than twenty-four
70 hours, and shall be fined not less than one hundred dollars nor
71 more than five hundred dollars.

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this state, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in the county or regional
76 jail for not less than one day nor more than six months, which
77 jail term is to include actual confinement of not less than
78 twenty-four hours, and shall be fined not less than one hundred
79 dollars nor more than five hundred dollars.

80 (f) Any person who:

81 (1) Knowingly permits his or her vehicle to be driven in this
82 state by any other person who:

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any
87 controlled substance or any other drug; or

88 (E) Has an alcohol concentration in his or her blood of eight
89 hundredths of one percent or more, by weight;

90 (2) Is guilty of a misdemeanor and, upon conviction
91 thereof, shall be confined in the county or regional jail for not
92 more than six months and shall be fined not less than one
93 hundred dollars nor more than five hundred dollars.

94 (g) Any person who knowingly permits his or her vehicle
95 to be driven in this state by any other person who is an habitual
96 user of narcotic drugs or amphetamine or any derivative
97 thereof, is guilty of a misdemeanor and, upon conviction
98 thereof, shall be confined in the county or regional jail for not
99 more than six months and shall be fined not less than one
100 hundred dollars nor more than five hundred dollars.

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this state while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one
104 percent or more, by weight, but less than eight hundredths of
105 one percent, by weight, for a first offense under this subsection,
106 is guilty of a misdemeanor and, upon conviction thereof, shall
107 be fined not less than twenty-five dollars nor more than one
108 hundred dollars. For a second or subsequent offense under this
109 subsection, the person is guilty of a misdemeanor and, upon

110 conviction thereof, shall be confined in the county or regional
111 jail for twenty-four hours, and shall be fined not less than one
112 hundred dollars nor more than five hundred dollars. A person
113 who is charged with a first offense under the provisions of this
114 subsection may move for a continuance of the proceedings,
115 from time to time, to allow the person to participate in the
116 vehicle alcohol test and lock program as provided for in section
117 three-a, article five-a of this chapter. Upon successful comple-
118 tion of the program, the court shall dismiss the charge against
119 the person and expunge the person's record as it relates to the
120 alleged offense. In the event the person fails to successfully
121 complete the program, the court shall proceed to an adjudica-
122 tion of the alleged offense. A motion for a continuance under
123 this subsection may not be construed as an admission or be used
124 as evidence.

125 A person arrested and charged with an offense under the
126 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
127 this section may not also be charged with an offense under this
128 subsection arising out of the same transaction or occurrence.

129 (i) Any person who:

130 (1) Drives a vehicle in this state while he or she:

131 (A) Is under the influence of alcohol; or

132 (B) Is under the influence of any controlled substance; or

133 (C) Is under the influence of any other drug; or

134 (D) Is under the combined influence of alcohol and any
135 controlled substance or any other drug; or

136 (E) Has an alcohol concentration in his or her blood of eight
137 hundredths of one percent or more, by weight; and

138 (2) The person when so driving has on or within the motor
139 vehicle one or more other persons who are unemancipated
140 minors who have not reached their sixteenth birthday, is guilty
141 of a misdemeanor and, upon conviction thereof, shall be
142 confined in the county or regional jail for not less than two days
143 nor more than twelve months, which jail term is to include
144 actual confinement of not less than forty-eight hours, and shall
145 be fined not less than two hundred dollars nor more than one
146 thousand dollars.

147 (j) A person violating any provision of subsection (b), (c),
148 (d), (e), (f), (g) or (i) of this section, for the second offense
149 under this section, is guilty of a misdemeanor and, upon
150 conviction thereof, shall be confined in the county or regional
151 jail for not less than six months nor more than one year, and the
152 court may, in its discretion, impose a fine of not less than one
153 thousand dollars nor more than three thousand dollars.

154 (k) A person violating any provision of subsection (b), (c),
155 (d), (e), (f), (g) or (i) of this section, for the third or any
156 subsequent offense under this section, is guilty of a felony and,
157 upon conviction thereof, shall be imprisoned in a state correc-
158 tional facility for not less than one nor more than three years,
159 and the court may, in its discretion, impose a fine of not less
160 than three thousand dollars nor more than five thousand dollars.

161 (l) For purposes of subsections (j) and (k) of this section
162 relating to second, third and subsequent offenses, the following
163 types of convictions are to be regarded as convictions under this
164 section:

165 (1) Any conviction under the provisions of subsection (a),
166 (b), (c), (d), (e) or (f) of this section or under a prior enactment
167 of this section for an offense which occurred within the ten-year
168 period immediately preceding the date of arrest in the current
169 proceeding;

170 (2) Any conviction under a municipal ordinance of this
171 state or any other state or a statute of the United States or of any
172 other state of an offense which has the same elements as an
173 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
174 this section, which offense occurred within the ten-year period
175 immediately preceding the date of arrest in the current proceed-
176 ing.

177 (m) A person may be charged in a warrant or indictment or
178 information for a second or subsequent offense under this
179 section if the person has been previously arrested for or charged
180 with a violation of this section which is alleged to have oc-
181 curred within the applicable time period for prior offenses,
182 notwithstanding the fact that there has not been a final adjudica-
183 tion of the charges for the alleged previous offense. In that case,
184 the warrant or indictment or information must set forth the date,
185 location and particulars of the previous offense or offenses. No
186 person may be convicted of a second or subsequent offense
187 under this section unless the conviction for the previous offense
188 has become final.

189 (n) The fact that any person charged with a violation of
190 subsection (a), (b), (c), (d) or (e) of this section, or any person
191 permitted to drive as described under subsection (f) or (g) of
192 this section, is or has been legally entitled to use alcohol, a
193 controlled substance or a drug does not constitute a defense
194 against any charge of violating subsection (a), (b), (c), (d), (e),
195 (f) or (g) of this section.

196 (o) For purposes of this section, the term "controlled
197 substance" has the meaning ascribed to it in chapter sixty-a of
198 this code.

199 (p) The sentences provided herein upon conviction for a
200 violation of this article are mandatory and may not be subject
201 to suspension or probation: *Provided*, That the court may apply

202 the provisions of article eleven-a, chapter sixty-two of this code
203 to a person sentenced or committed to a term of one year or less
204 for a first offense under this section. An order for home
205 detention by the court pursuant to the provisions of article
206 eleven-b of said chapter may be used as an alternative sentence
207 to any period of incarceration required by this section for a first
208 or subsequent offense: *Provided, however,* That for any period
209 of home incarceration ordered for a person convicted of second
210 offense under this section, electronic monitoring shall be
211 required for no fewer than five days of the total period of home
212 confinement ordered and the offender may not leave home for
213 those five days notwithstanding the provisions of section five,
214 article eleven-b, chapter sixty-two of this code: *Provided*
215 *further,* That for any period of home incarceration ordered for
216 a person convicted of a third or subsequent violation of this
217 section, electronic monitoring shall be included for no fewer
218 than ten days of the total period of home confinement ordered
219 and the offender may not leave home for those ten days
220 notwithstanding section five, article eleven-b, chapter sixty-two
221 of this code.

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND
REVOCATION OF LICENSES FOR DRIVING UNDER
THE INFLUENCE OF ALCOHOL, CONTROLLED
SUBSTANCES OR DRUGS.**

**§17C-5A-3a. Establishment of and participation in the motor
vehicle alcohol test and lock program.**

1 (a) The Division of Motor Vehicles shall control and regulate
2 a motor vehicle alcohol test and lock program for persons
3 whose licenses have been revoked pursuant to this article or the
4 provisions of article five of this chapter, or have been convicted
5 under section two, article five of this chapter. The program shall
6 include the establishment of a users fee for persons participat-
7 ing in the program which shall be paid in advance and deposited
8 into the driver's rehabilitation fund. Except where specified

9 otherwise, the use of the term “program” in this section refers
10 to the motor vehicle alcohol test and lock program. The
11 Commissioner of the Division of Motor Vehicles shall propose
12 legislative rules for promulgation in accordance with the
13 provisions of chapter twenty-nine-a of this code for the purpose
14 of implementing the provisions of this section. The rules shall
15 also prescribe those requirements which, in addition to the
16 requirements specified by this section for eligibility to partici-
17 pate in the program, the Commissioner determines must be met
18 to obtain the Commissioner’s approval to operate a motor
19 vehicle equipped with a motor vehicle alcohol test and lock
20 system. For purposes of this section, a “motor vehicle alcohol
21 test and lock system” means a mechanical or computerized
22 system which, in the opinion of the Commissioner, prevents the
23 operation of a motor vehicle when, through the system’s
24 assessment of the blood alcohol content of the person operating
25 or attempting to operate the vehicle, the person is determined to
26 be under the influence of alcohol.

27 (b) (1) Any person whose license is revoked for the first
28 time pursuant to this article or the provisions of article five of
29 this chapter is eligible to participate in the program when the
30 person’s minimum revocation period as specified by subsection
31 (c) of this section has expired and the person is enrolled in or
32 has successfully completed the safety and treatment program or
33 presents proof to the Commissioner within sixty days of
34 receiving approval to participate by the Commissioner that he
35 or she is enrolled in a safety and treatment program.

36 (2) Any person whose license has been suspended pursuant
37 to the provisions of subsection (1), section two of this article for
38 driving a motor vehicle while under the age of twenty-one years
39 with an alcohol concentration in his or her blood of two
40 hundredths of one percent or more, by weight, but less than
41 eight hundredths of one percent, by weight, is eligible to
42 participate in the program after thirty days have elapsed from

43 the date of the initial suspension, during which time the
44 suspension was actually in effect: *Provided*, That in the case of
45 a person under the age of eighteen, the person is eligible to
46 participate in the program after thirty days have elapsed from
47 the date of the initial suspension, during which time the
48 suspension was actually in effect or after the person's eigh-
49 teenth birthday, whichever is later. Before the Commissioner
50 approves a person to operate a motor vehicle equipped with a
51 motor vehicle alcohol test and lock system, the person must
52 agree to comply with the following conditions:

53 (A) If not already enrolled, the person will enroll in and
54 complete the educational program provided for in subsection
55 (c), section three of this article at the earliest time that place-
56 ment in the educational program is available, unless good cause
57 is demonstrated to the Commissioner as to why placement
58 should be postponed;

59 (B) The person will pay all costs of the educational pro-
60 gram, any administrative costs and all costs assessed for any
61 suspension hearing.

62 (3) Notwithstanding the provisions of this section to the
63 contrary, no person eligible to participate in the program under
64 this subsection may operate a motor vehicle unless approved to
65 do so by the Commissioner.

66 (c) A person who participates in the program under
67 subdivision (1), subsection (b) of this section is subject to a
68 minimum revocation period and minimum period for the use of
69 the ignition interlock device as follows:

70 (1) For a person whose license has been revoked for a first
71 offense for six months pursuant to the provisions of section
72 one-a of this article for conviction of an offense defined in
73 subsection (d) or (f), section two, article five of this chapter or
74 pursuant to subsection (i), section two of this article, the

75 minimum period of revocation for participation in the test and
76 lock program is thirty days and the minimum period for the use
77 of the ignition interlock device is five months;

78 (2) For a person whose license has been revoked for a first
79 offense pursuant to section seven, article five of this chapter,
80 refusal to submit to a designated secondary chemical test, the
81 minimum period of revocation for participation in the test and
82 lock program is thirty days and the minimum period for the use
83 of the ignition interlock device is nine months;

84 (3) For a person whose license has been revoked for a first
85 offense pursuant to the provisions of section one-a of this
86 article for conviction of an offense defined in subsection (a),
87 section two, article five of this chapter or pursuant to subsection
88 (f), section two of this article, the minimum period of revoca-
89 tion before the person is eligible for participation in the test and
90 lock program is twelve months and the minimum period for the
91 use of the ignition interlock device is two years;

92 (4) For a person whose license has been revoked for a first
93 offense pursuant to the provisions of section one-a of this
94 article for conviction of an offense defined in subsection (b),
95 section two, article five of this chapter or pursuant to subsection
96 (g), section two of this article, the minimum period of revoca-
97 tion is six months and the minimum period for the use of the
98 ignition interlock device is two years;

99 (5) For a person whose license has been revoked for a first
100 offense pursuant to the provisions of section one-a of this
101 article for conviction of an offense defined in subsection (c),
102 section two, article five of this chapter or pursuant to subsection
103 (h), section two of this article, the minimum period of revoca-
104 tion for participation in the program is two months and the
105 minimum period for the use of the ignition interlock device is
106 one year;

107 (6) For a person whose license has been revoked for a first
108 offense pursuant to the provisions of section one-a of this
109 article for conviction of an offense defined in subsection (i),
110 section two, article five of this chapter or pursuant to subsection
111 (m), section two of this article, the minimum period of revoca-
112 tion for participation in the program is two months and the
113 minimum period for the use of the ignition interlock device is
114 ten months;

115 (d) Notwithstanding any provision of the code to the
116 contrary, a person shall participate in the program if the person
117 is convicted under section two, article five of this chapter or the
118 person's license is revoked under section two of this article or
119 section seven, article five of this chapter and the person was
120 previously either convicted or license was revoked under any
121 provision cited in this subsection within the past ten years. The
122 minimum revocation period for a person required to participate
123 in the program under this subsection is one year and the
124 minimum period for the use of the ignition interlock device is
125 two years, except that the minimum revocation period for a
126 person required to participate because of a violation of subsec-
127 tion (l), section two of this article or subsection (h), section two,
128 article five of this chapter is two months and the minimum
129 period of participation is one year. The Division will add one
130 year to the minimum period for the use of the ignition interlock
131 device for each additional previous conviction or revocation
132 within the past ten years. Any person required to participate
133 under this subsection must have an ignition interlock device
134 installed on every vehicle he or she owns or operates.

135 (e) An applicant for the test and lock program may not have
136 been convicted of any violation of section three, article four,
137 chapter seventeen-b of this code for driving while the appli-
138 cant's driver's license was suspended or revoked within the six-
139 month period preceding the date of application for admission to
140 the test and lock program; such is necessary for employment
141 purposes.

142 (f) Upon permitting an eligible person to participate in the
143 program, the Commissioner shall issue to the person, and the
144 person is required to exhibit on demand, a driver's license
145 which shall reflect that the person is restricted to the operation
146 of a motor vehicle which is equipped with an approved motor
147 vehicle alcohol test and lock system.

148 (g) The Commissioner may extend the minimum period of
149 revocation and the minimum period of participation in the
150 program for a person who violates the terms and conditions of
151 participation in the program as found in this section, or legisla-
152 tive rule, or any agreement or contract between the participant
153 and the Division or program service provider.

154 (h) A person whose license has been suspended pursuant to
155 the provisions of subsection (l), section two of this article who
156 has completed the educational program, and who has not
157 violated the terms required by the Commissioner of the person's
158 participation in the program, is entitled to the reinstatement of
159 his or her driver's license six months from the date the person
160 is permitted to operate a motor vehicle by the Commissioner.
161 When a license has been reinstated pursuant to this subsection,
162 the records ordering the suspension, records of any administra-
163 tive hearing, records of any blood alcohol test results and all
164 other records pertaining to the suspension shall be expunged by
165 operation of law: *Provided*, That a person is entitled to
166 expungement under the provisions of this subsection only once.
167 The expungement shall be accomplished by physically marking
168 the records to show that the records have been expunged and by
169 securely sealing and filing the records. Expungement has the
170 legal effect as if the suspension never occurred. The records
171 may not be disclosed or made available for inspection and in
172 response to a request for record information, the Commissioner
173 shall reply that no information is available. Information from
174 the file may be used by the Commissioner for research and
175 statistical purposes so long as the use of the information does
176 not divulge the identity of the person.

177 (i) In addition to any other penalty imposed by this code,
178 any person who operates a motor vehicle not equipped with an
179 approved motor vehicle alcohol test and lock system during
180 such person's participation in the motor vehicle alcohol test and
181 lock program is guilty of a misdemeanor and, upon conviction
182 thereof, shall be confined in the county or regional jail for a
183 period not less than one month nor more than six months and
184 fined not less than one hundred dollars nor more than five
185 hundred dollars. Any person who attempts to bypass the alcohol
186 test and lock system is guilty of a misdemeanor and, upon
187 conviction thereof, shall be confined in the county or regional
188 jail not more than six months and fined not less than one
189 hundred dollars nor more than one thousand dollars: *Provided,*
190 That notwithstanding any provision of this code to the contrary,
191 a person enrolled and participating in the test and lock program
192 may operate a motor vehicle solely at his or her job site, if such
193 is a condition of his or her employment. For the purpose of this
194 section, job site does not include any street or highway open to
195 the use of the public for purposes of vehicular traffic.

CHAPTER 86

(Com. Sub. for S. B. 603 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended; to repeal §18B-2-1, §18B-2-2 and §18B-2-3 of said code; to repeal §18B-3-5 and §18B-3-7 of said code; to repeal §18B-5-2d of said code; to amend and reenact §5-

6-4a of said code; to amend and reenact §5G-1-2 of said code; to amend said code by adding thereto a new section, designated §12-1-12d; to amend and reenact §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code; to amend and reenact §18-2-23a of said code; to amend said code by adding thereto a new section, designated §18-2-24; to amend said code by adding thereto a new section, designated §18A-3-11; to amend and reenact §18A-3A-1 and §18A-3A-2b of said code; to amend said code by adding thereto a new section, designated §18A-3A-6; to amend and reenact §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2 and §18B-1A-6 of said code; to amend and reenact §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-13; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-8; to amend said code by adding thereto a new section, designated §18B-2B-9; to amend and reenact §18B-3-1, §18B-3-2 and §18B-3-3 of said code; to amend said code by adding thereto a new section, designated §18B-3-4; to amend and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code; to amend and reenact §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code; to amend said code by adding thereto a new section, designated §18B-5-10; to amend and reenact §18B-10-1, §18B-10-5 and §18B-10-6 of said code; to amend said code by adding thereto a new section, designated §18B-10-6a; to amend said code by adding thereto a new section, designated §18B-11-7; and to amend and reenact §18B-14-11 of said code, all relating to public and higher education generally; authorizing and requiring certain electronic requisitions; exempting certain institutions from providing certain documentation with requisitions; requiring certain institutions to submit certain documentation to Joint Committee on Government and Finance; expanding certain professional development provisions; establishing a structure to enhance collaboration between certain state and regional entities in providing professional development; requiring

certain state and regional entities to ensure coordination and collaboration in professional development efforts and designating certain priorities for professional development; limiting the circumstances for procuring out-of-state services regarding certain professional development issues; reconstituting the Center for Professional Development Board and modifying its membership, duties and certain required employee provisions; creating position of Chief Executive Officer; requiring certain professional development studies and reports; creating the position of Coordinator of the Principals Academy; prohibiting the required attendance of certain employees at certain professional development programs under certain circumstances until date certain; transferring powers, authorities, responsibilities and duties between certain entities; definitions; requiring transfer of real property under certain circumstances from Higher Education Policy Commission to certain institutions; clarifying requirements for promulgation of higher education rules; requiring certain institutions to promulgate certain rules; establishing certain requirements for rule adoption, validation, enforcement and reporting; limiting certain authorities when rules not adopted; clarifying legislative intent relating to mission of certain institutions; limiting Policy Commission jurisdiction, power, responsibility and authority regarding certain institutions; modifying Policy Commission duties; modifying salary limit of Chancellor for Higher Education; specifying limitation of certain entities on exercising certain authorities and fulfilling certain responsibilities; modifying responsibility for assigning institutions' geographic areas of responsibility; modifying participation requirements and authorization for certain state institutions of higher education to offer graduate programs under certain circumstances and expanding the authorized institutions to offer such programs; modifying certain academic program approval provisions; transferring to certain institutions authority regarding certain capital project management and arrangements; preserving the jurisdiction and authority of certain higher education entities to

manage technology; clarifying authority of Policy Commission to assess certain fees; specifying when discharging certain duties requires consultation among various higher education entities; transferring to certain institutions authority to approve tuition and fee increases and set standards for conferring degrees; exempting certain institutions from Policy Commission approval requirements for executing certain documents, instruments, purchases and procurements; requiring disease awareness initiatives; requiring study and report of recommendations relating to higher education personnel issues; establishing scope of personnel study and charges for implementation; requiring employee participation; modifying requirements and authorities regarding delegation of powers by certain higher education entities; providing for disability insurance for employees; providing flexibility measures for certain state institutions of higher education and providing for future application of flexibility measures to additional state institutions of higher education; modifying governance by the Council For Community and Technical College Education; expanding and modifying the powers and duties of research, doctoral-granting public universities and their governing boards; providing legislative findings, purpose and intent for such expansion and modification; expanding authority for certain institutions and establishing parameters and procedures for donating certain surplus computers and related items; limiting application to certain institutions of certain surplus item disposal authority; defining the relationship between the Policy Commission and certain governing boards and between the West Virginia Council for Community and Technical College Education and certain governing boards; establishing and defining the duties of certain governing boards to address state priorities and the goals for post-secondary education established by the Legislature; defining state priorities; requiring annual report of progress; expanding penalty options and jurisdiction of certain parking and vehicle operating violations for certain institutions; specifying certain acceptable qualifications for employment as campus

police officer at certain institutions; expanding authority of certain campus police officers; expanding responsibility of certain institutions to investigate certain crimes; exempting certain institutions from requirements to participate in certain cooperative purchasing and operating arrangements; modifying format and documentation requirements for acceptance of certain documents by State Auditor; expanding permissible uses for purchase card; transferring to State Auditor certain duties regarding purchase cards; transferring to State Auditor authority to approve certain purchase card payments designated to exceed the purchase amount limits and to set the amount by which such payments may exceed the limits; modifying for certain institutions certain document submission requirements for travel expense reimbursement; specifying responsibility of certain institutions for ensuring fiscal integrity of operations; establishing requirements for implementing best business and management practices for certain institutions, including certain required reports; limiting and clarifying certain document approval authority of the Attorney General; authorizing state medical and health professionals schools to participate in self-insurance retention programs pursuant to certain conditions; authorizing state Board of Risk and Insurance Management to enter into agreements with state medical and health professionals schools to develop and implement self-insurance retention programs; requiring plan review by state Insurance Commissioner prior to implementing self-insurance retention programs; authorizing Insurance Commissioner and state Board of Risk and Insurance Management to promulgate emergency rules; expanding discretion of certain institutions to offer undergraduate- and graduate-level fee waivers, eliminating certain waiver award restrictions and requiring rule governing waivers; requiring certain institutions to establish a nonprofit Regional Brownfield Assistance Center; defining Assistance Center service regions; establishing Assistance Center powers and duties; providing temporary authorization to engage in alternative investment options for certain

moneys of certain state institutions of higher education and including a set expiration date for such authorization; creating Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics; establishing membership; assigning charge to Commission; providing legislative findings and requiring report to Legislative Oversight Commission on Education Accountability; deleting, repealing and updating certain obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended, be repealed; that sections §18B-2-1, §18B-2-2 and §18B-2-3 of said code be repealed; that §18B-3-5 and §18B-3-7 of said code be repealed; that §18B-5-2d of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §5G-1-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12d; that §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code be amended and reenacted; that §18-2-23a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-24; that said code be amended by adding thereto a new section, designated §18A-3-11; that §18A-3A-1 and §18A-3A-2b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-3A-6; that §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-13; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-8; that said code be amended by adding thereto a new section, designated §18B-2B-9; that §18B-3-1, §18B-3-2 and §18B-3-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3-4; that §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code be

amended and reenacted; that §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-5-10; that §18B-10-1, §18B-10-5 and §18B-10-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-6a; that said code be amended by adding thereto a new section, designated §18B-11-7; and that §18B-14-11 of said code be amended and reenacted, all to read as follows:

Chapter

- 5. General Powers and Authority Of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 5G. Procurement of Architect-engineer Services By State and its Subdivisions.**
- 12. Public Moneys and Securities.**
- 18. Education.**
- 18A. School Personnel.**
- 18B. Higher Education.**

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 6. STATE BUILDINGS.

**§5-6-4a. Review of real property contracts and agreements;
master plan for office space.**

- 1 (a) The Secretary of Administration shall provide to the
- 2 Joint Committee on Government and Finance a copy of a
- 3 contract or agreement for real property exceeding one million
- 4 dollars and a report setting forth a detailed summary of the
- 5 terms of the contract or agreement, including the name of the
- 6 owner of the property and the agent involved in the sale, at least
- 7 thirty days prior to any sale, exchange, transfer, purchase, lease

8 purchase, lease or rental of real property, any refundings of
9 lease purchases, leases or rental agreements, any construction
10 of new buildings and any other acquisition or lease of buildings,
11 office space or grounds by any state agency, including the
12 Higher Education Policy Commission, but excepting the
13 transactions of the state institutions of higher education known
14 as Marshall University and West Virginia University and the
15 Division of Highways for state road purposes pursuant to article
16 two-a, chapter seventeen of this code: *Provided*, That a
17 contract or agreement for the lease purchase, lease or rental of
18 real property by any state agency, where the costs of real
19 property acquisition and improvements are to be financed, in
20 whole or in part, with bond proceeds, may contain a preliminary
21 schedule of rents and leases for purposes of review by the
22 committee.

23 (b) For renewals of contracts or agreements required to be
24 reported by the provisions of this section, the Secretary of
25 Administration shall provide a report setting forth a detailed
26 summary of the terms of the contract or agreement, including
27 the name of the owner of the property.

28 (c) Within thirty days after receipt of the contract, agree-
29 ment or report, the committee shall meet and review the
30 contract, agreement or report.

31 (d) On or before the first day of July, two thousand six, the
32 Secretary of Administration shall conduct an inventory of
33 available office space and office space needs and shall develop
34 and present a master plan for the utilization of office space for
35 state agencies to the Joint Committee on Government and
36 Finance.

37 (e) The governing boards of the state institutions of higher
38 education known as Marshall University and West Virginia
39 University shall provide to the Joint Committee on Government

40 and Finance a copy of any contract or agreement for real
41 property exceeding one million dollars and shall make available
42 to the Joint Committee on Government and Finance upon
43 request a summary of the terms of the contract or agreement,
44 including the name of the owner of the property and the agent
45 involved in the sale.

**CHAPTER 5G. PROCUREMENT OF
ARCHITECT-ENGINEER SERVICES
BY STATE AND ITS SUBDIVISIONS.**

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-2. Definitions.

1 As used in this section:

2 (a) The term “agency” means all state departments,
3 agencies, authorities, quasipublic corporations and all political
4 subdivisions, including cities, counties, boards of education and
5 public service districts, except, for the purposes of this section,
6 the term “agency” does not include the state institutions of
7 higher education known as Marshall University and West
8 Virginia University.

9 (b) The term “architectural and engineering services”
10 includes those professional services of an architectural or
11 engineering nature as well as incidental services that members
12 of those professions and those in their employ may logically or
13 justifiably perform.

14 (c) The term “director of purchasing” means any individual
15 assigned by any agency to procure the services of architects and
16 engineers.

17 (d) The term “firm” or “professional firm” means any
18 individual, firm, partnership, corporation, association or other

19 legal entity permitted by law to practice the professions of
20 architecture and engineering.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

- 1. State Depositories.**
- 3. Appropriations, Expenditures and Deductions.**

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Pilot program for investments by Marshall University and West Virginia University.

1 (a) Notwithstanding any provision of this article to the
2 contrary, the governing boards of Marshall University and West
3 Virginia University each may invest certain funds with its
4 respective nonprofit foundation that has been established to
5 receive contributions exclusively for that university and which
6 exists on the first day of January, two thousand five. Any such
7 investment is subject to the limitations of this section.

8 (b) A governing board, through its chief financial officer
9 may enter into agreements, approved as to form by the State
10 Treasurer, for the investment by its foundation of certain funds
11 subject to their administration. Any interest or earnings on the
12 moneys invested is retained by the investing university.

13 (c) Moneys of a university that may be invested with its
14 foundation pursuant to this section are those subject to the
15 administrative control of the university that are collected under
16 an act of the Legislature for specific purposes and do not
17 include any funds made available to the university from the
18 state general revenue fund or the funds established in sections
19 eighteen or eighteen-a, article twenty-two, chapter twenty-nine
20 of this code. Moneys permitted to be invested under this section
21 may be aggregated in an investment fund for investment
22 purposes.

23 (d) Of the moneys authorized for investment by this
24 section, Marshall University and West Virginia University
25 each, respectively, may have invested with its foundation at any
26 time not more than the greater of:

27 (1) Eighteen million dollars for Marshall University and
28 twenty-five million dollars for West Virginia University; or

29 (2) Sixty-five percent of its unrestricted net assets as
30 presented in the statement of net assets for the fiscal year end
31 audited financial reports.

32 (e) Investments by foundations that are authorized under
33 this section shall be made in accordance with and subject to the
34 provisions of the Uniform Prudent Investor Act codified as
35 article six-c, chapter forty-four of this code. As part of its
36 fiduciary responsibilities, each governing board shall establish
37 investment policies in accordance with the Uniform Prudent
38 Investor Act for those moneys invested with its foundation.
39 The governing board shall review, establish and modify, if
40 necessary, the investment objectives as incorporated in its
41 investment policies so as to provide for the financial security of
42 the moneys invested with its foundation. The governing boards
43 shall give consideration to the following:

44 (1) Preservation of capital;

45 (2) Diversification;

46 (3) Risk tolerance;

47 (4) Rate of return;

48 (5) Stability;

49 (6) Turnover;

50 (7) Liquidity; and

51 (8) Reasonable cost of fees.

52 (f) A governing board shall report annually by the thirty-
53 first day of December, to the Governor and to the Joint Com-
54 mittee on Government and Finance on the performance of
55 investments managed by its foundation pursuant to this section.

56 (g) The authority of a governing board to invest moneys
57 with its foundation pursuant to this section expires on the first
58 day of July, two thousand ten.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-5. When requisition to Auditor sufficient authority for issuing warrant.

§12-3-6. Requisitions on behalf of state boards and institutions.

§12-3-7. Payment of compensation and expenses of members of state boards and
commissions; embezzlement.

§12-3-8. Requisition on behalf of institutions to be accompanied by statement
showing funds on hand.

§12-3-5. When requisition to Auditor sufficient authority for issuing warrant.

1 (a) When an appropriation has been made by law, subject
2 to the order or payable on the requisition of a particular officer,
3 board or person, the order or written or electronic requisition is
4 sufficient authority to the Auditor to issue a warrant for the
5 same or any party thereof.

6 (b) The Auditor:

7 (1) Shall accept an electronic requisition from Marshall
8 University and West Virginia University;

9 (2) May accept an electronic requisition from any entity
10 other than Marshall University or West Virginia University at
11 his or her discretion; and

12 (3) May not issue a warrant for an amount that exceeds the
13 appropriation or for an expired appropriation.

§12-3-6. Requisitions on behalf of state boards and institutions.

1 (a) An appropriation made to or for any state board or
2 institution shall be drawn from the Treasury upon the requisition of an appropriate officer thereof to the Auditor at such
3 times and in such amounts as is necessary for the purposes for
4 which the appropriation is made. The Auditor shall pay the
5 amount named in the requisition at such times and in such
6 installments as are necessary for the purposes for which the
7 appropriation is made.
8

9 (b) Except as provided in subsection (c) of this section, a
10 requisition for appropriation for new buildings and substantial
11 betterments shall be accompanied by the architect's estimate
12 that the amount named in the requisition is needed for immediate use.
13

14 (c) The provisions of subsection (b) of this section do not
15 apply to a requisition from:

16 (1) An institution from which the Auditor is required to
17 accept an electronic requisition. Such an institution is not
18 required to submit the documentation required in subsection (b)
19 of this section, but shall maintain the documentation for
20 inspection at the Auditor's request; and

21 (2) The Commissioner of Corrections.

22 (d) The Auditor may issue a warrant to pay money out of
23 the State Treasury only if the money is needed for the present
24 use.

§12-3-7. Payment of compensation and expenses of members of state boards and commissions; embezzlement.

1 (a) Unless otherwise provided by law, a member of any
2 state board or commission:

3 (1) Receives four dollars per day for each day necessarily
4 employed as such, including time spent traveling to and
5 returning from the meeting location;

6 (2) Receives the actual and necessary expenses incurred in
7 the discharge of his or her duties; and

8 (3) Does not receive mileage reimbursement.

9 (b) Prior to receiving compensation or expense reimburse-
10 ment:

11 (1) The member prepares in duplicate an itemized statement
12 specifying the number of days spent and the expenses incurred;

13 (2) The member certifies the accuracy of the itemized
14 statement;

15 (3) The member delivers the original to the secretary or
16 clerk of the board or commission for preservation in its office;
17 and

18 (4) The secretary or clerk immediately forwards the
19 duplicate to the Auditor.

20 (c) If any member willfully makes a greater charge of
21 services or expenses than truth justified, he or she is guilty of
22 embezzlement and punished accordingly.

23 (d) The governing board of Marshall University and West
24 Virginia University each satisfies the requirements of subsec-
25 tion (b) of this section by maintaining the member's original
26 itemized, certified statement and submitting an electronic
27 requisition to the Auditor.

§12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

1 A requisition made upon the Auditor for any money
 2 appropriated for a state correctional facility; the West Virginia
 3 School for the Deaf and Blind; state mental health facilities;
 4 state hospitals; corrections facilities; Marshall University; West
 5 Virginia University; any other public institution for education,
 6 charity or correction; or institutions under the jurisdiction of the
 7 Higher Education Policy Commission or the West Virginia
 8 Council for Community and Technical College Education shall
 9 be accompanied by a written or electronic statement of a
 10 financial officer of the institution, showing the amount of
 11 money in his or her hands to the credit of the institution, or
 12 otherwise in its control, on the day the requisition is forwarded
 13 for payment.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.

§18-2-24. Collaboration of state institutions of higher education having a teacher preparation program with the Center for Professional Development and the regional education service agencies.

§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.

1 (a) *Legislative intent.* — The intent of this section is:

2 (1) To provide for the coordination of professional develop-
 3 ment programs by the State Board;

4 (2) To promote high-quality instructional delivery and
5 management practices for a thorough and efficient system of
6 schools; and

7 (3) To ensure that the expertise and experience of state
8 institutions of higher education with teacher preparation
9 programs are included in developing and implementing
10 professional development programs.

11 (b) *Goals.* — The State Board annually shall establish goals
12 for professional staff development in the public schools of the
13 state. As a first priority, the State Board shall require adequate
14 and appropriate professional staff development to ensure high
15 quality teaching that will enable students to achieve the content
16 standards established for the required curriculum in the public
17 schools.

18 The State Board shall submit the goals to the State Depart-
19 ment of Education, the Center for Professional Development,
20 the regional educational service agencies, the Higher Education
21 Policy Commission and the Legislative Oversight Commission
22 on Education Accountability on or before the fifteenth day of
23 January each year.

24 The goals shall include measures by which the effectiveness
25 of the professional staff development programs will be evalu-
26 ated. The professional staff development goals shall include
27 separate goals for teachers, principals and paraprofessional
28 service personnel and may include separate goals for classroom
29 aides and others in the public schools.

30 In establishing the goals, the State Board shall review
31 reports that may indicate a need for professional staff develop-
32 ment including, but not limited to, the report of the Center for
33 Professional Development created in article three-a, chapter
34 eighteen-a of this code, student test scores on the statewide
35 student assessment program, the measures of student and school

36 performance for accreditation purposes, school and school
37 district report cards and its plans for the use of funds in the
38 strategic staff development fund pursuant to section thirty-two,
39 article two, chapter eighteen of this code.

40 (c) The Center for Professional Development shall design
41 a proposed professional staff development program plan to
42 achieve the goals of the State Board and shall submit the
43 proposed plan to the State Board for approval as soon as
44 possible following receipt of the State Board goals each year.
45 In developing and implementing this plan, the Center first shall
46 rely upon the available expertise and experience of state
47 institutions of higher education before procuring advice,
48 technical assistance or consulting services from sources outside
49 the state.

50 The proposed plan shall include a strategy for evaluating
51 the effectiveness of the professional staff development pro-
52 grams delivered under the plan and a cost estimate. The State
53 Board shall review the proposed plan and return it to the Center
54 for Professional Development noting whether the proposed plan
55 is approved or is not approved, in whole or in part. If a
56 proposed plan is not approved in whole, the State Board shall
57 note its objections to the proposed plan or to the parts of the
58 proposed plan not approved and may suggest improvements or
59 specific modifications, additions or deletions to address more
60 fully the goals or eliminate duplication. If the proposed plan is
61 not wholly approved, the Center for Professional Development
62 shall revise the plan to satisfy the objections of the State Board.
63 State board approval is required prior to implementation of the
64 professional staff development plan.

65 (d) The State Board approval of the proposed professional
66 staff development plan shall establish a Master Plan for
67 Professional Staff Development which shall be submitted by the
68 State Board to the affected agencies and to the Legislative

69 Oversight Commission on Education Accountability. The
70 Master Plan shall include the State Board-approved plans for
71 professional staff development by the State Department of
72 Education, the Center for Professional Development, the state
73 institutions of higher education and the regional educational
74 service agencies to meet the professional staff development
75 goals of the State Board. The Master Plan also shall include a
76 plan for evaluating the effectiveness of the professional staff
77 development delivered through the programs and a cost
78 estimate.

79 The Master Plan shall serve as a guide for the delivery of
80 coordinated professional staff development programs by the
81 State Department of Education, the Center for Professional
82 Development, the state institutions of higher education and the
83 regional educational service agencies beginning on the first day
84 of June in the year in which the Master Plan was approved
85 through the thirtieth day of May in the following year. This
86 section does not prohibit changes in the Master Plan, subject to
87 State Board approval, to address staff development needs
88 identified after the Master Plan was approved.

**§18-2-24. Collaboration of state institutions of higher education
having a teacher preparation program with the
Center for Professional Development and the
regional education service agencies.**

1 (a) For the purposes of this section, “teacher preparation
2 institution” means a state institution of higher education with a
3 teacher preparation program.

4 (b) The intent of this section is to establish a structure to
5 enhance collaboration between the teacher preparation institu-
6 tions, the Center for Professional Development and the regional
7 education service agencies in providing professional develop-
8 ment.

9 (c) The Legislature finds that:

10 (1) There is insufficient collaboration of the teacher
11 preparation institutions with the Center for Professional
12 Development and each of the regional education service
13 agencies;

14 (2) More collaboration would prevent duplication of
15 services and result in higher quality professional development;

16 (3) Creating a structure and assigning responsibility would
17 promote more effective collaboration;

18 (4) The state's research and doctoral degree-granting public
19 institutions of higher education, West Virginia University and
20 Marshall University, have the most capacity to be important
21 sources of research and expertise on professional development;

22 (5) West Virginia University and Marshall University are
23 the only institutions in the state that offer course work leading
24 to a doctoral degree in education administration;

25 (6) As the largest state institutions of higher education,
26 West Virginia University and Marshall University have more
27 capacity than any other institution in the state to handle the
28 additional responsibilities assigned in this section;

29 (7) The coordination by West Virginia University and
30 Marshall University of the efforts of other teacher preparation
31 institutions to collaborate with the Center for Professional
32 Development and each of the regional education service
33 agencies will provide points of accountability for the collabora-
34 tion efforts of the other institutions; and

35 (8) The State Board's authority over the regional education
36 service agencies can be used to motivate the agencies to
37 collaborate with the teacher preparation institutions in provid-

38 ing professional development and will serve as a point of
39 accountability for the collaboration efforts of the agencies.

40 (d) West Virginia University and Marshall University shall
41 collaborate with the Center for Professional Development in
42 performing the Center's duties. This collaboration shall include
43 at least the following:

44 (1) Including the teacher preparation institutions in the
45 proposed professional staff development program plan required
46 to be submitted to the State Board by section twenty-three-a of
47 this article;

48 (2) Providing any available research-based expertise that
49 would be helpful in the design of the proposed professional
50 staff development program plan;

51 (3) Providing any available research-based expertise that
52 would be helpful in the implementation of professional devel-
53 opment programs; and

54 (4) Arranging for other state institutions of higher education
55 having a teacher preparation program to assist the Center when
56 that assistance would be helpful.

57 (e) All teacher preparation institutions shall collaborate
58 with the regional education service agency of the service area
59 in which the institution is located at least to:

60 (1) Prevent unnecessary duplication of services;

61 (2) Assist in the implementation of the professional
62 development programs of the regional education service
63 agency; and

64 (3) Assist the regional education service agency in obtain-
65 ing any available grants for professional development or to
66 apply for any available grant with the agency collaboratively.

67 (f) Since no teacher preparation institution exists in the
68 service area of Regional Education Service Agency IV,
69 Marshall University shall collaborate with that Agency for the
70 purposes set forth in subdivision (e) of this section.

71 (g) In addition to the collaboration required by subsections
72 (e) and (f) of this section of all teacher preparation institutions,
73 West Virginia University and Marshall University shall:

74 (1) Coordinate the collaboration of each of the other teacher
75 preparation institutions in their designated coordination area
76 with the appropriate regional education service agency. This
77 coordination at least includes ensuring that each of the other
78 institutions are collaborating with the appropriate regional
79 education service agency; and

80 (2) Collaborate with each of the other teacher preparation
81 institutions in their designated coordination area. This collabo-
82 ration at least includes providing assistance to the other
83 institutions in providing professional development and in their
84 collaboration with the appropriate regional education service
85 agency.

86 (h) The designated coordination area of West Virginia
87 University includes the service areas of Regional Education
88 Service Agencies V, VI, VII and VIII. The designated coordi-
89 nation area of Marshall University includes the service areas of
90 Regional Education Service Agencies I, II, III and IV.

91 (i) The State Board shall ensure that each of the regional
92 education service agencies is collaborating with the teacher
93 preparation institution or institutions in its service area for the
94 purposes set forth in subsection (e) of this section. Since
95 Regional Education Service Agency IV does not have a teacher
96 preparation institution in its service area, the State Board shall
97 ensure that it is collaborating with Marshall University for the
98 purposes set forth in subsection (e) of this section.

99 (j) Before a regional education service agency, except for
100 Regional Education Service Agency IV, obtains professional
101 development related services or expertise from any teacher
102 preparation institution outside of that agency's service area, the
103 agency shall inform the Center for Professional Development
104 Board. Before Regional Education Service Agency IV obtains
105 professional development related services or expertise from any
106 teacher preparation institution other than Marshall University,
107 the agency shall inform the Center Board.

108 (k) The collaboration and coordination requirements of this
109 section include collaborating and coordinating to provide
110 professional development for at least teachers, principals and
111 paraprofessionals.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

3. Training, Certification, Licensing, Professional Development.

3A. Center for Professional Development.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-11. Study of professional development standards and best practices.

1 The Legislative Oversight Commission on Education
2 Accountability shall cause a study to be conducted to determine
3 and to recommend standards and best practices for professional
4 development that are focused on advancing student achieve-
5 ment. The study and a final report of recommendations shall be
6 completed prior to the first day of September, two thousand
7 five. The Commission shall submit the final report to the Joint
8 Committee on Government and Finance. The Commission
9 shall determine if resources to assist in the completion of the
10 study are available from sources other than public funds and
11 shall report such to the Joint Committee.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

§18A-3A-2b. The Principals Academy.

§18A-3A-6. Attendance outside the employment term.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

1 (a) Teaching is a profession that directly correlates to the
2 social and economic well-being of a society and its citizens.
3 Superior teaching is essential to a well-educated and productive
4 populace. Strong academic leadership provided by principals
5 and administrators skilled in modern management principles is
6 also essential. The intent of this article is to recognize the value
7 of professional involvement by experienced educators, princi-
8 pals and administrators in building and maintaining a superior
9 force of professional educators and to establish avenues for
10 applying this involvement.

11 (b) The general mission of the Center is to advance the
12 quality of teaching and management in the schools of West
13 Virginia through: (1) The implementation primarily of state-
14 wide training, professional staff development, including
15 professional staff development for at least teachers, principals
16 and paraprofessionals, and technical assistance programs and
17 practices as recommended by the State Board to assure the
18 highest quality of teaching and management; and (2) the
19 provision of technical and other assistance and support to
20 regional and local education agencies in identifying and
21 providing high-quality professional staff development, includ-
22 ing professional staff development for at least teachers,
23 principals and paraprofessionals, and training programs and
24 implementing best practices to meet their locally identified
25 needs. The Center also may implement local programs if the

26 State Board, in its Master Plan for Professional Staff Develop-
27 ment established pursuant to section twenty-three-a, article two,
28 chapter eighteen of this code, determines that there is a specific
29 local need for the programs. Additionally, the Center shall
30 perform other duties assigned to it by law.

31 Nothing in this article shall be construed to require any
32 specific level of funding by the Legislature.

33 (c) The Center for Professional Development Board is
34 reconstituted, and all terms of members elected or appointed
35 prior to the effective date of this section are expired. The
36 Center Board shall consists of thirteen persons as follows:

37 (1) The Secretary of Education and the Arts, ex officio, and
38 the State Superintendent, ex officio, each of whom is:

39 (A) Entitled to vote; and

40 (B) A Cochair of the Board.

41 (2) Two members of the State Board, elected by the State
42 Board;

43 (3) One person employed by West Virginia University and
44 one person employed by Marshall University, both of whom
45 are:

46 (A) Appointed by the President of the employing institu-
47 tion;

48 (B) Faculty in the teacher education section of the employ-
49 ing institution; and

50 (C) Knowledgeable in matters relevant to the issues
51 addressed by the Center;

52 (4) One Regional Education Service Agency Executive
53 Director, elected by all of the Regional Education Service
54 Agency Executive Directors;

55 (5) Three experienced educators, of whom one is a working
56 classroom teacher, one is a school principal and one is a county
57 administrator. All such educators are:

58 (A) Appointed by the Governor by and with the advice and
59 consent of the Senate;

60 (B) Experienced educators who have achieved recognition
61 for their superior knowledge, ability and performance in
62 teaching or management, as applicable; and

63 (C) Knowledgeable in matters relevant to the issues
64 addressed by the Center; and

65 (6) Three citizens of the state who are:

66 (A) Knowledgeable in matters relevant to the issues
67 addressed by the Center, including, but not limited to, profes-
68 sional development and management principles; and

69 (B) Appointed by the Governor by and with the advice and
70 consent of the Senate.

71 (C) Not more than two such members may be residents
72 within the same congressional district.

73 (d) Each appointment and election is for a two-year term.
74 Such members may serve no more than two consecutive two-
75 year terms.

76 (1) The State Board shall elect another member to fill the
77 unexpired term of any person who vacates State Board member-
78 ship.

79 (2) The Regional Education Service Agency Executive
80 Directors shall elect an executive director to fill the unexpired
81 term of any executive director who ceases to be employed in
82 that capacity.

83 (3) Of the initial members appointed by the Governor, three
84 are appointed for one-year terms and three are appointed for
85 two-year terms. Each successive appointment by the Governor
86 is for a two-year term. The Governor shall appoint a new
87 member to fill the unexpired term of any vacancy in the
88 appointed membership.

89 (4) The President of West Virginia University and Marshall
90 University each appoints an employee to fill the unexpired term
91 of any member who ceases to be employed by that institution.

92 (e) The Center for Professional Development Board shall
93 meet at least quarterly and the appointed members shall be
94 reimbursed for reasonable and necessary expenses actually
95 incurred in the performance of their official duties from funds
96 appropriated or otherwise made available for those purposes
97 upon submission of an itemized statement therefor.

98 (f) The position of Executive Director is abolished. The
99 Governor shall appoint, by and with the advice and consent of
100 the Senate, a Chief Executive Officer with knowledge and
101 experience in professional development and management
102 principles. Any reference in this code to the Executive Director
103 of the Center for Professional Development means the Chief
104 Executive Officer. From appropriations to the Center for
105 Professional Development, the Center Board sets the salary of
106 the Chief Executive Officer. The Center Board, upon the
107 recommendation of the Chief Executive Officer, may employ
108 other staff necessary to carry out the mission and duties of the
109 Center. The Chief Executive Officer serves at the will and
110 pleasure of the Governor. Annually, the Center Board shall

111 evaluate the Chief Executive Officer, and shall report the results
112 to the Governor. The duties of the Chief Executive Officer
113 include:

114 (1) Managing the daily operations of the Center;

115 (2) Ensuring the implementation of the Center's mission;

116 (3) Ensuring collaboration of the Center with other profes-
117 sional development providers;

118 (4) Requesting from the Governor and the Legislature any
119 resources or statutory changes that would help in enhancing the
120 collaboration of all professional development providers in the
121 state, in advancing the quality of professional development
122 through any other means or both;

123 (5) Serving as the chair of the Principals Standards Advi-
124 sory Council created in section two-c, article three of this
125 chapter and convening regular meetings of this Council to
126 effectuate its purposes; and

127 (6) Other duties as assigned by the Governor or the Center
128 Board.

129 (g) When practicable, personnel employed by state higher
130 education agencies and state, regional and county public
131 education agencies shall be made available to the Center to
132 assist in the operation of projects of limited duration, subject to
133 the provisions of section twenty-four, article two, chapter
134 eighteen of this code.

135 (h) The Center shall assist in the delivery of programs and
136 activities pursuant to this article to meet statewide, and if
137 needed as determined by the goals and Master Plan for Profes-
138 sional Staff Development established by the State Board
139 pursuant to section twenty-three-a, article two, chapter eighteen

140 of this code, the local professional development needs of
141 paraprofessionals, teachers, principals and administrators and
142 may contract with existing agencies or agencies created after
143 the effective date of this section or others to provide training
144 programs in the most efficient manner. Existing programs
145 currently based in agencies of the state shall be continued in the
146 agency of their origin unless the Center establishes a compel-
147 ling need to transfer or cancel the existing program. The Center
148 shall recommend to the Governor the transfer of funds to the
149 providing agency, if needed, to provide programs approved by
150 the Center.

151 (i) The Center for Professional Development shall imple-
152 ment training and professional development programs for the
153 Principals Academy based upon the minimum qualities,
154 proficiencies and skills necessary for principals in accordance
155 with the standards established by the State Board pursuant to
156 the terms of section two-c, article three of this chapter.

157 (j) In accordance with section two-c, article three of this
158 chapter, the Center shall be responsible for paying reasonable
159 and necessary expenses for persons attending the Principals
160 Academy: *Provided*, That nothing in this section shall be
161 construed to require any specific level of funding by the
162 Legislature.

163 (k) Persons attending the professional development
164 offerings of the Center and other courses and services offered
165 by the Center for Professional Development, except the
166 Principals Academy shall be assessed fees which shall be less
167 than the full cost of attendance. There is hereby created in the
168 State Treasury a special revenue account known as the "Center
169 for Professional Development Fund". All moneys collected by
170 the Center shall be deposited in the fund for expenditure by the
171 Center Board for the purposes specified in this section. Moneys
172 remaining in the fund at the end of the fiscal year are subject to
173 reappropriation by the Legislature.

174 (1) The Center Board shall make collaboration with the
175 State Board in providing professional development services in
176 the following areas a priority:

177 (1) Services to those public schools selected by the State
178 Superintendent pursuant to section three-g, article two-e,
179 chapter eighteen of this code; and

180 (2) Services in any specific subject matter area that the
181 State Board, the Legislature or both, determine is justified due
182 to a need to increase student achievement in that area.

§18A-3A-2b. The Principals Academy.

1 (a) There is hereby established within the Center for
2 Professional Development the "Principals Academy". Training
3 through the Principals Academy shall include at least the
4 following:

5 (1) Training designed to build within principals the mini-
6 mum qualities, proficiencies and skills that will be required of
7 all principals pursuant to the rules of the State Board;

8 (2) Specialized training and professional development
9 programs for all principals; and

10 (3) Specialized training and professional development
11 programs for the following principals:

12 (A) Newly appointed principals;

13 (B) Principals whose schools have been designated as
14 seriously impaired, which programs shall commence as soon as
15 practicable following the designation;

16 (C) Principals subject to improvement plans; and

17 (D) Principals of schools with significantly different grade
18 level configurations.

19 (b) The Legislature finds that the quality of the principal of
20 a school is one of the most important factors in determining the
21 academic achievement of students and that well-trained, highly
22 qualified principals should be a priority for the state.

23 (b) The Legislature further finds that while the Principals
24 Academy has been effective in training quality leaders for the
25 state's public schools, the training provided is such a significant
26 factor in determining their success that a new position is needed
27 to coordinate and focus primarily on the Principals Academy to
28 increase further the quality of the training.

29 (c) Therefore, from appropriations to the Center for
30 Professional Development, the Center Board shall employ and
31 fix the compensation of the Coordinator of the Principals
32 Academy. The Coordinator serves at the will and pleasure of
33 the Center Board. It is the duty of the Coordinator, subject to
34 direction and oversight by the Center and the Chief Executive
35 Officer, to lead the Principals Academy, to focus primarily on
36 the Principals Academy and to make a continuous effort to
37 enhance further the quality of the training and professional
38 development programs of the Academy. The Center Board, the
39 Chief Executive Officer, or both, may assign duties to the
40 coordinator other than those that relate to the Principals
41 Academy so long as the Coordinator is able to focus primarily
42 on the Principals Academy.

§18A-3A-6. Attendance outside the employment term.

1 (a) A professional educator may not be required to attend
2 the principals academy or any other program offered through
3 the Center for Professional Development outside his or her
4 employment term. A professional educator may attend the
5 academy or other program outside his or her employment term

6 by mutual agreement between the Center, the educator, and his
7 or her employer.

8 (b) The provisions of this section expire on the first day of
9 July, two thousand six.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.

1A. Compact with Higher Education for the Future of West Virginia.

1B. Higher Education Policy Commission.

2A. Institutional Boards of Governors.

2B. West Virginia Council for Community and Technical College Education.

3. Additional Powers and Duties of Research, Doctoral-granting Public Universities.

4. General Administration.

5. Higher Education Budgets and Expenditures.

10. Fees and Other Money Collected at State Institutions of Higher Education.

11. Miscellaneous Institutes and Centers.

14. Miscellaneous.

ARTICLE 1. GOVERNANCE.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

§18B-1-6. Rulemaking.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

1 (a) All powers, duties and authorities transferred to the
2 Board of Regents pursuant to former provisions of chapter
3 eighteen of this code and transferred to the Board of Trustees
4 and Board of Directors which were created as the governing
5 boards pursuant to the former provisions of this chapter and all
6 powers, duties and authorities of the Board of Trustees and
7 Board of Directors, to the extent they are in effect on the
8 seventeenth day of June, two thousand, are hereby transferred
9 to the Interim Governing Board created in article one-c of this

10 chapter and shall be exercised and performed by the Interim
11 Governing Board until the first day of July, two thousand one,
12 as such powers, duties and authorities may apply to the institu-
13 tions under its jurisdiction.

14 (b) Title to all property previously transferred to or vested
15 in the Board of Trustees and the Board of Directors and
16 property vested in either of the Boards separately, formerly
17 existing under the provisions of this chapter, are hereby
18 transferred to the Interim Governing Board created in article
19 one-c of this chapter until the first day of July, two thousand
20 one. Property transferred to or vested in the Board of Trustees
21 and Board of Directors shall include:

22 (1) All property vested in the Board of Governors of West
23 Virginia University and transferred to and vested in the West
24 Virginia Board of Regents;

25 (2) All property acquired in the name of the State Board of
26 Control or the West Virginia Board of Education and used by
27 or for the state colleges and universities and transferred to and
28 vested in the West Virginia Board of Regents;

29 (3) All property acquired in the name of the State Commis-
30 sion on Higher Education and transferred to and vested in the
31 West Virginia Board of Regents; and

32 (4) All property acquired in the name of the Board of
33 Regents and transferred to and vested in the respective Board of
34 Trustees and Board of Directors.

35 (c) Each valid agreement and obligation previously
36 transferred to or vested in the Board of Trustees and Board of
37 Directors formerly existing under the provisions of this chapter
38 is hereby transferred to the Interim Governing Board until the
39 first day of July, two thousand one, as those agreements and
40 obligations may apply to the institutions under its jurisdiction.

41 Valid agreements and obligations transferred to the Board of
42 Trustees and Board of Directors shall include:

43 (1) Each valid agreement and obligation of the Board of
44 Governors of West Virginia University transferred to and
45 deemed the agreement and obligation of the West Virginia
46 Board of Regents;

47 (2) Each valid agreement and obligation of the State Board
48 of Education with respect to the state colleges and universities
49 transferred to and deemed the agreement and obligation of the
50 West Virginia Board of Regents;

51 (3) Each valid agreement and obligation of the State
52 Commission on Higher Education transferred to and deemed
53 the agreement and obligation of the West Virginia Board of
54 Regents; and

55 (4) Each valid agreement and obligation of the Board of
56 Regents transferred to and deemed the agreement and obliga-
57 tion of the respective Board of Trustees and Board of Directors.

58 (d) All orders, resolutions and rules adopted or promulgated
59 by the respective Board of Trustees and Board of Directors and
60 in effect immediately prior to the first day of July, two thou-
61 sand, are hereby transferred to the Interim Governing Board
62 until the first day of July, two thousand one, and shall continue
63 in effect and shall be deemed the orders, resolutions and rules
64 of the Interim Governing Board until rescinded, revised, altered
65 or amended by the Commission or the governing boards in the
66 manner and to the extent authorized and permitted by law.
67 Such orders, resolutions and rules shall include:

68 (1) Those adopted or promulgated by the Board of Gover-
69 nors of West Virginia University and in effect immediately
70 prior to the first day of July, one thousand nine hundred
71 sixty-nine, unless and until rescinded, revised, altered or

72 amended by the Board of Regents in the manner and to the
73 extent authorized and permitted by law;

74 (2) Those respecting state colleges and universities adopted
75 or promulgated by the West Virginia Board of Education and in
76 effect immediately prior to the first day of July, one thousand
77 nine hundred sixty-nine, unless and until rescinded, revised,
78 altered or amended by the Board of Regents in the manner and
79 to the extent authorized and permitted by law;

80 (3) Those adopted or promulgated by the State Commission
81 on Higher Education and in effect immediately prior to the first
82 day of July, one thousand nine hundred sixty-nine, unless and
83 until rescinded, revised, altered or amended by the Board of
84 Regents in the manner and to the extent authorized and permit-
85 ted by law; and

86 (4) Those adopted or promulgated by the Board of Regents
87 prior to the first day of July, one thousand nine hundred
88 eighty-nine, unless and until rescinded, revised, altered or
89 amended by the respective Board of Trustees or Board of
90 Directors in the manner and to the extent authorized and
91 permitted by law.

92 (e) Title to all real property transferred to or vested in the
93 Interim Governing Board pursuant to this section of the code is
94 hereby transferred to the Commission effective the first day of
95 July, two thousand one. The board of governors for each
96 institution may request that the Commission transfer title to the
97 board of governors of any real property specifically identifiable
98 with that institution or the Commission may initiate the
99 transfer. Any such request must be made within two years of
100 the effective date of this section and be accompanied by an
101 adequate legal description of the property. In the case of real
102 property that is specifically identifiable with Marshall Univer-
103 sity or West Virginia University, the Commission shall transfer

104 title to all real property, except real property that is used jointly
105 by institutions or for statewide programs under the jurisdiction
106 of the Commission or the Council, to the Board of Governors
107 of Marshall University or West Virginia University, as appro-
108 priate, upon receipt of a request from the appropriate governing
109 board accompanied by an adequate legal description of the
110 property.

111 The title to any real property that is jointly utilized by
112 institutions or for statewide programs under the jurisdiction of
113 the Commission or the Council shall be retained by the Com-
114 mission.

115 (f) Ownership of or title to any other property, materials,
116 equipment or supplies obtained or purchased by the Interim
117 Governing Board or the previous governing boards on behalf of
118 an institution is hereby transferred to the board of governors of
119 that institution effective the first day of July, two thousand one.

120 (g) Each valid agreement and obligation previously
121 transferred or vested in the Interim Governing Board and which
122 was undertaken or agreed to on behalf of an institution or
123 institutions is hereby transferred to the board of governors of
124 the institution or institutions for whose benefit the agreement
125 was entered into or the obligation undertaken effective the first
126 day of July, two thousand one.

127 (1) The obligations contained in revenue bonds issued by
128 the previous governing boards under the provisions of section
129 eight, article ten of this chapter and article twelve-b, chapter
130 eighteen of this code are hereby transferred to the Commission
131 and each institution shall transfer to the Commission those
132 funds the Commission determines are necessary to pay that
133 institution's share of bonded indebtedness.

134 (2) The obligations contained in revenue bonds issued on
135 behalf of a state institution of higher education pursuant to any

136 other section of this code is hereby transferred to the board of
137 governors of the institution on whose behalf the bonds were
138 issued.

139 (h) All orders, resolutions, policies and rules:

140 (1) Adopted or promulgated by the respective Board of
141 Trustees, Board of Directors or Interim Governing Board and
142 in effect immediately prior to the first day of July, two thousand
143 one, are hereby transferred to the Commission effective the first
144 day of July, two thousand one, and continue in effect until
145 rescinded, revised, altered, amended or transferred to the
146 governing boards by the Commission as provided in this section
147 and in section six of this article.

148 (2) Adopted or promulgated by the Commission relating
149 solely to community and technical colleges or community and
150 technical college education, or rules which the Council finds
151 necessary for the exercise of its lawful powers and duties
152 pursuant to the provisions of this chapter, may be adopted by
153 the Council and continue in effect until rescinded, revised,
154 altered, amended or transferred to the governing boards under
155 the jurisdiction of the Council pursuant to section six of this
156 article. Nothing in this section requires the initial rules of the
157 Commission that are adopted by the Council to be promulgated
158 again under the procedure set forth in article three-a, chapter
159 twenty-nine-a of this code unless such rules are rescinded,
160 revised, altered or amended.

161 (3) Adopted or promulgated by the Commission relating to
162 multiple types of public institutions of higher education or
163 community and technical college education as well as baccalau-
164 reate and post-baccalaureate education are transferred to the
165 Council in part as follows:

166 (A) That portion of the rule relating solely to community
167 and technical colleges or community and technical college

168 education is transferred to the Council and continues in effect
169 until rescinded, revised, altered, amended or transferred to the
170 governing boards by the Council as provided in this section and
171 in section six of this article;

172 (B) That portion of the rule relating to institutions or
173 education other than community and technical colleges is
174 retained by the Commission and continues in effect until
175 rescinded, revised, altered, amended or transferred to the
176 governing boards by the Commission as provided in this section
177 and in section six of this article.

178 (i) The Commission may, in its sole discretion, transfer any
179 rule, other than a legislative rule, to the jurisdiction of the
180 governing boards of the institutions under its jurisdiction who
181 may rescind, revise, alter or amend any rule so transferred
182 pursuant to rules adopted by the Commission pursuant to
183 section six of this article.

184 The Council may, in its sole discretion, transfer any rule,
185 other than a legislative rule, to the jurisdiction of the governing
186 boards of the institutions under its jurisdiction who may
187 rescind, revise, alter or amend any rule so transferred pursuant
188 to rules adopted by the Council pursuant to section six of this
189 article.

190 (j) As to any title, agreement, obligation, order, resolution,
191 rule or any other matter about which there is some uncertainty,
192 misunderstanding or question, the matter shall be summarized
193 in writing and sent to the Commission which shall make a
194 determination regarding such matter within thirty days of
195 receipt thereof.

196 (k) Rules or provisions of law which refer to other provi-
197 sions of law which were repealed, rendered inoperative or
198 superseded by the provisions of this section shall remain in full
199 force and effect to such extent as may still be applicable to

200 higher education and may be so interpreted. Such references
201 include, but are not limited to, references to sections and prior
202 enactments of article twenty-six, chapter eighteen of this code
203 and code provisions relating to retirement, health insurance,
204 grievance procedures, purchasing, student loans and savings
205 plans. Any determination which needs to be made regarding
206 applicability of any provision of law shall first be made by the
207 Commission.

§18B-1-6. Rulemaking.

1 (a) The Commission is hereby empowered to promulgate,
2 adopt, amend or repeal rules, in accordance with the provisions
3 of article three-a, chapter twenty-nine-a of this code, subject to
4 the provisions of section three of this article.

5 (b) The Council is hereby empowered to promulgate, adopt,
6 amend or repeal rules in accordance with the provisions of
7 article three-a, chapter twenty-nine-a of this code and subject to
8 the provisions of section three of this article. This grant of
9 rule-making power extends only to those areas over which the
10 Council has been granted specific authority and jurisdiction by
11 law.

12 (c) As it relates to the authority granted to governing boards
13 of state institutions of higher education to promulgate, adopt,
14 amend or repeal any rule under the provisions of this code:

15 (1) "Rule" means any regulation, guideline, directive,
16 standard, statement of policy or interpretation of general
17 application which has institutionwide effect or which affects the
18 rights, privileges or interests of employees, students or citizens.
19 Any regulation, guideline, directive, standard, statement of
20 policy or interpretation of general application that meets this
21 definition is a rule for the purposes of this section.

22 (2) Regulations, guidelines or policies established for
23 individual units, divisions, departments or schools of the
24 institution, which deal solely with the internal management or
25 responsibilities of a single unit, division, department or school
26 or with academic curricular policies that do not constitute a
27 mission change for the institution, are excluded from this
28 subsection, except for the requirements relating to posting.

29 (3) The Commission and Council each shall promulgate a
30 rule to guide the development and approval of rules made by
31 their respective governing boards, including the governing
32 boards of Marshall University and West Virginia University.
33 The rules promulgated by the Commission and Council shall
34 include, but are not limited to, the following provisions which
35 shall be included in the rule on rules adopted by each governing
36 board of a state institution of higher education:

37 (A) A procedure to ensure that public notice is given and
38 that the right of interested parties to have a fair and adequate
39 opportunity to respond is protected, including providing for a
40 thirty-day public comment period prior to final adoption of a
41 rule;

42 (B) Designation of a single location where all proposed and
43 approved rules, guidelines and other policy statements are
44 posted and can be accessed by the public; and

45 (C) A procedure to maximize Internet access to all pro-
46 posed and approved rules, guidelines and other policy state-
47 ments to the extent technically and financially feasible.

48 (d) Nothing in this section requires that any rule reclassified
49 or transferred by the Commission or the Council under this
50 section be promulgated again under the procedures set out in
51 article three-a, chapter twenty-nine-a of this code unless the
52 rule is amended or modified.

53 (e) The Commission and Council each shall file with the
54 Legislative Oversight Commission on Education Accountability
55 any rule it proposes to promulgate, adopt, amend or repeal
56 under the authority of this article.

57 (f) The governing boards of Marshall University and West
58 Virginia University, respectively, shall promulgate and adopt
59 any rule which they are required to adopt by this chapter or
60 chapter eighteen-c of this code no later than the first day of
61 July, two thousand six. On and after this date:

62 (1) Any rule of either governing board which meets the
63 definition set out in subsection (c) of this section and which has
64 not been promulgated and adopted by formal vote of the
65 appropriate governing board is void and may not be enforced;

66 (2) Any authority granted by this code which inherently
67 requires the governing board to promulgate and adopt a rule is
68 void until the governing board complies with the provisions of
69 this section.

70 (g) Within thirty days of the adoption of a rule, including
71 repeal or amendment of an existing rule, the governing boards
72 of Marshall University and West Virginia University, respec-
73 tively, shall furnish to the Commission or the Council, as
74 appropriate, a copy of each rule which has been formally
75 adopted;

76 (h) Not later than the first day of October, two thousand
77 five, and annually thereafter, each governing board of a state
78 institution of higher education shall file with the Commission
79 or the Council, as appropriate, a list of all institutional rules that
80 were in effect for that institution on the first day of July of that
81 year, including the most recent date on which each rule was
82 considered and adopted, amended or repealed by the governing
83 board. For all rules adopted, amended or repealed after the
84 effective date of this section, the list shall include a statement

85 by the chair of the governing board certifying that the govern-
86 ing board has complied with the provisions of this section when
87 each listed rule was adopted.

**ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FU-
TURE OF WEST VIRGINIA.**

§18B-1A-2. Institutional compacts with state institutions of higher education;
establishment and review process.

§18B-1A-6. Graduate education.

**§18B-1A-2. Institutional compacts with state institutions of
higher education; establishment and review
process.**

1 (a) Each state college and university shall prepare an
2 institutional compact for submission to the Commission. Each
3 community and technical college shall prepare an institutional
4 compact for submission to the Council. When the process
5 herein provided is completed, the institutional compacts shall
6 form the agreements between the institutions of higher educa-
7 tion and the Commission or Council, respectively, and, ulti-
8 mately, between the institutions of higher education and the
9 people of West Virginia on how the institutions will use their
10 resources to address the intent of the Legislature and the goals
11 set forth in section one-a, article one of this chapter. The
12 compacts shall contain the following:

13 (1) A step-by-step process to accomplish the intent of the
14 Legislature and the goals set forth in section one-a, article one
15 of this chapter as organized by the Commission and Council.
16 The step-by-step process shall be delineated by objectives and
17 shall set forth a time line for achieving the objectives which
18 shall, where applicable, include benchmarks to measure
19 institutional progress as defined in subsection (e) of this
20 section.

21 (2) A determination of the mission of the institution which
22 specifically addresses changes, as applicable, in the areas of
23 research, graduate education, baccalaureate education, revised
24 admission requirements, community and technical colleges and
25 such other areas as the Commission or Council determines
26 appropriate. In the determination of mission, the institutions
27 and the Commission or Council shall consider the report
28 completed by the national center for higher education manage-
29 ment systems pursuant to the legislative study as provided in
30 section seven, article three of this chapter;

31 (3) A plan which is calculated to make any changes in
32 institutional mission and structure within a six-year period;

33 (4) A statement of the geographic areas of responsibility,
34 where applicable, for each goal to be accomplished as provided
35 in subsection (d) of this section;

36 (5) A detailed statement of how the compact is aligned with
37 and will be implemented in conjunction with the master plan of
38 the institution;

39 (6) Such other items, requirements or initiatives, required
40 by the Commission or Council, designed to accomplish the
41 intent of the Legislature and the goals set forth in section one-a,
42 article one of this chapter or other public policy goals estab-
43 lished by the Commission or Council.

44 (b) Each institutional compact shall be updated annually
45 and shall follow the same general guidelines contained in
46 subsection (a) of this section.

47 (c) Development and updating of the institutional compacts
48 is subject to the following:

49 (1) The ultimate responsibility for developing and updating
50 the institutional compacts at the institutional level resides with

51 the institutional board of advisors or the board of governors, as
52 appropriate;

53 (2) The ultimate responsibility for developing and adopting
54 the final version of the state college and university institutional
55 compacts resides with the Commission and the ultimate
56 responsibility for developing and adopting the final version of
57 the community and technical college institutional compacts
58 resides with the Council;

59 (3) Each institution shall submit its compact to the Com-
60 mission or Council annually by the fifteenth day of November;

61 (4) The Commission and Council shall review each
62 compact of the institutions under their respective jurisdictions
63 and either adopt the compact or return it with specific com-
64 ments for change or improvement. The Commission and
65 Council, as appropriate, shall continue this process as long as
66 each considers advisable;

67 (5) By the first day of May annually, if the institutional
68 compact of any institution as presented by that institution is not
69 adopted by the Commission or Council, then the Commission
70 or Council is empowered and directed to develop and adopt the
71 institutional compact for the institution and the institution is
72 bound by the compact so adopted; and

73 (6) As far as practicable, the Commission and Council each
74 shall establish uniform processes and forms for the develop-
75 ment and submission of the institutional compacts by the
76 institutions under their respective jurisdictions. As a part of this
77 function, the Commission and Council shall organize the
78 statements of legislative intent and goals contained in section
79 one-a, article one of this chapter in a manner that facilitates the
80 purposes of this subdivision and the purposes of this section.

81 (d) *Assignment of geographic areas of responsibility.* –

82 (1) The Commission shall assign geographic areas of
83 responsibility to the state institutions of higher education under
84 its jurisdiction, except for the state institutions of higher
85 education known as Marshall University and West Virginia
86 University. For institutions other than the state institutions of
87 higher education known as Marshall University and West
88 Virginia University, the geographic areas of responsibility are
89 made a part of their institutional compacts to ensure that all
90 areas of the state are provided necessary programs and services
91 to achieve the public policy agenda.

92 (2) Pursuant to the provisions of section four, article three-c
93 of this chapter, the Council shall assign geographic areas of
94 responsibility to the state institutions of higher education under
95 its jurisdiction, including the administratively linked institution
96 known as Marshall Community and Technical College, the
97 administratively linked institution known as the Community
98 and Technical College at West Virginia University Institute of
99 Technology and the regional campus known as West Virginia
100 University at Parkersburg.

101 (3) The geographic areas of responsibility for the state
102 institutions of higher education known as Marshall University
103 and West Virginia University are assigned by the Legislature.

104 (4) The benchmarks established in the institutional com-
105 pacts shall include measures of programs and services by
106 geographic area throughout the assigned geographic area of
107 responsibility.

108 (e) The compacts shall contain benchmarks used to deter-
109 mine progress toward meeting the goals established in the
110 compacts. The benchmarks shall meet the following criteria:

111 (1) They shall be as objective as possible;

112 (2) They shall be directly linked to the goals in the com-
113 pacts;

114 (3) They shall be measured by the indicators described in
115 subsection (f) of this section; and

116 (4) Where applicable, they shall be used to measure
117 progress in geographic areas of responsibility.

118 (f) The Commission and Council each shall establish by
119 legislative rule indicators which measure the degree to which
120 the goals and objectives set forth in section one-a, article one of
121 this chapter are being addressed and met by the institutions
122 under their respective jurisdictions. The benchmarks estab-
123 lished in subsection (e) of this section shall be measured by the
124 indicators.

125 (1) The rules pertaining to benchmarks and indicators in
126 effect for the Commission and the Council on the effective date
127 of this section remain in effect for the institutions under their
128 respective jurisdictions.

129 (2) The legislative rules shall set forth at the least the
130 following as pertains to all state institutions of higher educa-
131 tion:

132 (A) The indicators used to measure the degree to which the
133 goals and objectives are being met;

134 (B) Uniform definitions for the various data elements to be
135 used in establishing the indicators;

136 (C) Guidelines for the collection and reporting of data; and

137 (D) Sufficient detail within the benchmarks and indicators
138 to:

139 (i) Provide measurable evidence that the pursuits of the
140 institution are targeting the educational needs of the citizens of
141 the state and the components of the compacts and master plans;

142 (ii) Delineate the goals and benchmarks for an institution so
143 that the Commission, or Council can precisely measure the
144 degree to which progress is being made toward achieving the
145 goals for post-secondary education provided in section one-a,
146 article one of this chapter; and

147 (iii) Distinctly identify specific goals within the master plan
148 or compact of an institution that are not being met or toward
149 which sufficient progress is not being made.

150 (3) In addition to any other requirement, the legislative rule
151 established by the Council shall set forth at the least the
152 following as pertains to community and technical college
153 education:

154 (A) Benchmarks and indicators which are targeted to
155 identify:

156 (i) The degree to which progress is being made by institu-
157 tions toward meeting the goals for post-secondary education
158 and the essential conditions provided in section three, article
159 three-c of this chapter;

160 (ii) Information and data necessary to be considered by the
161 Council in making the determination required by section three,
162 article two-c of this chapter;

163 (iii) The degree to which progress is being made in the
164 areas considered by the Council for the purpose of making the
165 determination required by section three, article two-c of this
166 chapter; and

167 (B) Sufficient detail within the benchmarks and indicators
168 to provide clear evidence to support an objective determination

169 by the Council that an institution's progress toward achieving
170 the goals for post-secondary education and the essential
171 conditions is so deficient that implementation of the provisions
172 of section four, article two-c of this chapter is warranted and
173 necessary.

174 (g) The Commission or the Council, as appropriate, shall
175 approve the master plans developed by the boards of governors
176 and the institutional boards of advisors pursuant to section four,
177 article two-a of this chapter or section one, article six of this
178 chapter, as appropriate.

§18B-1A-6. Graduate education.

1 (a) *Intent.* — It is the intent of the Legislature to address the
2 need for high quality graduate education programs to be
3 available throughout the state.

4 (b) *Findings.* — The Legislature makes the following
5 findings:

6 (1) Since West Virginia ranks below its competitor states
7 in graduate degree production, particularly in the areas that are
8 important to the state's competitive position in the new econ-
9 omy of the twenty-first century, there is a considerable need for
10 greater access to graduate education, especially at the master's
11 degree level;

12 (2) There is a significant disparity in access to part-time
13 graduate degree programs among the different regions of the
14 state and part-time graduate enrollments are heavily concen-
15 trated in the counties immediately surrounding Marshall
16 University and West Virginia University;

17 (3) There is a particular need for increased access to
18 graduate programs linked directly to the revitalization of the
19 regional economies of the state; and

20 (4) There is a particular need for improved quality and
21 accessibility of preservice and in-service programs for teachers
22 in subject matter fields.

23 (c) In order to meet the need for graduate education, the
24 Commission is responsible for accomplishing the following:

25 (1) Ensuring that West Virginia University and Marshall
26 University assist in the expansion of access to master's degree
27 programs throughout West Virginia. These institutions shall
28 place a strong emphasis on collaboration with the baccalaureate
29 colleges and community and technical colleges in each region
30 when funds are available;

31 (2) Ensuring that any institution providing a master's
32 degree program under the provisions of this section provides a
33 meaningful, coherent program by offering courses in such a
34 way that students, including place-bound adults, have ample
35 opportunity to complete a degree in a reasonable period of time;

36 (3) Focusing on providing courses that enhance the profes-
37 sional skills of teachers in their subject areas;

38 (4) Ensuring that programs are offered in the most
39 cost-effective manner to expand access throughout the region
40 and the state; and

41 (5) Determining the graduate program needs of each region.

42 (d) Bluefield State College, Concord University, Fairmont
43 State University, Glenville State College, Shepherd University,
44 West Liberty State College and West Virginia State University
45 shall meet the need for graduate education in their regions
46 pursuant to this subsection and subsection (c) of this section.

47 (1) If an institution's proposal to offer a Master's degree
48 receives the approval of the Commission, that Master's degree
49 may be offered solely by the institution.

50 (2) If an institution does not receive the approval of the
51 Commission for a proposal to offer a Master's degree, that
52 institution may broker or collaborate with another higher
53 education institution to develop a revised proposal for offering
54 that brokered or collaborative Master's degree.

55 (e) There is an urgent need for master's degree programs
56 for teachers in disciplines or subject areas, such as mathematics,
57 science, history, literature, foreign languages and the arts.
58 Currently, master's-level courses in education that are offered
59 in the regions served by the state universities are primarily in
60 areas such as guidance and counseling, administration, special
61 education and other disciplines unrelated to teaching in subject
62 areas. If this need is not being met in a region through the
63 procedure established in subsection (d) of this section, then the
64 graduate center in that region may plan a master's degree
65 program in education focused on teaching in subject area fields
66 in which the demand is not being met. No institution may
67 begin a graduate program under the provisions of this section
68 until the program has been reviewed and approved by the
69 Commission. The Commission shall approve only those
70 programs, as authorized by this subsection, that emphasize
71 serving the needs of teachers and schools in the colleges'
72 immediate regions. In determining whether a program should
73 be approved, the Commission also shall rely upon the recom-
74 mendations of the statewide task force on teacher quality
75 provided in section eight, article fourteen of this chapter.

76 (f) The Commission shall review all graduate programs
77 being offered under the provisions of this section and, using the
78 criteria established for program startup in subsection (d) of this
79 section, determine which programs should be discontinued.

80 (g) At least annually, the governing boards shall evaluate
81 graduate programs developed pursuant to the provisions of this
82 section and report to the Commission on the following:

83 (1) The number of programs being offered and the courses
84 offered within each program;

85 (2) The disciplines in which programs are being offered;

86 (3) The locations and times at which courses are offered;

87 (4) The number of students enrolled in the program; and

88 (5) The number of students who have obtained master's
89 degrees through each program.

90 The governing boards shall provide the Commission with
91 any additional information the Commission requests in order to
92 make a determination on the viability of a program.

93 (h) In developing any graduate program under the provi-
94 sions of this section, institutions shall consider delivering
95 courses at times and places convenient to adult students who are
96 employed full time. Institutions shall place an emphasis on
97 extended degree programs, distance learning and off-campus
98 centers which utilize the cost-effective nature of extending
99 existing university capacity to serve the state rather than
100 duplicating the core university capacity and incurring the
101 increased cost of developing master's degree programs at other
102 institutions throughout the state.

103 (i) Brokering institutions shall invite proposals from other
104 public institutions of higher education for service provision
105 prior to contracting with other institutions: *Provided*, That if
106 institutions propose providing graduate programs in service
107 areas other than in their responsibility district, the institution
108 seeking to establish a program shall work through the district's
109 lead institution in providing those services.

110 (j) In addition to the approval required by the Commission,
111 authorization for any institution to offer a master's degree

112 program under the provisions of this section is subject to the
113 formal approval processes established by the governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of higher education policy Commission.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors.

§18B-1B-6. Appointment of institutional presidents; evaluation.

§18B-1B-13. Study of issues affecting employees in public higher education.

§18B-1B-4. Powers and duties of higher education policy Commission.

1 (a) The primary responsibility of the Commission is to
2 develop, establish and implement policy that will achieve the
3 goals and objectives found in section one-a, article one of this
4 chapter. The Commission shall exercise its authority and carry
5 out its responsibilities in a manner that is consistent and not in
6 conflict with the powers and duties assigned by law to the West
7 Virginia Council for community and technical college educa-
8 tion and the powers and duties assigned to the governing boards
9 of Marshall University and West Virginia University, respec-
10 tively. To that end, the Commission has the following powers
11 and duties relating to the institutions under its jurisdiction:

12 (1) Develop, oversee and advance the public policy agenda
13 pursuant to section one, article one-a of this chapter to address
14 major challenges facing the state, including, but not limited to,
15 the goals and objectives found in section one-a, article one of
16 this chapter and including specifically those goals and objec-
17 tives pertaining to the compacts created pursuant to section two,
18 article one-a of this chapter and to develop and implement the
19 master plan described in section nine of this article for the
20 purpose of accomplishing the mandates of this section;

21 (2) Develop, oversee and advance the implementation
22 jointly with the Council of a financing policy for higher

23 education in West Virginia. The policy shall meet the follow-
24 ing criteria:

25 (A) Provide an adequate level of education and general
26 funding for institutions pursuant to section five, article one-a of
27 this chapter;

28 (B) Serve to maintain institutional assets, including, but not
29 limited to, human and physical resources and deferred mainte-
30 nance;

31 (C) Invest and provide incentives for achieving the priority
32 goals in the public policy agenda, including, but not limited to,
33 those found in section one-a, article one of this chapter; and

34 (D) Incorporate the plan for strategic funding to strengthen
35 capacity for support of community and technical college
36 education established by the West Virginia Council for Com-
37 munity and Technical College Education pursuant to the
38 provisions of section six, article two-b of this chapter;

39 (3) In collaboration with the Council, create a policy
40 leadership structure capable of the following actions:

41 (A) Developing, building public consensus around and
42 sustaining attention to a long-range public policy agenda. In
43 developing the agenda, the Commission and Council shall seek
44 input from the Legislature and the Governor and specifically
45 from the State Board of Education and local school districts in
46 order to create the necessary linkages to assure smooth,
47 effective and seamless movement of students through the public
48 education and post-secondary education systems and to ensure
49 that the needs of public school courses and programs can be
50 fulfilled by the graduates produced and the programs offered;

51 (B) Ensuring that the governing boards carry out their duty
52 effectively to govern the individual institutions of higher
53 education; and

54 (C) Holding the higher education institutions and the higher
55 education systems as a whole accountable for accomplishing
56 their missions and implementing the provisions of the com-
57 pacts;

58 (4) Develop and adopt each institutional compact;

59 (5) Review and adopt the annual updates of the institutional
60 compacts;

61 (6) Serve as the accountability point to:

62 (A) The Governor for implementation of the public policy
63 agenda; and

64 (B) The Legislature by maintaining a close working
65 relationship with the legislative leadership and the Legislative
66 Oversight Commission on Education Accountability;

67 (7) Jointly with the Council, promulgate legislative rules
68 pursuant to article three-a, chapter twenty-nine-a of this code to
69 fulfill the purposes of section five, article one-a of this chapter;

70 (8) Establish and implement a peer group for each institu-
71 tion as described in section three, article one-a of this chapter;

72 (9) Establish and implement the benchmarks and perfor-
73 mance indicators necessary to measure institutional achieve-
74 ment towards state policy priorities and institutional missions
75 pursuant to section two, article one-a of this chapter;

76 (10) Annually report to the Legislature and to the Legisla-
77 tive Oversight Commission on Education Accountability during
78 the January interim meetings on a date and at a time and

79 location to be determined by the President of the Senate and the
80 Speaker of the House of Delegates. The report shall address at
81 least the following:

82 (A) The performance of its system of higher education
83 during the previous fiscal year, including, but not limited to,
84 progress in meeting goals stated in the compacts and progress
85 of the institutions and the higher education system as a whole
86 in meeting the goals and objectives set forth in section one-a,
87 article one of this chapter;

88 (B) An analysis of enrollment data collected pursuant to
89 section one, article ten of this chapter and recommendations for
90 any changes necessary to assure access to high-quality,
91 high-demand education programs for West Virginia residents;

92 (C) The priorities established for capital investment needs
93 pursuant to subdivision (11) of this subsection and the justifica-
94 tion for such priority;

95 (D) Recommendations of the Commission for statutory
96 changes needed to further the goals and objectives set forth in
97 section one-a, article one of this chapter;

98 (11) Establish a formal process for identifying needs for
99 capital investments and for determining priorities for these
100 investments for consideration by the Governor and the Legisla-
101 ture as part of the appropriation request process. It is the
102 responsibility of the Commission to assure a fair distribution of
103 funds for capital projects between the Commission and the
104 Council. To that end the Commission shall take the following
105 steps:

106 (A) Receive the list of priorities developed by the Council
107 for capital investment for the institutions under the Council's
108 jurisdiction pursuant to subsection (b), section six, article two-b
109 of this chapter;

110 (B) Place the ranked list of projects on the agenda for action
111 within sixty days of the date on which the list was received;

112 (C) Select a minimum of three projects from the list
113 submitted by the Council to be included on the ranked list
114 established by the Commission. At least one of the three
115 projects selected must come from the top two priorities estab-
116 lished by the Council.

117 (12) Maintain guidelines for institutions to follow concern-
118 ing extensive capital project management except the governing
119 boards of Marshall University and West Virginia University are
120 not subject to the provisions of this subdivision as it relates to
121 the state institutions of higher education known as Marshall
122 University and West Virginia University. The guidelines shall
123 provide a process for developing capital projects, including, but
124 not limited to, the notification by an institution to the Commis-
125 sion of any proposed capital project which has the potential to
126 exceed one million dollars in cost. Such a project may not be
127 pursued by an institution without the approval of the Commis-
128 sion. An institution may not participate directly or indirectly
129 with any public or private entity in any capital project which
130 has the potential to exceed one million dollars in cost;

131 (13) Acquire legal services as are considered necessary,
132 including representation of the Commission, its institutions,
133 employees and officers before any court or administrative body,
134 notwithstanding any other provision of this code to the contrary.
135 The counsel may be employed either on a salaried basis or on
136 a reasonable fee basis. In addition, the Commission may, but
137 is not required to, call upon the Attorney General for legal
138 assistance and representation as provided by law;

139 (14) Employ a Chancellor for Higher Education pursuant to
140 section five of this article;

141 (15) Employ other staff as necessary and appropriate to
142 carry out the duties and responsibilities of the Commission and
143 the Council, in accordance with the provisions of article four of
144 this chapter;

145 (16) Provide suitable offices in Charleston for the chancel-
146 lor, vice chancellors and other staff;

147 (17) Advise and consent in the appointment of the presi-
148 dents of the institutions of higher education under its jurisdic-
149 tion pursuant to section six of this article. The role of the
150 Commission in approving an institutional president is to assure
151 through personal interview that the person selected understands
152 and is committed to achieving the goals and objectives as set
153 forth in the institutional compact and in section one-a, article
154 one of this chapter;

155 (18) Approve the total compensation package from all
156 sources for presidents of institutions under its jurisdiction, as
157 proposed by the governing boards. The governing boards must
158 obtain approval from the Commission of the total compensation
159 package both when institutional presidents are employed
160 initially and afterward when any change is made in the amount
161 of the total compensation package;

162 (19) Establish and implement the policy of the state to
163 assure that parents and students have sufficient information at
164 the earliest possible age on which to base academic decisions
165 about what is required for students to be successful in college,
166 other post-secondary education and careers related, as far as
167 possible, to results from current assessment tools in use in West
168 Virginia;

169 (20) Approve and implement a uniform standard jointly
170 with the Council to determine which students shall be placed in
171 remedial or developmental courses. The standard shall be
172 aligned with college admission tests and assessment tools used

173 in West Virginia and shall be applied uniformly by the govern-
174 ing boards throughout the public higher education system. The
175 chancellors shall develop a clear, concise explanation of the
176 standard which they shall communicate to the State Board of
177 Education and the State Superintendent of schools;

178 (21) Review and approve or disapprove capital projects as
179 described in subdivision (11) of this subsection;

180 (22) Jointly with the Council, develop and implement an
181 oversight plan to manage systemwide technology such as the
182 following:

183 (A) Expanding distance learning and technology networks
184 to enhance teaching and learning, promote access to quality
185 educational offerings with minimum duplication of effort; and

186 (B) Increasing the delivery of instruction to nontraditional
187 students, to provide services to business and industry and
188 increase the management capabilities of the higher education
189 system.

190 (C) Notwithstanding any other provision of law or this code
191 to the contrary, the Council, Commission and state institutions
192 of higher educations are not subject to the jurisdiction of the
193 Chief Technology Officer for any purpose.

194 (23) Establish and implement policies and procedures to
195 ensure that students may transfer and apply toward the require-
196 ments for a bachelor's degree the maximum number of credits
197 earned at any regionally accredited in-state or out-of-state
198 community and technical college with as few requirements to
199 repeat courses or to incur additional costs as is consistent with
200 sound academic policy;

201 (24) Establish and implement policies and procedures to
202 ensure that students may transfer and apply toward the require-

203 ments for a degree the maximum number of credits earned at
204 any regionally accredited in-state or out-of-state higher educa-
205 tion institution with as few requirements to repeat courses or to
206 incur additional costs as is consistent with sound academic
207 policy;

208 (25) Establish and implement policies and procedures to
209 ensure that students may transfer and apply toward the require-
210 ments for a master's degree the maximum number of credits
211 earned at any regionally accredited in-state or out-of-state
212 higher education institution with as few requirements to repeat
213 courses or to incur additional costs as is consistent with sound
214 academic policy;

215 (26) Establish and implement policies and programs, in
216 cooperation with the Council and the institutions of higher
217 education, through which students who have gained knowledge
218 and skills through employment, participation in education and
219 training at vocational schools or other education institutions, or
220 internet-based education programs, may demonstrate by
221 competency-based assessment that they have the necessary
222 knowledge and skills to be granted academic credit or advanced
223 placement standing toward the requirements of an associate
224 degree or a bachelor's degree at a state institution of higher
225 education;

226 (27) Seek out and attend regional, national and international
227 meetings and forums on education and workforce develop-
228 ment-related topics, as in the Commission's discretion is
229 critical for the performance of their duties as members, for the
230 purpose of keeping abreast of education trends and policies to
231 aid it in developing the policies for this state to meet the
232 established education goals and objectives pursuant to section
233 one-a, article one of this chapter;

234 (28) Develop, establish and implement a rule for higher
235 education governing boards and institutions to follow when

236 considering capital projects. The guidelines shall assure that
237 the governing boards and institutions do not approve or
238 promote capital projects involving private sector businesses
239 which would have the effect of reducing property taxes on
240 existing properties or avoiding, in whole or in part, the full
241 amount of taxes which would be due on newly developed or
242 future properties;

243 (29) Consider and submit to the appropriate agencies of the
244 executive and legislative branches of state government a budget
245 that reflects recommended appropriations from the Commission
246 and the institutions under its jurisdiction. The Commission
247 shall submit as part of its budget proposal the separate recom-
248 mended appropriations it received from the Council, both for
249 the Council and the institutions under the Council's jurisdiction.
250 The Commission annually shall submit the proposed institu-
251 tional allocations based on each institution's progress toward
252 meeting the goals of its institutional compact;

253 (30) The Commission has the authority to assess institu-
254 tions under its jurisdiction, including the state institutions of
255 higher education known as Marshall University and West
256 Virginia University, for the payment of expenses of the
257 Commission or for the funding of statewide higher education
258 services, obligations or initiatives related to the goals set forth
259 for the provision of public higher education in the state;

260 (31) Promulgate rules allocating reimbursement of appro-
261 priations, if made available by the Legislature, to institutions of
262 higher education for qualifying noncapital expenditures
263 incurred in the provision of services to students with physical,
264 learning or severe sensory disabilities;

265 (32) Make appointments to boards and commissions where
266 this code requires appointments from the State College System
267 Board of Directors or the University of West Virginia System

268 Board of Trustees which were abolished effective the thirtieth
269 day of June, two thousand, except in those cases where the
270 required appointment has a specific and direct connection to the
271 provision of community and technical college education, the
272 appointment shall be made by the Council. Notwithstanding
273 any provisions of this code to the contrary, the Commission or
274 the Council may appoint one of its own members or any other
275 citizen of the state as its designee. The Commission and
276 Council shall appoint the total number of persons in the
277 aggregate required to be appointed by these previous governing
278 boards;

279 (33) Pursuant to the provisions of article three-a, chapter
280 twenty-nine-a of this code and section six, article one of this
281 chapter, promulgate rules as necessary or expedient to fulfill the
282 purposes of this chapter. The Commission and the Council
283 shall promulgate a uniform joint legislative rule for the purpose
284 of standardizing, as much as possible, the administration of
285 personnel matters among the institutions of higher education;

286 (34) Determine when a joint rule among the governing
287 boards of the institutions under its jurisdiction is necessary or
288 required by law and, in those instances, in consultation with the
289 governing boards of all the institutions under its jurisdiction,
290 promulgate the joint rule;

291 (35) In consultation with the Governing Boards of Marshall
292 University and West Virginia University, implement a policy
293 jointly with the Council whereby course credit earned at a
294 community and technical college transfers for program credit
295 at any other state institution of higher education and is not
296 limited to fulfilling a general education requirement;

297 (36) Promulgate a joint rule with the Council establishing
298 tuition and fee policy for all institutions of higher education,
299 other than state institutions of higher education known as

300 Marshall University and West Virginia University which are
301 subject to the provisions of section one, article ten of this
302 chapter. The rule shall include, but is not limited to, the
303 following:

304 (A) Comparisons with peer institutions;

305 (B) Differences among institutional missions;

306 (C) Strategies for promoting student access;

307 (D) Consideration of charges to out-of-state students; and

308 (E) Such other policies as the Commission and Council
309 consider appropriate; and

310 (37) Implement general disease awareness initiatives to
311 educate parents and students, particularly dormitory residents,
312 about meningococcal meningitis; the potentially life-threatening
313 dangers of contracting the infection; behaviors and activities
314 that can increase risks; measures that can be taken to prevent
315 contact or infection; and potential benefits of vaccination. The
316 Commission shall encourage institutions that provide medical
317 care to students to provide access to the vaccine for those who
318 wish to receive it.

319 (b) In addition to the powers and duties listed in subsection
320 (a) of this section, the Commission has the following general
321 powers and duties related to its role in developing, articulating
322 and overseeing the implementation of the public policy agenda:

323 (1) Planning and policy leadership including a distinct and
324 visible role in setting the state's policy agenda and in serving as
325 an agent of change;

326 (2) Policy analysis and research focused on issues affecting
327 the system as a whole or a geographical region thereof;

328 (3) Development and implementation of institutional
329 mission definitions including use of incentive funds to influ-
330 ence institutional behavior in ways that are consistent with
331 public priorities;

332 (4) Academic program review and approval for institutions
333 under its jurisdiction, including the use of institutional missions
334 as a template to judge the appropriateness of both new and
335 existing programs and the authority to implement needed
336 changes. The Commission's authority to review and approve
337 academic programs for either the state institution of higher
338 education known as Marshall University or West Virginia
339 University is limited to programs that are proposed to be
340 offered at a new location not presently served by that institu-
341 tion;

342 (5) Distribution of funds appropriated to the Commission,
343 including incentive and performance-based funding;

344 (6) Administration of state and federal student aid programs
345 under the supervision of the vice chancellor for administration,
346 including promulgation of any rules necessary to administer
347 those programs;

348 (7) Serving as the agent to receive and disburse public
349 funds when a governmental entity requires designation of a
350 statewide higher education agency for this purpose;

351 (8) Development, establishment and implementation of
352 information, assessment and accountability systems, including
353 maintenance of statewide data systems that facilitate long-term
354 planning and accurate measurement of strategic outcomes and
355 performance indicators;

356 (9) Jointly with the Council, developing, establishing and
357 implementing policies for licensing and oversight for both
358 public and private degree-granting and nondegree-granting

359 institutions that provide post-secondary education courses or
360 programs in the state pursuant to the findings and policy
361 recommendations required by section eleven of this article;

362 (10) Development, implementation and oversight of
363 statewide and region-wide projects and initiatives related to
364 providing post-secondary education at the baccalaureate level
365 and above such as those using funds from federal categorical
366 programs or those using incentive and performance-based
367 funding from any source; and

368 (11) Quality assurance that intersects with all other duties
369 of the Commission particularly in the areas of research, data
370 collection and analysis, planning, policy analysis, program
371 review and approval, budgeting and information and account-
372 ability systems.

373 (c) In addition to the powers and duties provided in
374 subsections (a) and (b) of this section and any other powers and
375 duties as may be assigned to it by law, the Commission has
376 such other powers and duties as may be necessary or expedient
377 to accomplish the purposes of this article.

378 (d) The Commission is authorized to withdraw specific
379 powers of any governing board of an institution under its
380 jurisdiction for a period not to exceed two years, if the Commis-
381 sion makes a determination that:

382 (1) The governing board has failed for two consecutive
383 years to develop an institutional compact as required in article
384 one of this chapter;

385 (2) The Commission has received information, substanti-
386 ated by independent audit, of significant mismanagement or
387 failure to carry out the powers and duties of the board of
388 governors according to state law; or

389 (3) Other circumstances which, in the view of the Commis-
390 sion, severely limit the capacity of the board of governors to
391 carry out its duties and responsibilities.

392 The period of withdrawal of specific powers may not
393 exceed two years during which time the Commission is
394 authorized to take steps necessary to reestablish the conditions
395 for restoration of sound, stable and responsible institutional
396 governance.

**§18B-1B-5. Employment of Chancellor for Higher Education;
office; powers and duties generally; employment
of Vice Chancellors.**

1 (a) The Commission, created pursuant to section one of this
2 article, shall employ a Chancellor for Higher Education who is
3 the Chief Executive Officer of the Commission and who serves
4 at its will and pleasure.

5 (b) The Commission shall set the qualifications for the
6 position of Chancellor and shall conduct a thorough nationwide
7 search for qualified candidates. A qualified candidate is one
8 who meets at least the following criteria:

9 (1) Possesses an excellent academic and administrative
10 background;

11 (2) Demonstrates strong communication skills;

12 (3) Has significant experience and an established national
13 reputation as a professional in the field of higher education;

14 (4) Is free of institutional or regional biases; and

15 (5) Holds or retains no other administrative position within
16 a system of higher education while employed as chancellor.

17 (c) The Commission shall conduct written performance
18 evaluations of the Chancellor annually and may offer the
19 Chancellor a contract not to exceed three years. At the end of
20 each contract period, the Commission shall review the evalua-
21 tions and make a determination by vote of its members on
22 continuing employment and compensation level.

23 (d) When filling a vacancy in the position of Chancellor,
24 the Commission shall enter into an initial employment contract
25 for one year with the candidate selected. At the end of the
26 initial contract period, and each contract period thereafter, the
27 Commission shall review the evaluations and make a determi-
28 nation by vote of its members on continuing employment and
29 compensation level for the Chancellor.

30 (e) The Commission sets the Chancellor's salary. The
31 salary may not exceed by more than twenty percent the average
32 annual salary of chief executive officers of state systems of
33 higher education in the states that comprise the membership of
34 the Southern Regional Education Board.

35 (f) The Commission may employ a Vice Chancellor for
36 Health Sciences who serves at the will and pleasure of the
37 Commission. The Vice Chancellor for Health Sciences shall
38 coordinate the West Virginia University School of Medicine,
39 the Marshall University School of Medicine and the West
40 Virginia School of Osteopathic Medicine and also shall provide
41 assistance to the governing boards on matters related to medical
42 education and health sciences. The Vice Chancellor for Health
43 Sciences shall perform all duties assigned by the Chancellor,
44 the Commission and state law. In the case of a vacancy in the
45 office of Vice Chancellor of Health Sciences, the duties
46 assigned to this Office by law are the responsibility of the
47 Chancellor or a designee.

48 (g) The Commission shall employ a Vice Chancellor for
49 Administration pursuant to section two, article four of this
50 chapter.

51 (h) The Commission may employ a Vice Chancellor for
52 State Colleges who serves at the will and pleasure of the
53 Commission. It is the duty and responsibility of the Vice
54 Chancellor for State Colleges to:

55 (1) Provide assistance to the Commission, the Chancellor
56 and the state colleges on matters related to or of interest and
57 concern to these institutions;

58 (2) Advise, assist and consult regularly with the institu-
59 tional presidents and institutional boards of governors of each
60 state college;

61 (3) Serve as an advocate and spokesperson for the state
62 colleges to represent them and to make their interests, views
63 and issues known to the Chancellor, the Commission and
64 governmental agencies;

65 (4) Perform all duties assigned by the Chancellor, the
66 Commission and state law.

67 In addition, the Vice Chancellor for State Colleges has the
68 responsibility and the duty to provide staff assistance to the
69 institutional presidents and governing boards to the extent
70 practicable.

71 (i) On behalf of the Commission, the Chancellor may enter
72 into agreements with any state agency or political subdivision
73 of the state, any state higher education institution or any other
74 person or entity to enlist staff assistance to implement the
75 powers and duties assigned by the Commission or by state law.

76 (j) The Chancellor is responsible for the daily operations of
77 the Commission and has the following responsibilities relating
78 to the Commission and the institutions under its jurisdiction:

79 (1) To carry out policy and program directives of the
80 Commission;

81 (2) To develop and submit annual reports on the implemen-
82 tation plan to achieve the goals and objectives set forth in
83 section one-a, article one of this chapter and in the institutional
84 compacts;

85 (3) To prepare and submit to the Commission for its
86 approval the proposed budget of the Commission including the
87 offices of the Chancellor and the Vice Chancellors;

88 (4) To assist the governing boards in developing rules,
89 subject to the provisions of section six, article one of this
90 chapter. Nothing in this chapter requires the rules of the
91 governing boards to be filed pursuant to the rule-making
92 procedures provided in article three-a, chapter twenty-nine-a of
93 this code. The Commission and the Council, either separately
94 or jointly as appropriate, are responsible for ensuring that any
95 policy which is required to be uniform across the institutions is
96 applied in a uniform manner;

97 (5) To perform all other duties and responsibilities assigned
98 by the Commission or by state law.

99 (k) The Chancellor shall be reimbursed for all actual and
100 necessary expenses incurred in the performance of all assigned
101 duties and responsibilities.

102 (l) The Chancellor, with the Commission, advises the
103 Legislature on matters of higher education in West Virginia.
104 The Chancellor shall work closely with the Legislative Over-
105 sight Commission on Education Accountability and with the

106 elected leadership of the state to ensure that they are fully
107 informed about higher education issues and that the Commis-
108 sion fully understands the goals for higher education that the
109 Legislature has established by law.

110 (m) The Chancellor may design and develop for consider-
111 ation by the Commission new statewide or regional initiatives
112 in accordance with the goals set forth in section one-a, article
113 one of this chapter and the public policy agenda articulated by
114 the Commission. In those instances where the initiatives to be
115 proposed have a direct and specific impact or connection to
116 community and technical college education as well as to
117 baccalaureate and graduate education, the Chancellor for
118 Higher Education and the Chancellor for Community and
119 Technical College Education shall design and develop the
120 initiatives jointly for consideration by the Commission and the
121 Council.

122 (n) The Chancellor shall work closely with members of the
123 State Board of Education and with the State Superintendent of
124 Schools to assure that the following goals are met:

125 (1) Development and implementation of a seamless
126 kindergarten-through-college system of education; and

127 (2) Appropriate coordination of missions and programs. To
128 further the goals of cooperation and coordination between the
129 Commission and the State Board of Education, the Chancellor
130 serves as an ex officio, nonvoting member of the State Board of
131 Education.

§18B-1B-6. Appointment of institutional presidents; evaluation.

1 (a) *Appointment of institutional presidents.* — Appointment
2 of presidents of the state institutions of higher education shall
3 be made as follows:

4 (1) Subject to the approval of the Commission, the govern-
5 ing board of the institution appoints a president for Bluefield
6 State College, Concord University, Fairmont State University,
7 Glenville State College, Marshall University, Shepherd
8 University, West Liberty State College, West Virginia School
9 of Osteopathic Medicine, West Virginia State University and
10 West Virginia University.

11 (2) Subject to the approval of the Council and to the
12 provisions of article three-c of this chapter, the Governing
13 Board of West Virginia University appoints the President of the
14 regional campus known as West Virginia University at
15 Parkersburg. When selecting candidates for consideration to
16 fill the office of president, the Governing Board shall use the
17 search and screening process provided in section one, article six
18 of this chapter.

19 Subject to the approval of the Commission, the Governing
20 Board of West Virginia University appoints the President of the
21 regional campus known as West Virginia University Institute
22 of Technology. The president of each regional campus serves
23 at the will and pleasure of the appointing governing board.

24 (3) Subject to the approval of the Council, the governing
25 board of the community and technical college appoints a
26 president for Eastern West Virginia Community and Technical
27 College, Southern West Virginia Community and Technical
28 College and West Virginia Northern Community and Technical
29 College.

30 (4) Subject to the approval of the Council, the governing
31 board of the sponsoring institution appoints a president for each
32 administratively linked community and technical college which
33 shares a physical campus location with the sponsoring institu-
34 tion, including Fairmont State Community and Technical
35 College, Marshall Community and Technical College, the

36 Community and Technical College at West Virginia University
37 Institute of Technology and West Virginia State Community
38 and Technical College.

39 (5) Subject to the approval of the Council, the governing
40 board of the community and technical college appoints a
41 president for each administratively linked community and
42 technical college which does not share a physical campus
43 location with the sponsoring institution, including New River
44 Community and Technical College and the Community and
45 Technical College of Shepherd.

46 (b) *Other appointments.* — The institutional president
47 appoints a provost to be the administrative head of the Potomac
48 campus of West Virginia University.

49 (c) *Evaluation of presidents.* — The appointing governing
50 board shall conduct written performance evaluations of each
51 institution's president, including the presidents of administra-
52 tively linked community and technical colleges. Evaluations
53 shall be done in every fourth year of employment as president,
54 recognizing unique characteristics of the institution and
55 utilizing institutional personnel, institutional boards of advisors
56 as appropriate, staff of the appropriate governing board and
57 persons knowledgeable in higher education matters who are not
58 otherwise employed by a governing board. A part of the
59 evaluation shall be a determination of the success of the
60 institution in meeting the requirements of its institutional
61 compact.

**§18B-1B-13. Study of issues affecting employees in public higher
education.**

1 (a) In consultation with the Council, the governing boards,
2 the State Advisory Council of Faculty established pursuant to
3 section two, article six of this chapter and the State Advisory
4 Council of Classified Employees established pursuant to section

5 five, article six of this chapter, the Commission shall conduct
6 a study relating to issues affecting employees in public higher
7 education.

8 (b) The study includes, but is not limited to, the following:

9 (1) Reviewing statutes, rules, guidelines, interpretations and
10 other statements of policy;

11 (2) Surveying the capacity, professional training and
12 practices of human resources staff by institution, including the
13 number of staff employed in each institutional human resources
14 office, their job titles and responsibilities;

15 (3) Evaluating the strengths and weaknesses of the state-
16 wide classification and compensation system and examining
17 alternatives;

18 (4) Reviewing job titles and responsibilities to determine if
19 certain families of jobs should be classified or nonclassified;

20 (5) Evaluating and recommending best practices and
21 methods to establish salary rates for faculty, classified employ-
22 ees, nonclassified employees and administrators, including:

23 (A) Developing measurable indicators of “merit” and
24 “performance” if these terms are to be used in a system for
25 determining benefits;

26 (B) Developing reliable instruments of performance
27 evaluation for all classes of employees; and

28 (C) Exploring the feasibility of authorizing employee
29 bonuses under a merit or performance-based system;

30 (6) Determining the most effective and efficient method to
31 train administrators who perform employee evaluations and
32 assuring that they use these instruments appropriately;

33 (7) Exploring justifications for maintaining or removing the
34 internal preference for hiring, promoting and transferring
35 classified employees pursuant to article seven of this chapter;

36 (8) Developing recommendations for a fair and rational
37 policy covering reductions in force;

38 (9) Identifying unnecessary state-level paperwork require-
39 ments related to personnel and recommending methods to
40 eliminate them while maintaining strict fiscal accountability;

41 (10) Evaluating the strengths and weaknesses of statewide
42 tenure and promotion policies for faculty and examining
43 alternatives;

44 (11) Evaluating the feasibility of implementing differential
45 salary rates based on cost of living or other relevant factors;

46 (12) Determining whether employees whose salaries are
47 derived from funds other than state appropriations should be
48 subject to the provisions of article seven of this chapter and
49 how such employees should be treated in any policy on
50 reductions in force; and

51 (13) Determining the true costs or benefits as well as the
52 advantages and disadvantages that may accrue as a result of
53 decisions to outsource certain institutional functions. In order
54 to perform a cost/benefit analysis, the Commission must first
55 develop an accurate database of institutional practices including
56 the number of positions being outsourced or filled by temporary
57 employees and the true amount of cost savings, if any.

58 (c) The Commission shall report to the Legislative Over-
59 sight Commission on Education Accountability by the first day
60 of October, two thousand five, and every six months thereafter
61 on the progress of the study.

62 (d) The Commission shall complete its work and report its
63 findings, conclusions and recommendations, together with
64 drafts of any legislation necessary to effectuate the recommen-
65 dations, to the Legislative Oversight Commission on Education
66 Accountability by the first day of December, two thousand
67 eight.

68 (1) In making its recommendations, the Commission shall
69 take into account the impact of proposed changes on employees
70 and the communities in which state institutions of higher
71 education are located; and

72 (2) The Commission shall include documentation to support
73 any conclusion or recommendation included as a part of their
74 findings and shall attach estimates of cost or savings to each
75 recommendation, if that recommendation has a fiscal impact on
76 any public agency or institution.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-3. Supervision of governing boards; promulgation of rules.

§18B-2A-4. Powers and duties of governing boards generally.

§18B-2A-8. Additional powers and duties of governing boards.

§18B-2A-3. Supervision of governing boards; promulgation of rules.

1 (a) The governing boards are subject to the supervision of
2 the Commission or the Council, as appropriate, except for the
3 governing boards of Marshall University and West Virginia
4 University as it relates to the state institutions of higher
5 education know as Marshall University and West Virginia
6 University. The Chancellor for Higher Education and the
7 Chancellor for Community and Technical College Education,
8 under the supervision of their respective boards, are responsible
9 for the coordination of policies and purposes of the governing
10 boards and shall provide for and facilitate sufficient interaction
11 among the governing boards and between the governing boards

12 and the State Board of Education to meet the goals and objec-
13 tives provided in the compacts and in section one-a, article one
14 of this chapter.

15 (b) The governing boards and the State Board of Education
16 shall provide any and all information requested by the Commis-
17 sion or the Council in an appropriate format and in a timely
18 manner.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the following powers
2 and duties:

3 (a) Determine, control, supervise and manage the financial,
4 business and education policies and affairs of the state institu-
5 tions of higher education under its jurisdiction;

6 (b) Develop a master plan for the institutions under its
7 jurisdiction, except the administratively linked community and
8 technical colleges which retain an institutional board of
9 advisors shall develop their master plans subject to the provi-
10 sions of section one, article six of this chapter.

11 (1) The ultimate responsibility for developing and updating
12 the master plans at the institutional level resides with the board
13 of governors, or board of advisors, as applicable, but the
14 ultimate responsibility for approving the final version of the
15 institutional master plans, including periodic updates, resides
16 with the Commission or Council, as appropriate.

17 (2) Each master plan shall include, but not be limited to, the
18 following:

19 (A) A detailed demonstration of how the master plan will
20 be used to meet the goals and objectives of the institutional
21 compact;

22 (B) A well-developed set of goals outlining missions,
23 degree offerings, resource requirements, physical plant needs,
24 personnel needs, enrollment levels and other planning
25 determinates and projections necessary in such a plan to assure
26 that the needs of the institution's area of responsibility for a
27 quality system of higher education are addressed;

28 (C) Documentation of the involvement of the Commission
29 or Council, as appropriate, institutional constituency groups,
30 clientele of the institution and the general public in the develop-
31 ment of all segments of the institutional master plan.

32 (3) The plan shall be established for periods of not less than
33 three nor more than six years and shall be revised periodically
34 as necessary, including the addition or deletion of degree
35 programs as, in the discretion of the appropriate governing
36 board, may be necessary;

37 (c) Prescribe for the institutions under its jurisdiction, in
38 accordance with its master plan and the compact for each
39 institution, specific functions and responsibilities to meet the
40 higher education needs of its area of responsibility and to avoid
41 unnecessary duplication;

42 (d) Direct the preparation of a budget request for the
43 institutions under its jurisdiction, such request to relate directly
44 to missions, goals and projections as found in the institutional
45 master plans and the institutional compacts;

46 (e) Consider, revise and submit to the Commission or
47 Council, as appropriate, a budget request on behalf of the
48 institutions under its jurisdiction;

49 (f) Review, at least every five years, all academic programs
50 offered at the institutions under its jurisdiction. The review
51 shall address the viability, adequacy and necessity of the
52 programs in relation to its institutional master plan, the institu-

53 tional compact and the education and workforce needs of its
54 responsibility district. As a part of the review, each governing
55 board shall require the institutions under its jurisdiction to
56 conduct periodic studies of its graduates and their employers to
57 determine placement patterns and the effectiveness of the
58 education experience. Where appropriate, these studies should
59 coincide with the studies required of many academic disciplines
60 by their accrediting bodies;

61 (g) The governing boards shall ensure that the sequence and
62 availability of academic programs and courses offered by the
63 institutions under their jurisdiction is such that students have
64 the maximum opportunity to complete programs in the time
65 frame normally associated with program completion. Each
66 governing board is responsible to see that the needs of nontradi-
67 tional college-age students are appropriately addressed and, to
68 the extent it is possible for the individual governing board to
69 control, to assure core course work completed at institutions
70 under its jurisdiction is transferable to any other state institution
71 of higher education for credit with the grade earned;

72 (h) Subject to the provisions of article one-b of this chapter,
73 the appropriate governing board has the exclusive authority to
74 approve the teacher education programs offered in the institu-
75 tion under its control. In order to permit graduates of teacher
76 education programs to receive a degree from a nationally
77 accredited program and in order to prevent expensive duplica-
78 tion of program accreditation, the Commission may select and
79 utilize one nationally recognized teacher education program
80 accreditation standard as the appropriate standard for program
81 evaluation;

82 (i) Utilize faculty, students and classified employees in
83 institutional-level planning and decisionmaking when those
84 groups are affected;

85 (j) Subject to the provisions of federal law and pursuant to
86 the provisions of article nine of this chapter and to rules
87 adopted by the Commission and the Council, administer a
88 system for the management of personnel matters, including, but
89 not limited to, personnel classification, compensation and
90 discipline for employees at the institutions under their jurisdic-
91 tion;

92 (k) Administer a system for hearing employee grievances
93 and appeals. Notwithstanding any other provision of this code
94 to the contrary, the procedure established in article six-a,
95 chapter twenty-nine of this code is the exclusive mechanism for
96 hearing prospective employee grievances and appeals. In
97 construing the application of said article to grievances of higher
98 education employees, the following apply:

99 (1) "Chief administrator" means the president of a state
100 institution of higher education as to those employees employed
101 by the institution and the appropriate chancellor as to those
102 employees employed by the Commission or Council;

103 (2) The State Division of Personnel may not be a party to
104 nor have any authority regarding a grievance initiated by a
105 higher education employee; and

106 (3) The provisions of this section supersede and replace the
107 grievance procedure set out in article twenty-nine, chapter
108 eighteen of this code for any grievance initiated by a higher
109 education employee after the first day of July, two thousand
110 one;

111 (l) Solicit and utilize or expend voluntary support, including
112 financial contributions and support services, for the institutions
113 under its jurisdiction;

114 (m) Appoint a president for the institutions under its
115 jurisdiction subject to the provisions of section six, article one-b
116 of this chapter;

117 (n) Conduct written performance evaluations of the
118 president pursuant to section six, article one-b of this chapter;

119 (o) Employ all faculty and staff at the institution under its
120 jurisdiction. Such employees operate under the supervision of
121 the president, but are employees of the governing board;

122 (p) Submit to the Commission or Council, as appropriate,
123 no later than the first day of November of each year an annual
124 report of the performance of the institution under its jurisdiction
125 during the previous fiscal year as compared to stated goals in its
126 master plan and institutional compact;

127 (q) Enter into contracts or consortium agreements with the
128 public schools, private schools or private industry to provide
129 technical, vocational, college preparatory, remedial and
130 customized training courses at locations either on campuses of
131 the public institution of higher education or at off-campus
132 locations in the institution's responsibility district. To accom-
133 plish this goal, the boards are permitted to share resources
134 among the various groups in the community;

135 (r) Provide and transfer funding and property to certain
136 corporations pursuant to section ten, article twelve of this
137 chapter;

138 (s) Delegate, with prescribed standards and limitations, the
139 part of its power and control over the business affairs of the
140 institution to the president in any case where it considers the
141 delegation necessary and prudent in order to enable the institu-
142 tion to function in a proper and expeditious manner and to meet
143 the requirements of its institutional compact. If a governing
144 board elects to delegate any of its power and control under the

145 provisions of this subsection, it shall enter such delegation in
146 the minutes of the meeting when the decision was made and
147 shall notify the Commission or Council, as appropriate. Any
148 such delegation of power and control may be rescinded by the
149 appropriate governing board, the Commission or Council, as
150 appropriate, at any time, in whole or in part, except that the
151 Commission may not revoke delegations of authority made by
152 the governing boards of Marshall University or West Virginia
153 University as they relate to the state institutions of higher
154 education known as Marshall University and West Virginia
155 University;

156 (t) Unless changed by the Commission or the Council, as
157 appropriate, the governing boards shall continue to abide by
158 existing rules setting forth standards for acceptance of advanced
159 placement credit for their respective institutions. Individual
160 departments at institutions of higher education may, upon
161 approval of the institutional faculty senate, require higher
162 scores on the advanced placement test than scores designated
163 by the appropriate governing board when the credit is to be used
164 toward meeting a requirement of the core curriculum for a
165 major in that department;

166 (u) Each governing board, or its designee, shall consult,
167 cooperate and work with the State Treasurer and the State
168 Auditor to update as necessary and maintain an efficient and
169 cost-effective system for the financial management and
170 expenditure of special revenue and appropriated state funds at
171 the institutions under its jurisdiction that ensures that properly
172 submitted requests for payment be paid on or before due date
173 but, in any event, within fifteen days of receipt in the State
174 Auditor's office;

175 (v) The governing boards in consultation with the appropri-
176 ate chancellor and the Secretary of the Department of Adminis-
177 tration shall develop, update as necessary and maintain a plan

178 to administer a consistent method of conducting personnel
179 transactions, including, but not limited to, hiring, dismissal,
180 promotions and transfers at the institutions under their jurisdic-
181 tion. Each such personnel transaction shall be accompanied by
182 the appropriate standardized system or forms which will be
183 submitted to the respective governing board and the Department
184 of Finance and Administration;

185 (w) *Transfer of funds.* –

186 (1) Notwithstanding any other provision of this code to the
187 contrary, the governing boards may transfer funds from any
188 account specifically appropriated for their use to any corre-
189 sponding line item in a general revenue account at any agency
190 or institution under their jurisdiction as long as such transferred
191 funds are used for the purposes appropriated.

192 (2) The governing boards may transfer funds from appropri-
193 ated special revenue accounts for capital improvements under
194 their jurisdiction to special revenue accounts at agencies or
195 institutions under their jurisdiction as long as such transferred
196 funds are used for the purposes appropriated.

197 (x) Notwithstanding any other provision of this code to the
198 contrary, the governing boards may acquire legal services as are
199 considered necessary, including representation of the governing
200 boards, their institutions, employees and officers before any
201 court or administrative body. The counsel may be employed
202 either on a salaried basis or on a reasonable fee basis. In
203 addition, the governing boards may, but are not required to, call
204 upon the Attorney General for legal assistance and representa-
205 tion as provided by law;

206 (y) Each governing board which has under its jurisdiction
207 an administratively linked community and technical college or
208 a regional campus offering community and technical college
209 education programs shall create within the administrative

210 structure of its governing board a subcommittee for community
211 and technical college education. The subcommittee shall have
212 at least four members, one of whom is the chairperson of the
213 board of advisors of the community and technical college or, in
214 the case of the Governing Board of West Virginia university,
215 both the member representing the community and technical
216 college and the member representing the regional campus; and

217 (z) A governing board may contract and pay for disability
218 insurance for a class or classes of employees at a state institu-
219 tion of higher education under its jurisdiction.

§18B-2A-8. Additional powers and duties of governing boards.

1 (a) A state institution of higher education is granted the
2 powers, duties and authorities previously granted to the state
3 institutions of higher education known as Marshall University
4 and West Virginia University, subject to the following:

5 (1) The institutional operating budgets of all institutions to
6 which this section applies have achieved a level of funding
7 comparable with, but not less than ninety percent of, their
8 respective peers, as established pursuant to section three, article
9 one-a of this chapter;

10 (2) The Commission approves granting the powers, duties
11 and authorities to that institution; and

12 (3) The powers, duties and authorities may not be granted
13 to any institution prior to the first day of July, two thousand
14 twelve.

15 (b) The powers, duties and authorities granted pursuant to
16 this section are those provided in:

17 (1) Section four-a, article six, chapter five of this code;

18 (2) Section two, article one, chapter five-g of this code;

19 (3) Section twelve-b, article one, chapter twelve of this
20 code;

21 (4) Sections five, six, seven and eight, article three, chapter
22 twelve of this code;

23 (5) Sections three and six, article one of this chapter;

24 (6) Section two, article one-a of this chapter;

25 (7) Section four, article one-b of this chapter;

26 (8) Sections three and four of this article;

27 (9) Sections two and three, article three of this chapter;

28 (10) Sections five, five-a, six and seven, article four of this
29 chapter;

30 (11) Sections three, four, seven and nine, article five of this
31 chapter; and

32 (12) Sections one and six-a, article ten of this chapter.

33 (c) This section does not apply to any community and
34 technical college.

**ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND
TECHNICAL COLLEGE EDUCATION.**

**§18B-2B-9. Permits required for correspondence, business,
occupational and trade schools; surety bonds and
fees; issuance, renewal and revocation of permit;
reports; rules; penalty and enforcement.**

1 (a) The following words when used in this section have the
2 meaning hereinafter ascribed to them unless the context clearly
3 indicates a different meaning:

4 (1) "Proprietary schools that award specialized associate
5 degrees" means institutions of higher education; and

6 (2) "Specialized associate degrees" means degrees awarded
7 by such institutions pursuant to a program of not fewer than two
8 academic years.

9 (b) Nothing in this section qualifies proprietary schools for
10 additional state moneys not otherwise qualified under other
11 provisions of this code.

12 (c) It is unlawful for any person representing a correspon-
13 dence, business, occupational or trade school inside or outside
14 this state, as these are defined by the Council by rule promul-
15 gated in accordance with article three-a, chapter twenty-nine-a
16 of this code, to solicit, sell or offer to sell courses of instruction
17 to any resident of this state for consideration or remuneration
18 unless the school first applies for a permit, or obtains a permit,
19 from the Council in the manner and on the terms herein
20 prescribed, except this section does not apply to private
21 organizations which offer only tax return preparation courses.
22 The rule previously promulgated by the State College System
23 Board of Directors and transferred to the Council by section six,
24 article two-b, chapter eighteen-b of this code remains in effect
25 until rescinded or amended by the Council.

26 (1) All private training or educational institutions, schools
27 or academies or other organizations shall apply for a permit
28 from the Council on forms provided by the Council.

29 (2) Each initial application shall be accompanied by a
30 nonrefundable fee of two thousand dollars. The Council also
31 may assess an additional fee based on any additional expense
32 required to evaluate the application.

33 (3) The Council shall make a determination on the initial
34 permit application within ninety days after receipt of the
35 application and fee.

36 (4) An applicant for an initial permit shall show proof at the
37 time of filing an application that adequate facilities are avail-
38 able and ready for occupancy and that all instructional equip-
39 ment, books and supplies and personnel are in place and ready
40 for operation. A representative of the Council shall make an
41 on-site visit to the facilities of all new applicants to confirm
42 their readiness for operation prior to issuance of the initial
43 permit if the facilities are located in West Virginia.

44 (5) A school is considered to be established under the
45 provisions of this article on the date it first begins to operate
46 lawfully. An established school is not required to reapply for
47 a permit as a result of changes in governance; administration;
48 ownership; or form of operation.

49 (6) After the first permit year, an annual fee of five hundred
50 dollars is imposed on each school for each campus it operates
51 in this state.

52 (d) Each application shall be accompanied by a surety bond
53 in the penal sum of thirty-five thousand dollars for any school
54 which has its physical facilities located in this state and which
55 has operated in this state for at least ten years:

56 (1) If the school has changed ownership within the last ten
57 years by transfer of ownership control to a person who is a
58 spouse, parent, sibling, child or grandchild of the previous
59 owner, the surety bond shall continue in the penal sum of
60 thirty-five thousand dollars.

61 (2) Any school which has operated in West Virginia for
62 fewer than ten years, excluding those schools which have
63 changed ownership within the last ten years as provided in

64 subdivision (1) of this section, and any school located in
65 another state which applies for a permit hereunder, shall
66 provide a surety bond of fifty thousand dollars.

67 (3) Any school may be required to increase its bond to one
68 hundred fifty thousand dollars if either of the following
69 conditions apply:

70 (A) The school's accreditation is terminated for cause; or

71 (B) The school's institutional eligibility under the Higher
72 Education Act of 1965, as amended, has been terminated for
73 cause. Expiration, nonrenewal or voluntary relinquishment of
74 accreditation or institutional eligibility under the Higher
75 Education Act, or failure to meet the requirements of one or
76 more programs under the Act, are not considered to be a
77 termination for cause.

78 (4) Any school may be required to increase its bond to an
79 amount not to exceed four hundred thousand dollars if, in
80 accordance with the standards of the American Institute of
81 Certified Public Accountants, the school's audited financial
82 statements are qualified because the school's continued
83 financial viability as an ongoing concern is in doubt and the
84 Council determines an increased bond is reasonably necessary
85 to protect the financial obligations legally due the students then
86 enrolled at the institution.

87 (A) A school may be required to maintain the increased
88 bonding requirements described above until all students
89 attending classes at the date of termination either graduate or
90 withdraw.

91 (B) The bond may be continuous and shall be conditioned
92 to provide indemnification to any student suffering loss as a
93 result of any fraud or misrepresentation used in procuring the
94 student's enrollment, failure of the school to meet contractual

95 obligations, or failure of the school to meet the requirements of
96 this section.

97 (C) The bond shall be given by the school itself as a blanket
98 bond covering all of its representatives.

99 (D) The surety on a bond may cancel the same upon giving
100 thirty days' notice in writing to the principal on the bond and to
101 the state Council and thereafter shall be relieved of liability for
102 any breach of condition occurring after the effective date of the
103 cancellation.

104 (e) A permit shall be valid for one year corresponding to the
105 effective date of the bond and may be renewed upon applica-
106 tion, accompanied by the required fee and the surety bond as
107 herein required. All fees collected for the issuance or renewal
108 of a permit shall be deposited in the State Treasury to the credit
109 of the Council.

110 (f) The Council may refuse a permit to any school if the
111 Council finds that the school engages in practices which are
112 inconsistent with this section or with rules issued pursuant
113 thereto.

114 (g) A permit issued hereunder may be suspended or
115 revoked by the Council for fraud or misrepresentation in
116 soliciting or enrolling students, for failure of the school to
117 fulfill its contract with one or more students who are residents
118 of West Virginia or for violation of or failure to comply with
119 any provision of this section or with any regulation of the
120 Council pertinent thereto.

121 (1) Before taking any action to suspend or revoke a school's
122 permit, the Council shall give the school fifteen days' notice
123 and convene a hearing, if a hearing is requested by the school.

124 (2) Prior to the Council taking any adverse action, including
125 refusal, suspension or revocation of a permit, the Council shall
126 give the school reasonable opportunity to take corrective
127 measures.

128 (3) Any refusal, suspension or revocation of a permit, or
129 any other adverse action against a school, shall comply with all
130 constitutional provisions, including due process, relating to the
131 protection of property rights.

132 (h) All correspondence, business, occupational or trade
133 schools which have been issued a permit shall make annual
134 reports to the Council on forms furnished by the Council and
135 shall provide such appropriate information as the Council
136 reasonably may require. All correspondence, business, occupa-
137 tional or trade schools which have been issued a permit shall
138 furnish to the Council a list of its official representatives. Each
139 school shall be issued a certificate of identification by the
140 Council for each of its official representatives.

141 (i) The issuance of a permit pursuant to this section does
142 not constitute approval or accreditation of any course or school.
143 No school, nor any representative of a school, may make any
144 representation stating, asserting or implying that a permit issued
145 pursuant to this section constitutes approval or accreditation by
146 the State of West Virginia, Council or any other department or
147 agency of the state.

148 (j) The Council is hereby authorized to adopt rules and
149 conduct on-site reviews to evaluate academic standards
150 maintained by schools for the awarding of certificates, diplo-
151 mas, associate degrees and specialized associate degrees.

152 (1) These standards may include curriculum, personnel,
153 facilities, materials and equipment.

154 (2) For accredited correspondence, business, occupational
155 and trade schools under permit on the first day of July, one
156 thousand nine hundred seventy-nine, which have their physical
157 facilities located in this state and which are accredited by the
158 appropriate nationally recognized accrediting agency or
159 association approved by the United States Department of
160 Education, the accrediting agency's standards, procedures and
161 criteria are accepted as meeting applicable laws, standards and
162 rules of the Council.

163 (3) Institutions which are institutionally accredited by
164 accrediting agencies recognized by the United States Depart-
165 ment of Education to establish academic standards for post-
166 secondary education may offer post-secondary educational
167 programs leading to certificates, diplomas and associate degrees
168 and may award certificates, diplomas and associate degrees to
169 graduates who successfully complete required programs in
170 accordance with the academic standards required by such
171 accrediting agency.

172 (4) If a review undertaken by the Council indicates there
173 may be deficiencies in the academic standards the institution
174 maintains in its educational programs and if such deficiencies
175 are of such a material nature that they jeopardize continued
176 accreditation, the Council shall notify the institution. If the
177 Council and the institution are unable to agree on the deficien-
178 cies or the steps necessary to correct the deficiencies, the
179 Council shall consult with the institution's accrediting agency
180 regarding an academically appropriate resolution which may
181 include a joint on-site review by the Council and the accrediting
182 agency.

183 (5) The Council also may review the academic standards of
184 unaccredited institutions and may require such institutions to
185 maintain recognized academic standards that are reasonably
186 appropriate to the nature of the institution and the training
187 offered.

188 (k) The Council may authorize an investigation of written
189 student complaints alleging a violation of this section, Council
190 rules or accreditation standards and may take appropriate action
191 based on the findings of such an investigation.

192 (l) All evaluations or investigations of correspondence,
193 business, occupational and trade schools and actions resulting
194 from such evaluations or investigations shall be made in
195 accordance with rules promulgated by the Council pursuant to
196 article three-a, chapter twenty-nine-a of this code.

197 (m) In regard to private, proprietary educational institutions
198 operating under this section of the code, accredited by a
199 national or regional accrediting agency or association recog-
200 nized by the United States Department of Education and which
201 provide training at a campus located in this state:

202 (1) Any rule or standard which is authorized by this or any
203 section of the code or other law and which is now in effect or
204 promulgated hereafter by the Council (or other agency with
205 jurisdiction) shall be clearly, specifically and expressly autho-
206 rized by narrowly construed enabling law and shall be unen-
207 forceable and without legal effect unless authorized by an Act
208 of the Legislature under the provisions of article three-a,
209 chapter twenty-nine-a of this code.

210 (2) Notwithstanding any other provision of this section or
211 other law to the contrary, the institution's accrediting agency
212 standards, procedures and criteria shall be accepted as the
213 standards and rules of the Council (or other agency with
214 jurisdiction) and as meeting other law or legal requirements
215 relating to the operation of proprietary institutions which such
216 Council or other agency has the legal authority to enforce under
217 any section of the code or other law. Nothing in this section
218 denies students the use of remedies that would otherwise be
219 available under state or federal consumer laws or federal law
220 relating to federal college financial assistance programs.

221 (3) Accredited institutions operating hereunder are hereby
222 recognized as postsecondary. Academic progress is measured
223 and reported in credit hours and all reports/documents are filed
224 on a credit-hour basis unless the institution notifies the Council
225 that it utilizes clock hours as its unit of measurement.

226 (n) A representative of any school who solicits, sells or
227 offers to sell courses of instruction to any resident of this state
228 for consideration or remuneration unless the school first applies
229 for a permit, or obtains a permit, is guilty of a misdemeanor
230 and, upon conviction thereof, shall be fined not more than two
231 hundred dollars per day per violation, or imprisoned in jail not
232 more than sixty days, or both fined and imprisoned. No
233 correspondence, business, occupational or trade school shall
234 maintain an action in any court of this state to recover for
235 services rendered pursuant to a contract solicited by the school
236 if the school did not hold a valid permit at the time the contract
237 was signed by any of the parties thereto. The Attorney General
238 or any county prosecuting attorney, at the request of the
239 Council or upon his or her own motion, may bring any appro-
240 priate action or proceeding in any court of competent jurisdic-
241 tion for the enforcement of the provisions of this section
242 relating to permits, bonds and sureties.

243 (o) In regard to institutions operating under this section, all
244 substantive standards and procedural requirements established
245 by the Council (or the West Virginia state program review
246 entity or other agency with jurisdiction over institutions
247 operating hereunder) shall meet all substantive and procedural
248 standards of due process relating to the protection of an
249 individual citizen's property rights as provided under the United
250 States Constitution and shall follow the substantive standards
251 and procedural requirements established by or under authority
252 of this section.

**ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH,
DOCTORAL-GRANTING PUBLIC UNIVERSITIES.**

§18B-3-1. Legislative findings, purpose; intent; definition.

§18B-3-2. Computer and computer equipment donation program.

§18B-3-3. Relationship of governing boards to the Commission and the Council.

§18B-3-4. Duty of governing boards to address state priorities.

§18B-3-1. Legislative findings, purpose; intent; definition.

1 (a) The Legislature finds that an effective and efficient
2 system of doctoral-level education is vital to providing for the
3 economic well-being of the citizens of West Virginia and for
4 accomplishing established state goals and objectives. As the
5 only research and doctoral-granting public universities in the
6 state, Marshall University and West Virginia University are
7 major assets to the citizens of West Virginia and must be an
8 integral part of any plan to strengthen and expand the economy.

9 (b) The Legislature further finds that these two institutions
10 must compete in both a national and global environment that is
11 rapidly changing, while they continue to provide high quality
12 education that is both affordable and accessible and remain
13 accountable to the people of West Virginia for the most
14 efficient and effective use of scarce resources.

15 (c) The Legislature further finds that Marshall University
16 and West Virginia University, under the direction of their
17 respective governing boards, have sufficient staff and internal
18 expertise to manage operational governance of their institutions
19 in an efficient and accountable manner and can best fulfill their
20 public missions when their governing boards are given flexibil-
21 ity and autonomy sufficient to meet state goals established in
22 this article and in section one-a, article one of this chapter.

23 (d) Therefore, the purposes of this article include, but are
24 not limited to, the following:

25 (1) Enhancing the competitive position of Marshall
26 University and West Virginia University in the current environ-
27 ment for research and development;

28 (2) Providing the governing boards of these institutions
29 with operational flexibility and autonomy, including tools to
30 promote economic development in West Virginia;

31 (3) Encouraging the development of research expertise in
32 areas directly beneficial to the state; and

33 (4) Focusing the attention and resources of the governing
34 boards on state goals and priorities to enhance the competitive
35 position of the state and the economic, social and cultural
36 well-being of its citizens.

37 (e) The following terms wherever used or referred to in this
38 chapter have the following meaning, unless a different meaning
39 plainly appears from the context:

40 (1) "State institution of higher education known as Marshall
41 University" means the doctoral-granting research institution
42 and does not include Marshall Community and Technical
43 College; and

44 (2) "State institution of higher education known as West
45 Virginia University" means the doctoral-granting research
46 institution and does not include any of the following:

47 (A) The regional campus known as West Virginia Univer-
48 sity Institute of Technology;

49 (B) The administratively linked institution known as the
50 Community and Technical College at West Virginia University
51 Institute of Technology; and

52 (C) The regional campus known as West Virginia Univer-
53 sity at Parkersburg.

54 (f) The governing boards of Marshall University and West
55 Virginia University each have the power and the obligation to
56 perform functions, tasks and duties as prescribed by law and to
57 exercise their authority and carry out their responsibilities in a
58 manner that is consistent with and not in conflict with the
59 powers and duties assigned by law to the West Virginia Council
60 for Community and Technical College Education and the
61 Higher Education Policy Commission.

62 (g) While the governing boards of Marshall University and
63 West Virginia University, respectively, may choose to delegate
64 powers and duties to the presidents of the state institutions of
65 higher education known as Marshall University and West
66 Virginia University pursuant to subsection (s), section four,
67 article two-a of this chapter, ultimately, it is they who are
68 accountable to the Legislature, the Governor and the citizens of
69 West Virginia for meeting the established state goals set forth
70 in this article and section one-a, article one of this chapter.
71 Therefore, it is the intent of the Legislature that grants of
72 operational flexibility and autonomy be made directly to the
73 governing boards and are not grants of operational flexibility
74 and autonomy to the presidents of these institutions.

§18B-3-2. Computer and computer equipment donation program.

1 Notwithstanding any other provision of this code to the
2 contrary, the governing boards are authorized to create a
3 program to donate surplus computers and computer-related
4 equipment to education facilities, nonprofit organizations,
5 juvenile detention centers, municipal and county public safety
6 offices and other public, charitable or educational enterprises or
7 organizations in this state.

8 (a) Only equipment which otherwise would be transferred
9 to the Surplus Property Unit of the Purchasing Division may be
10 donated;

11 (b) The governing boards shall keep records and accounts
12 that clearly identify the equipment donated, the age of the
13 equipment, the reasons for declaring it obsolete and the name
14 of the education facility, nonprofit organization, juvenile
15 detention center, municipal or county public safety office or
16 other public, charitable or educational enterprise or organiza-
17 tion to which the equipment was donated;

18 (c) Each governing board shall promulgate a rule in
19 accordance with the provisions of section six, article one of this
20 chapter to implement the donation program. The rules shall
21 specify the procedures to be used for record keeping and shall
22 provide for fair and impartial selection of equipment recipients.

**§18B-3-3. Relationship of governing boards to the Commission
and the Council.**

1 (a) *Relationship between the Commission and the governing*
2 *boards. –*

3 (1) The Commission functions as a state-level coordinating
4 board exercising its powers and duties in relation to the
5 governing boards of Marshall University and West Virginia
6 University only as specifically prescribed by law;

7 (2) The primary responsibility of the Commission is to
8 work collaboratively with the governing boards to research,
9 develop and propose policy that will achieve the established
10 goals and objectives set forth in this chapter and chapter
11 eighteen-c of this code; and

12 (3) The Commission has specific responsibilities which
13 include, but are not limited to, the following:

14 (A) Advocating for public higher education at the state
15 level; and

16 (B) Collecting and analyzing data, researching, developing
17 recommendations, and advising the Legislature and the Gover-
18 nor on broad policy initiatives, use of incentive funding,
19 national and regional trends in higher education and issues of
20 resource allocation involving multiple governing boards.

21 (b) *Relationship between the Council and the governing*
22 *boards. –*

23 (1) The Council maintains all powers and duties assigned
24 to it by law or policy relating to the administratively linked
25 institution known as Marshall Community and Technical
26 College, the administratively linked institution known as the
27 Community and Technical College at West Virginia University
28 Institute of Technology and the regional campus known as West
29 Virginia University at Parkersburg;

30 (2) In addition to recognizing the authority assigned by law
31 to the Council, it is the responsibility of the governing boards
32 of Marshall University and West Virginia University to exercise
33 their authority and carry out their responsibilities in a manner
34 that is consistent with and complementary to the powers and
35 duties assigned by law or policy to the community and technical
36 colleges or to the Council;

37 (3) It is further the responsibility of the governing boards to
38 abide by the rules duly promulgated by the Council relating to
39 the community and technical colleges, to strengthen the
40 community and technical college mission of these institutions,
41 to aid them in meeting the essential conditions set forth in
42 section three, article three-c of this chapter and to promote them
43 to students, parents and the community as independently
44 accredited institutions in their own right.

45 (c) The governing boards shall work collaboratively with
46 the Commission, the Council and their staff to provide any and

47 all information requested by the Commission or the Council in
48 an appropriate format and in a timely manner.

§18B-3-4. Duty of governing boards to address state priorities.

1 (a) The expertise of faculty and graduate students at the
2 state institutions of higher education known as Marshall
3 University and West Virginia University is important to every
4 citizen of this state. It is the responsibility of the governing
5 boards to channel this expertise into research and analysis that
6 will yield measurable benefits to the citizens of West Virginia.
7 Therefore, in addition to the goals for post-secondary education
8 established in section one-a, article one of this chapter, and
9 goals established elsewhere in this code, it is the responsibility
10 of the governing boards in collaboration to concentrate attention
11 and resources on certain specific state priorities that have a
12 direct, positive impact on the economic, social and cultural
13 well-being of the people of West Virginia. These priorities
14 include, but are not limited to, the following:

15 (1) Developing Regional Brownfield Assistance Centers
16 pursuant to section seven, article eleven of this chapter;

17 (2) Performing professional development-related research
18 and coordinating the delivery of professional development to
19 educators in the public schools of the state pursuant to the
20 provisions of article two, chapter eighteen of this code;

21 (3) Building subject matter expertise in public school
22 finance, including mastery of the theories and concepts used in
23 developing formulas to provide state-level financial support to
24 public education; and

25 (4) Researching and proposing cost-efficient methods to the
26 Legislature for governing boards other than Marshall University
27 and West Virginia University to dispose of obsolete computers
28 and computer-related equipment.

29 (b) The Legislature may, but is not required to, make
30 additional appropriations for the benefit of the state institutions
31 of higher education known as Marshall University and West
32 Virginia University to assist them in fulfilling the purposes set
33 forth in subsection (a) of this section.

34 (c) In addition to the priorities established in subsection (a)
35 of this section, each governing board separately shall focus
36 resources and attention on improving their graduation rates for
37 full-time undergraduate students as a specific institutional
38 priority. The graduation rate is measured as a percentage of the
39 undergraduate students who obtain a degree within six years of
40 the date of enrollment as full-time freshmen. The governing
41 boards shall develop and implement plans to reach the follow-
42 ing goals:

43 (1) Marshall University shall attain a graduation rate for
44 full-time undergraduate students of forty percent by the first
45 day of July, two thousand eight, and shall attain a graduation
46 rate for full-time undergraduate students of forty-five percent
47 by the first day of July, two thousand ten.

48 (2) West Virginia University shall attain a graduation rate
49 for full-time undergraduate students of sixty percent by the first
50 day of July, two thousand eight, and shall attain a graduation
51 rate for full-time undergraduate students of sixty-three percent
52 by the first day of July, two thousand ten.

53 (3) The Commission shall monitor and report by the first
54 day of December, two thousand five, and annually thereafter, to
55 the Legislative Oversight Commission on Education Account-
56 ability on the progress of the governing boards toward meeting
57 the goals set forth in subdivisions (1) and (2) of this subsection.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compen-
sation and removal.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

§18B-4-6. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

1 (a) The governing boards may appoint bona fide residents
2 of this state to serve as campus police officers upon any
3 premises owned or leased by the State of West Virginia and
4 under the jurisdiction of the governing boards, subject to the
5 conditions and restrictions established in this section.

6 (1) A person who previously was qualified for employment
7 as a law-enforcement officer for a state agency or political
8 subdivision of the state is considered certified for appointment
9 as a campus police officer at the state institutions of higher
10 education under the jurisdiction of the governing boards of
11 Marshall University and West Virginia University.

12 (2) Before performing duties as a campus police officer in
13 any county, a person shall qualify as is required of county
14 police officers by:

15 (A) Taking and filing an oath of office as required by article
16 one, chapter six of this code; and

17 (B) Posting an official bond as required by article two,
18 chapter six of this code.

19 (b) A campus police officer may carry a gun and any other
20 dangerous weapon while on duty if the officer fulfills the
21 certification requirement for law-enforcement officers under
22 section five, article twenty-nine, chapter thirty of this code or
23 meets the requirements of subsection (a) of this section.

24 (c) It is the duty of a campus police officer to preserve law
25 and order:

26 (1) On the premises under the jurisdiction of the governing
27 board; and

28 (2) On any street, road or thoroughfare, except controlled
29 access and open country highways, immediately adjacent to or
30 passing through premises, to which the officer is assigned by
31 the president of the state institution of higher education.

32 (A) For the purpose of this subdivision, the campus police
33 officer is a law-enforcement officer pursuant to the provisions
34 of section one, article twenty-nine, chapter thirty of this code.

35 (B) The officer has and may exercise all the powers and
36 authority of a law-enforcement officer as to offenses committed
37 within the area assigned;

38 (C) The officer is subject to all the requirements and
39 responsibilities of a law-enforcement officer;

40 (D) Authority assigned pursuant to this subdivision does not
41 supersede in any way the authority or duty of other law-
42 enforcement officers to preserve law and order on such pre-
43 mises.

44 (E) Campus police officers may assist a local law-enforce-
45 ment agency on public highways. The assistance may be
46 provided to control traffic in and around premises owned by the
47 state when:

48 (i) Traffic is generated as a result of athletic or other
49 activities conducted or sponsored by a state institution of higher
50 education; and

51 (ii) The assistance has been requested by the local law-
52 enforcement agency.

53 (F) Campus police officers may assist a local law-enforce-
54 ment agency in any location under the agency's jurisdiction at
55 the request of the agency.

56 (d) The salary of a campus police officer is paid by the
57 appropriate governing board. Each state institution may furnish
58 each campus police officer with a firearm and an official
59 uniform to be worn while on duty. The institution shall furnish
60 and require each officer while on duty to wear a shield with an
61 appropriate inscription and to carry credentials certifying to the
62 person's identity and authority as a campus police officer.

63 (e) A governing board may at its pleasure revoke the
64 authority of any campus police officer and such officers serve
65 at the will and pleasure of the governing board. The president
66 of the state institution shall report the termination of employ-
67 ment of a campus police officer by filing a notice to that effect
68 in the office of the clerk of each county in which the campus
69 police officer's oath of office was filed.

**§18B-4-5a. Crimes committed on campus of institutions of higher
education.**

1 (a) The president or a designee of each state institution of
2 higher education shall on a regular and timely basis provide
3 information to the public concerning alleged crimes occurring
4 on the institution's property which have been reported to a
5 campus police officer or any other officer of the institution.

6 (1) A crime is considered reported when:

7 (A) A campus police officer or other officer of the institu-
8 tion determines that the report is credible;

9 (B) The report is submitted in writing and attested to by the
10 victim on forms at the institution for such purpose; or

11 (C) The institution is notified by a law-enforcement agency
12 of the reporting of a crime alleged to have occurred on the
13 institution's property.

14 (2) Such reports are referred within twenty-four hours to the
15 appropriate law-enforcement agencies, as defined in section
16 one, article twenty-nine, chapter thirty of this code, for further
17 investigation.

18 (b) For the state institutions of higher education under the
19 jurisdiction of the Governing Board of Marshall University and
20 for the state institution of higher education known as West
21 Virginia University only, the campus police shall investigate a
22 crime within their respective jurisdictions for up to thirty days
23 if the county prosecuting attorney does not reassign the case to
24 another agency sooner.

25 (c) The information required to be made available to the
26 public regarding the crime report shall be available within ten
27 days of the report. The information shall include the nature of
28 the criminal offense, the date of the offense, the general
29 location of the offense (such as a designation of a specific
30 building or area of the campus) and the time of day when the
31 offense occurred.

32 (1) This subsection does not require the release of any
33 information which may disclose the identity of the victim.

34 (2) The institution shall withhold the information required
35 to be made available to the public for a longer period upon
36 certification of investigative need that the information be
37 withheld from the public.

38 (A) The certification shall be filed by an officer of one of
39 the investigating law-enforcement agencies with the president
40 of the institution or the designee to whom the duties required by
41 this section have been delegated.

42 (B) The required information may not be withheld after an
43 arrest has been made in connection with the crime report.

44 (d) For purposes of this section, "crime" is defined as those
45 offenses required to be reported under the federal Crime
46 Awareness and Campus Security Act of 1990, as amended.
47 "Crime" includes murder, rape, robbery, aggravated assault,
48 burglary, motor vehicle theft and arrests for liquor, drug or
49 weapons laws violations.

50 (e) The Council and Commission shall provide crime
51 reporting forms to institutions under their respective jurisdic-
52 tions and promulgate a rule pursuant to the provisions of article
53 three-a, chapter twenty-nine-a of this code as necessary to
54 implement this section.

**§18B-4-6. Acquisition, operation and regulation of parking areas
and facilities at state institutions of higher educa-
tion; regulation of parking, speed and flow of
traffic on campus roads and driveways; civil and
criminal penalties; disposition of revenue.**

1 (a) The governing boards are hereby authorized to con-
2 struct, maintain and operate automobile parking facilities or
3 areas upon any premises owned or leased at any state institution
4 of higher education under their jurisdiction for use by students,
5 faculty, staff and visitors. The governing boards may charge
6 fees for use of the parking facilities or areas under their control.
7 All moneys collected for the use of the parking facilities or
8 areas shall be paid to the credit of the state institution of higher
9 education at which the fees were charged into a special fund in
10 the State Treasury. The moneys in the fund are used first to pay

11 the cost of maintaining and operating the parking facilities or
12 areas.

13 Any excess not needed for this purpose may be used for the
14 acquisition of property by lease or purchase and the construc-
15 tion thereon of additional parking facilities or areas. Any
16 money in the fund not needed immediately for the acquisition,
17 construction, maintenance or operation of the parking facilities
18 or areas may be temporarily invested by the governing boards
19 with the West Virginia Investment Management Board to the
20 credit of the institution by which the fees were charged.

21 (b) Notwithstanding any other motor vehicle or traffic law
22 or regulation to the contrary, a governing board may regulate
23 and control at any state institution under its jurisdiction the
24 speed, flow and parking of vehicles on campus roads, drive-
25 ways and parking facilities or areas.

26 (1) Rules for this purpose shall be promulgated by the
27 governing boards in the manner prescribed in section six, article
28 one of this chapter; and

29 (2) When so promulgated, the rules have the force and
30 effect of law.

31 (3) The governing board shall post in a conspicuous
32 location in each parking facility or area, a summary of the rules
33 governing the use of the facility or area including, but not
34 limited to, the availability of temporary parking permits and
35 where these permits may be obtained and the penalties which
36 may be imposed for violations of the rules.

37 (4) The governing board shall post in a conspicuous
38 location along each campus road and driveway notice signs
39 pertaining to the speed of vehicles, spaces available for parking,
40 directional flow of traffic and penalties which may be imposed
41 for violations of the rules.

42 (c) Any person parking or operating a vehicle in violation
43 of the rules shall be issued a citation:

44 (1) Describing the offense charged;

45 (2) Ordering an appearance:

46 (A) Within ten days, excluding Saturdays, Sundays and
47 holidays observed by the state institution, before a designated
48 official of the institution;

49 (B) Before a magistrate located in the county if the person
50 cited fails to appear within the ten days; or

51 (C) Before the judge of the municipal court, if the state
52 institution is located within a municipality having such an
53 official, and the person cited fails to appear within the ten days.

54 (d) The designated official of the state institution has
55 exclusive jurisdiction of the offense during the ten-day period
56 until the citations are forwarded to a magistrate. For the state
57 institutions of higher education under the jurisdiction of the
58 Governing Board of Marshall University and for the state
59 institution of higher education known as West Virginia Univer-
60 sity only, the designated official of the institution has exclusive
61 jurisdiction of the offense for thirty days following the viola-
62 tion. After thirty days the official forwards the citation to a
63 magistrate. Any person so cited may plead no contest to the
64 offense and, by so pleading, is subject to a civil penalty to be
65 determined uniformly by the designated official and commensurate
66 with the severity of the offense. For the state institutions
67 under the jurisdiction of the Governing Board of Marshall
68 University and for the state institution of higher education
69 known as West Virginia University only, the amount imposed
70 may not exceed twenty dollars. For all other institutions the
71 amount may not exceed ten dollars, for each offense as partial
72 reimbursement to the state institution of higher education for

73 the cost of regulating traffic and parking. In the case of the
74 state institutions under the jurisdiction of the Governing Board
75 of Marshall University and in the case of the state institution of
76 higher education known as West Virginia University only, the
77 designated official shall determine the penalty uniformly,
78 commensurate with the severity of the offense, and may apply
79 academic restrictions in lieu of requiring a student to appear in
80 court and receive penalties otherwise provided in this section.
81 Moneys derived from civil penalties imposed herein shall be
82 deposited in the special fund in the state treasury created by this
83 section and credited to the state institution to which the penalty
84 was paid.

85 (e) Upon expiration of the ten-day or thirty-day period, as
86 applicable, or upon a pleading of not guilty before the desig-
87 nated official of the state institution within the applicable
88 period, the magistrate or judge of the municipal court has
89 jurisdiction of the offense. Any person cited under the provi-
90 sions of this section, upon a finding of guilty by the magistrate
91 or municipal judge, is subject to a fine for each offense by the
92 state institutions under the jurisdiction of the Governing Board
93 of Marshall University and for the state institution of higher
94 education known as West Virginia University only, of up to
95 forty dollars, and at all other state institutions not less than ten
96 dollars nor more than twenty dollars, the amount to be com-
97 mensurate with the severity of the offense.

98 (f) Each designated official of a state institution presiding
99 over a case under the provisions of this section shall keep a
100 record of every citation which alleges a violation of such
101 provisions, or the rules promulgated in accordance therewith,
102 and shall keep a record of every official action in reference
103 thereto including, but not limited to, a record of every plea of
104 no contest, conviction or acquittal, of the offense charged, and
105 the amount of the fine or civil penalty resulting from each
106 citation.

107 (g) Whenever a vehicle is parked on any state institution
108 campus road, driveway or parking facility or area in a manner
109 which violates posted rules and substantially impedes the flow
110 of traffic or endangers the health and safety, the institution may,
111 in addition to the issuing of a citation and subsequent proce-
112 dures set forth herein, remove the vehicle, by towing or
113 otherwise, to an area owned by the institution or areas desig-
114 nated for this purpose. The vehicle, having been towed to the
115 designated area or areas, may be rendered immovable by use of
116 locking wheel blocks or other device not damaging to the
117 vehicle. The state institution of higher education shall maintain
118 any vehicle so towed in the same condition as it was immedi-
119 ately prior to being towed, but shall not be liable for any
120 damage to a vehicle towed to, or kept in, a designated area
121 pursuant to the provisions of this section. The state institution
122 of higher education shall pay for the cost of removing the
123 vehicle and shall have a right to reimbursement from the owner
124 for this cost and for the reasonable cost of keeping the vehicle
125 in the designated area. Until payment of these costs, the state
126 institution of higher education may retain possession of the
127 vehicle and the institution shall have a lien on the vehicle for
128 the amount due. The state institution of higher education may
129 enforce this lien in the manner provided in section fourteen,
130 article eleven, chapter thirty-eight of this code for the enforce-
131 ment of other liens. For the state institutions of higher educa-
132 tion under the jurisdiction of the Governing Board of Marshall
133 University and for the state institution of higher education
134 known as West Virginia University only, the provisions of this
135 subsection also apply when a vehicle is subject to three or more
136 unpaid citations.

137 (h) If, at any time, Marshall Community and Technical
138 College ceases to share a physical campus location with
139 Marshall University, it may not be included as an institution
140 under the jurisdiction of the governing board of Marshall

141 University for the purposes of subsections (a),(d),(e) and (g) of
142 this section.

**§18B-4-7. Accreditation of institutions of higher education;
standards for degrees.**

1 The Council shall make rules for the accreditation of
2 community and technical colleges in this state and shall
3 determine the minimum standards for conferring degrees. The
4 Commission shall make rules for the accreditation of colleges
5 and universities in this state, except the governing boards of
6 Marshall University and West Virginia University shall make
7 rules for the state institutions of higher education known as
8 Marshall University and West Virginia University, and shall
9 determine the minimum standards for conferring degrees. The
10 governing boards of Marshall University and West Virginia
11 University shall promulgate rules pursuant to the provisions of
12 section six, article one of this chapter for the accreditation of
13 the state institutions of higher education known as Marshall
14 University and West Virginia University. An institution of
15 higher education may not confer any degree on any basis of
16 work or merit below the minimum standards prescribed by the
17 Council, Commission or the governing boards. Nothing in this
18 section infringes upon the rights, including rights to award
19 degrees, granted to any institution by charter given according
20 to law, or by actions of the Council or Commission or their
21 predecessors, prior to the effective date of this section. With
22 the approval of the Commission, governing boards of institu-
23 tions which currently offer substantial undergraduate course
24 offerings and a master's degree in a discipline are authorized to
25 grant baccalaureate degrees in that discipline.

26 Except as otherwise provided in this section, a charter or
27 other instrument containing the right to confer degrees of higher
28 education status may not be granted by the State of West
29 Virginia to any institution, association or organization within

30 the state, nor may any such degree be awarded, until the
31 condition of conferring the degree has first been approved in
32 writing by the Council, Commission or appropriate governing
33 board.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

§18B-5-9. Higher education fiscal responsibility.

§18B-5-10. Medical professional liability insurance and risk management functions.

§18B-5-3. Authority to contract for programs, services and facilities.

1 The governing boards, the Commission and the Council are
2 authorized and empowered to enter into contracts and expend
3 funds for programs, services and facilities provided by public
4 and private education institutions, associations, boards, agen-
5 cies, consortia, corporations, partnerships, individuals and local,
6 state and federal governmental bodies within and outside of
7 West Virginia in order that maximum higher education opportu-
8 nities of high quality may be provided to the citizens of the
9 state in the most economical manner. In no event may a
10 contract for such services and facilities be entered into unless
11 the Commission, the Council or the governing boards have
12 determined that such services and facilities are necessary and
13 would be at a savings to the state.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

1 (a) The Council, Commission and each governing board,
2 through the Vice Chancellor for Administration, shall purchase
3 or acquire all materials, supplies, equipment, services and

4 printing required for that governing board or the Council or
5 Commission, as appropriate, and the state institutions of higher
6 education under their jurisdiction, except the governing boards
7 of Marshall University and West Virginia University, respec-
8 tively, are subject to the provisions of subsection (d) of this
9 section.

10 (b) The Commission and Council jointly shall adopt rules
11 governing and controlling acquisitions and purchases in
12 accordance with the provisions of this section. The rules shall
13 assure that the Council, Commission and governing boards:

14 (1) Do not preclude any person from participating and
15 making sales thereof to the governing board or to the Council
16 or Commission except as otherwise provided in section five of
17 this article. Provision of consultant services such as strategic
18 planning services will not preclude or inhibit the governing
19 boards, Council or Commission from considering any qualified
20 bid or response for delivery of a product or a commodity
21 because of the rendering of those consultant services;

22 (2) Establish and prescribe specifications, in all proper
23 cases, for materials, supplies, equipment, services and printing
24 to be purchased;

25 (3) Adopt and prescribe such purchase order, requisition or
26 other forms as may be required;

27 (4) Negotiate for and make purchases and acquisitions in
28 such quantities, at such times and under contract, in the open
29 market or through other accepted methods of governmental
30 purchasing as may be practicable in accordance with general
31 law;

32 (5) Advertise for bids on all purchases exceeding
33 twenty-five thousand dollars, to purchase by means of sealed
34 bids and competitive bidding or to effect advantageous pur-

35 chases through other accepted governmental methods and
36 practices;

37 (6) Post notices of all acquisitions and purchases for which
38 competitive bids are being solicited in the purchasing office of
39 the specified institution involved in the purchase, at least two
40 weeks prior to making such purchases and ensure that the notice
41 is available to the public during business hours;

42 (7) Provide for purchasing in the open market;

43 (8) Provide for vendor notification of bid solicitation and
44 emergency purchasing;

45 (9) Provide that competitive bids are not required for
46 purchases of twenty-five thousand dollars or less; and

47 (10) Provide for not fewer than three bids where bidding is
48 required. If fewer than three bids are submitted, an award may
49 be made from among those received.

50 (c) When a state institution of higher education submits a
51 contract, agreement or other document to the Attorney General
52 for approval as to form as required by this chapter the following
53 conditions apply:

54 (1) "Form" means compliance with the Constitution and
55 statutes of the State of West Virginia.

56 (2) The Attorney General does not have the authority to
57 reject a contract, agreement or other document based on the
58 substantive provisions therein or any extrinsic matter so long as
59 there is compliance with the Constitution and statutes of this
60 State.

61 (3) Within fifteen days of receipt, the Attorney General
62 must notify the appropriate state institution of higher education

63 in writing that the contract, agreement or other document is
64 approved or disapproved as to form. If the contract, agreement
65 or other document is disapproved as to form, the notice of
66 disapproval must identify each defect that supports the disap-
67 proval.

68 (4) If the state institution elects to challenge the disapproval
69 by filing a Writ of Mandamus or other action and prevails, then
70 the Attorney General shall pay reasonable attorney fees and
71 costs incurred.

72 (d) Pursuant to this subsection, the governing boards of
73 Marshall University and West Virginia University, respectively,
74 may:

75 (1) Purchase or acquire all materials, supplies, equipment,
76 services and printing required for the governing board without
77 approval from the Commission or the Vice Chancellor for
78 Administration and may issue checks in advance to cover
79 postage as provided in subsection (f) of this section;

80 (2) Make purchases from cooperative buying groups,
81 consortia, the federal government or from federal government
82 contracts if the materials, supplies, services, equipment or
83 printing to be purchased is available from these groups and if
84 this would be the most financially advantageous manner of
85 making the purchase;

86 (3) Select and acquire by contract or lease all grounds,
87 buildings, office space or other space, the rental of which is
88 necessarily required by the governing board; and

89 (4) Use purchase cards under terms approved for the
90 Commission, the Council and governing boards of state
91 institutions of higher education and participate in any expanded
92 program of use as provided in subsection (w) of this section.

93 (e) The governing boards shall adopt sufficient accounting
94 and auditing procedures and promulgate and adopt appropriate
95 rules subject to the provisions of section six, article one of this
96 chapter to govern and control acquisitions, purchases, leases
97 and other instruments for grounds, buildings, office or other
98 space or lease-purchase agreements.

99 (f) The Council, Commission or each governing board,
100 through the Vice Chancellor for Administration, may issue a
101 check in advance to a company supplying postage meters for
102 postage used by that board, the Council or Commission and by
103 the state institutions of higher education under their jurisdiction.

104 (g) When a purchase is to be made by bid, any or all bids
105 may be rejected. However, all purchases based on advertised
106 bid requests shall be awarded to the lowest responsible bidder
107 taking into consideration the qualities of the articles to be
108 supplied, their conformity with specifications, their suitability
109 to the requirements of the governing boards, Council or
110 Commission and delivery terms. The preference for resident
111 vendors as provided in section thirty-seven, article three,
112 chapter five-a of this code apply to the competitive bids made
113 pursuant to this section.

114 (h) The governing boards, Council and Commission shall
115 maintain a purchase file, which shall be a public record and
116 open for public inspection. After the award of the order or
117 contract, the governing boards, Council and Commission shall
118 indicate upon the successful bid that it was the successful bid
119 and shall further indicate why bids are rejected and, if the
120 mathematical low vendor is not awarded the order or contract,
121 the reason therefor. A record in the purchase file may not be
122 destroyed without the written consent of the Legislative
123 Auditor. Those files in which the original documentation has
124 been held for at least one year and in which the original
125 documents have been reproduced and archived on microfilm or

126 other equivalent method of duplication may be destroyed
127 without the written consent of the Legislative Auditor. All
128 files, no matter the storage method, shall be open for inspection
129 by the Legislative Auditor upon request.

130 (i) The Commission and Council also jointly shall adopt
131 rules to prescribe qualifications to be met by any person who is
132 to be employed as a buyer pursuant to this section. These rules
133 shall require that a person may not be employed as a buyer
134 unless that person, at the time of employment, either is:

135 (1) A graduate of an accredited college or university; or

136 (2) Has at least four years' experience in purchasing for any
137 unit of government or for any business, commercial or indus-
138 trial enterprise.

139 (j) Any person making purchases and acquisitions pursuant
140 to this section shall execute a bond in the penalty of fifty
141 thousand dollars, payable to the State of West Virginia, with a
142 corporate bonding or surety company authorized to do business
143 in this state as surety thereon, in form prescribed by the
144 Attorney General and conditioned upon the faithful perfor-
145 mance of all duties in accordance with this section and sections
146 five through eight, inclusive, of this article and the rules of the
147 governing board and the Council and Commission. In lieu of
148 separate bonds for such buyers, a blanket surety bond may be
149 obtained. Any such bond shall be filed with the Secretary of
150 State. The cost of any such bond shall be paid from funds
151 appropriated to the applicable governing board or the Council
152 or Commission.

153 (k) All purchases and acquisitions shall be made in consid-
154 eration and within limits of available appropriations and funds
155 and in accordance with applicable provisions of article two,
156 chapter five-a of this code relating to expenditure schedules and
157 quarterly allotments of funds. Notwithstanding any other

158 provision of this code to the contrary, only those purchases
159 exceeding the dollar amount for competitive sealed bids in this
160 section are required to be encumbered and they may be entered
161 into the state's centralized accounting system by the staff of the
162 Commission, Council or governing boards to satisfy the
163 requirements of article two, chapter five-a of this code and
164 specifically sections twenty-six, twenty-seven and twenty-eight
165 of said article to determine whether the amount of the purchase
166 is within the Commission's, Council's or governing board's
167 quarterly allotment, is in accordance with the approved expen-
168 diture schedule and otherwise conforms to the provisions of
169 said article.

170 (l) The governing boards, Council and Commission may
171 make requisitions upon the Auditor for a sum to be known as an
172 advance allowance account, not to exceed five percent of the
173 total of the appropriations for the governing board, Council or
174 Commission, and the Auditor shall draw a warrant upon the
175 Treasurer for such accounts. All advance allowance accounts
176 shall be accounted for by the applicable governing board or the
177 Council or Commission once every thirty days or more often if
178 required by the State Auditor.

179 (m) Contracts entered into pursuant to this section shall be
180 signed by the applicable governing board or the Council or
181 Commission in the name of the state and shall be approved as
182 to form by the Attorney General. A contract which requires
183 approval as to form by the Attorney General is considered
184 approved if the Attorney General has not responded within
185 fifteen days of presentation of the contract. A contract or a
186 change order for that contract and notwithstanding any other
187 provision of this code to the contrary, associated documents
188 such as performance and labor/material payments, bonds and
189 certificates of insurance which use terms and conditions or
190 standardized forms previously approved by the Attorney
191 General and do not make substantive changes in the terms and

192 conditions of the contract do not require approval as to form by
193 the Attorney General. The Attorney General shall make a list
194 of those changes which he or she considers to be substantive
195 and the list, and any changes thereto, shall be published in the
196 State Register. A contract that exceeds the dollar amount
197 requiring competitive sealed bids in this section shall be filed
198 with the State Auditor. If requested to do so, the governing
199 boards, Council or Commission shall make all contracts
200 available for inspection by the State Auditor. The governing
201 board, Council or Commission, as appropriate, shall prescribe
202 the amount of deposit or bond to be submitted with a bid or
203 contract, if any, and the amount of deposit or bond to be given
204 for the faithful performance of a contract.

205 (n) If the governing board, Council or Commission pur-
206 chases or contracts for materials, supplies, equipment, services
207 and printing contrary to the provisions of sections four through
208 seven of this article or the rules pursuant thereto, such purchase
209 or contract is void and of no effect.

210 (o) Any governing board or the Council or Commission, as
211 appropriate, may request the Director of purchases to make
212 available, from time to time, the facilities and services of that
213 department to the governing boards, Council or Commission in
214 the purchase and acquisition of materials, supplies, equipment,
215 services and printing and the director of purchases shall
216 cooperate with that governing board, Council or Commission,
217 as appropriate, in all such purchases and acquisitions upon such
218 request.

219 (p) Each governing board or the Council or Commission, as
220 appropriate, shall permit private institutions of higher education
221 to join as purchasers on purchase contracts for materials,
222 supplies, services and equipment entered into by that governing
223 board or the Council or Commission. Any private school
224 desiring to join as purchasers on such purchase contracts shall

225 file with that governing board or the Council or Commission an
226 affidavit signed by the president of the institution of higher
227 education or a designee requesting that it be authorized to join
228 as purchaser on purchase contracts of that governing board or
229 the Council or Commission, as appropriate. The private school
230 shall agree that it is bound by such terms and conditions as that
231 governing board or the Council or Commission may prescribe
232 and that it will be responsible for payment directly to the
233 vendor under each purchase contract.

234 (q) Notwithstanding any other provision of this code to the
235 contrary, the governing boards, Council and Commission, as
236 appropriate, may make purchases from cooperative buying
237 groups, consortia, the federal government or from federal
238 government contracts if the materials, supplies, services,
239 equipment or printing to be purchased is available from
240 cooperative buying groups, consortia, the federal government
241 or from a federal contract and purchasing from the cooperative
242 buying groups, consortia, federal government or from a federal
243 government contract would be the most financially advanta-
244 geous manner of making the purchase.

245 (r) An independent performance audit of all purchasing
246 functions and duties which are performed at any state institution
247 of higher education, except Marshall University and West
248 Virginia University, shall be performed each fiscal year. The
249 Joint Committee on Government and Finance shall conduct the
250 performance audit and the governing boards, Council and
251 Commission, as appropriate, are responsible for paying the cost
252 of the audit from funds appropriated to the governing boards,
253 Council or Commission.

254 (1) The governing boards of Marshall University and West
255 Virginia University, respectively, shall provide for independent
256 performance audits of all purchasing functions and duties on
257 their campuses at least once in each three-year period.

258 (2) Each audit shall be inclusive of the entire time period
259 that has elapsed since the date of the preceding audit.

260 (3) Copies of all appropriate documents relating to any
261 audit performed by the governing boards of Marshall University
262 and West Virginia University shall be furnished to the Joint
263 Committee on Government and Finance and the Legislative
264 Oversight Commission on Education Accountability within
265 thirty days of the date the audit report is completed.

266 (s) The governing boards shall require each institution
267 under their respective jurisdictions to notify and inform every
268 vendor doing business with that institution of the provisions of
269 section fifty-four, article three, chapter five-a of this code, also
270 known as the Prompt Pay Act of 1990.

271 (t) Consultant services, such as strategic planning services,
272 may not preclude or inhibit the governing boards, Council or
273 Commission from considering any qualified bid or response for
274 delivery of a product or a commodity because of the rendering
275 of those consultant services.

276 (u) After the Commission or Council, as appropriate, has
277 granted approval for lease-purchase arrangements by the
278 governing boards, a governing board may enter into
279 lease-purchase arrangements for capital improvements, includ-
280 ing equipment, except the governing boards of Marshall
281 University and West Virginia University may enter into
282 lease-purchase arrangements for the state institutions of higher
283 education known as Marshall University and West Virginia
284 University without seeking the approval of the Commission or
285 the Council. Any lease-purchase arrangement so entered shall
286 constitute a special obligation of the State of West Virginia.
287 The obligation under a lease-purchase arrangement so entered
288 may be from any funds legally available to the institution and
289 must be cancelable at the option of the governing board or

290 institution at the end of any fiscal year. The obligation, any
291 assignment or securitization thereof, never constitutes an
292 indebtedness of the State of West Virginia or any department,
293 agency or political subdivision thereof, within the meaning of
294 any constitutional provision or statutory limitation, and may not
295 be a charge against the general credit or taxing powers of the
296 state or any political subdivision thereof. Such facts shall be
297 plainly stated in any lease-purchase agreement. Further, the
298 lease-purchase agreement shall prohibit assignment or securiti-
299 zation without consent of the lessee and the approval of the
300 agreement as to form by the Attorney General of West Virginia.
301 Proposals for any arrangement must be requested in accordance
302 with the requirements of this section and any rules or guidelines
303 of the Commission and Council. In addition, any
304 lease-purchase agreement which exceeds one hundred thousand
305 dollars total shall be approved as to form by the Attorney
306 General of West Virginia. The interest component of any
307 lease-purchase obligation is exempt from all taxation of the
308 State of West Virginia, except inheritance, estate and transfer
309 taxes. It is the intent of the Legislature that if the requirements
310 set forth in the Internal Revenue Code of 1986, as amended, and
311 any regulations promulgated pursuant thereto are met, the
312 interest component of any lease-purchase obligation also is
313 exempt from the gross income of the recipient for purposes of
314 federal income taxation and may be designated by the govern-
315 ing board or the president of the institution as a bank-qualified
316 obligation.

317 (v) Notwithstanding any other provision of this code to the
318 contrary, the Commission, Council and governing boards have
319 the authority, in the name of the state, to lease, or offer to lease,
320 as lessee, any grounds, buildings, office or other space in
321 accordance with this paragraph and as provided below:

322 (1) The Commission, Council and governing boards have
323 sole authority to select and to acquire by contract or lease all

324 grounds, buildings, office space or other space, the rental of
325 which is necessarily required by the Commission, Council or
326 governing boards for the institutions under their jurisdiction.
327 For state institutions of higher education other than Marshall
328 University and West Virginia University, the Chief Executive
329 Officer of the Commission, Council or an institution shall
330 certify the following:

331 (A) That the grounds, buildings, office space or other space
332 requested is necessarily required for the proper function of the
333 Commission, Council or institution;

334 (B) That the Commission, Council or institution will be
335 responsible for all rent and other necessary payments in
336 connection with the contract or lease; and

337 (C) That satisfactory grounds, buildings, office space or
338 other space is not available on grounds and in buildings
339 currently owned or leased by the Commission, Council or the
340 institution.

341 Before executing any rental contract or lease, the Commis-
342 sion, Council or a governing board shall determine the fair
343 rental value for the rental of the requested grounds, buildings,
344 office space or other space, in the condition in which they exist,
345 and shall contract for or lease the premises at a price not to
346 exceed the fair rental value.

347 (2) The Commission, Council and governing boards are
348 authorized to enter into long-term agreements for buildings,
349 land and space for periods longer than one fiscal year but not to
350 exceed forty years. Any purchase of real estate, any
351 lease-purchase agreement and any construction of new build-
352 ings or other acquisition of buildings, office space or grounds
353 resulting therefrom, pursuant to the provisions of this subsec-
354 tion shall be presented by the Commission or Council, as
355 appropriate, to the Joint Committee on Government and

356 Finance for prior review. Any such lease shall contain, in
357 substance, all the following provisions:

358 (A) That the Commission, Council or governing board, as
359 lessee, has the right to cancel the lease without further obliga-
360 tion on the part of the lessee upon giving thirty days' written
361 notice to the lessor at least thirty days prior to the last day of the
362 succeeding month;

363 (B) That the lease is considered canceled without further
364 obligation on the part of the lessee if the Legislature or the
365 federal government fails to appropriate sufficient funds therefor
366 or otherwise acts to impair the lease or cause it to be canceled;
367 and

368 (C) That the lease is considered renewed for each ensuing
369 fiscal year during the term of the lease unless it is canceled by
370 the Commission, Council or governing board before the end of
371 the then-current fiscal year.

372 (3) The Commission, Council or institution which is
373 granted any grounds, buildings, office space or other space
374 leased in accordance with this section may not order or make
375 permanent changes of any type thereto, unless the Commission,
376 Council or governing board, as appropriate, has first determined
377 that the change is necessary for the proper, efficient and
378 economically sound operation of the institution. For purposes
379 of this section, a "permanent change" means any addition,
380 alteration, improvement, remodeling, repair or other change
381 involving the expenditure of state funds for the installation of
382 any tangible thing which cannot be economically removed from
383 the grounds, buildings, office space or other space when
384 vacated by the institution.

385 (4) Leases and other instruments for grounds, buildings,
386 office or other space, once approved by the Commission,
387 Council or governing board, may be signed by the Chief

388 Executive Officer of the Commission, Council or institution.
389 Any lease or instrument exceeding one hundred thousand
390 dollars annually shall be approved as to form by the Attorney
391 General. A lease or other instrument for grounds, buildings,
392 office or other space that contains a term, including any options,
393 of more than six months for its fulfillment shall be filed with
394 the State Auditor.

395 (5) The Commission and Council jointly may promulgate
396 rules they consider necessary to carry out the provisions of this
397 section. The governing boards of Marshall University and West
398 Virginia University shall promulgate rules pursuant to section
399 six, article one of this chapter to implement the provisions of
400 this section.

401 (w) Purchasing card use may be expanded by the Council,
402 Commission and state institutions of higher education pursuant
403 to the provisions of this subsection.

404 (1) The Council and Commission jointly shall establish
405 procedures to be implemented by the Council, Commission and
406 any institution under their respective jurisdictions using
407 purchasing cards. The procedures shall ensure that each
408 maintains:

409 (A) Appropriate use of the purchasing card system;

410 (B) Full compliance with the provisions of article three,
411 chapter twelve of this code relating to the purchasing card
412 program; and

413 (C) Sufficient accounting and auditing procedures for all
414 purchasing card transactions.

415 (2) By the first day of November, two thousand four, the
416 Council and Commission jointly shall present the procedures to
417 the Legislative Oversight Commission on Education Account-
418 ability for its adoption.

419 (3) Notwithstanding any other provision of this code to the
420 contrary, if the Legislative Oversight Commission on Education
421 Accountability adopts the procedures, the Council, Commis-
422 sion, and any institution authorized pursuant to subdivision (4)
423 of this subsection, may use purchasing cards for:

424 (A) Travel expenses directly related to the job duties of the
425 traveling employee, including fuel and food; and

426 (B) Any routine, regularly scheduled payment, including,
427 but not limited to, utility payments and real property rental fees.
428 The Council, Commission and each institution, annually by the
429 thirtieth day of June, shall provide to the State Purchasing
430 Division a list of all goods or services for which payment was
431 made pursuant to this provision during that fiscal year.

432 (4) The Commission and Council each shall evaluate the
433 capacity of each institution under its jurisdiction for complying
434 with the procedures established pursuant to subdivision (3) of
435 this subsection. The Commission and Council each shall
436 authorize expanded use of purchasing cards pursuant to said
437 subdivision for any such institution it determines has the
438 capacity to comply.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

1 (a) The Commission, the Council and the governing boards
2 shall dispose of obsolete and unusable equipment, surplus
3 supplies and other unneeded materials, either by transfer to
4 other governmental agencies or institutions, by exchange or
5 trade, or by sale as junk or otherwise. The Commission, the
6 Council and each governing board shall adopt rules governing
7 and controlling the disposition of all such equipment, supplies
8 and materials.

9 (1) At least ten days prior to the disposition, the Commis-
10 sion, the Council or the governing boards, as applicable, shall
11 advertise, by newspaper publication as a Class II legal adver-
12 tisement in compliance with the provisions of article three,
13 chapter fifty-nine of this code, in the county in which the
14 equipment, supplies and materials are located, the availability
15 or sales of such disposable equipment, supplies and materials.

16 (2) The Commission, the Council or governing boards, as
17 applicable, may sell the disposable equipment, supplies and
18 materials, in whole or in part, at public auction or by sealed bid,
19 or may transfer, exchange or trade the same to other govern-
20 mental agencies or institutions (if by transfer, exchange or
21 trade, then without advertising), in whole or in part, as sound
22 business practices may warrant under existing circumstances
23 and conditions.

24 (3) The requirements set forth in subsection (a) of this
25 section apply to Marshall University and West Virginia
26 University relating only to those items of obsolete and unusable
27 equipment, surplus supplies and other unneeded materials that
28 exceed five thousand dollars in recorded net book value.
29 Marshall University and West Virginia University may dispose
30 of obsolete and unusable computers and computer-related
31 equipment pursuant to the provisions of section two, article
32 three of this chapter.

33 (b) The Commission, Council or governing board, as
34 appropriate, except for Marshall University and West Virginia
35 University, shall report annually to the Legislative Auditor, all
36 sales of commodities made during the preceding six months.

37 (1) The report shall include a description of the commodi-
38 ties sold, the name of the buyer to whom each commodity was
39 sold, and the price paid by the buyer.

40 (2) Marshall University and West Virginia University shall
41 report biennially to the Legislative Auditor the total sales of
42 commodities made during the preceding biennium along with
43 the total recorded net book value of such commodities.

44 (c) The proceeds of sales or transfers shall be deposited in
45 the State Treasury to the credit on a pro rata basis of the fund or
46 funds from which the purchase of the particular commodities or
47 expendable commodities was made. The Commission, Council
48 or governing board, as appropriate, may charge and assess fees
49 reasonably related to the costs of care and handling with respect
50 to the transfer, warehousing, sale and distribution of state
51 property that is disposed of or sold pursuant to the provisions of
52 this section.

§18B-5-9. Higher education fiscal responsibility.

1 (a) The governing boards of Marshall University and West
2 Virginia University each shall ensure the fiscal integrity of its
3 operations using best business and management practices.

4 (1) The practices include at least the following:

5 (A) Complying with Generally Accepted Accounting
6 Principles of the Governmental Accounting Standards Board
7 (GAAP); and the Generally Accepted Government Auditing
8 Standards of the Government Accountability Office (GAGAS);

9 (B) Operating without material weakness in internal
10 controls as defined by GAAP, GAGAS and, where applicable,
11 the Office of Management and Budget (OMB) Circular A-133;

12 (C) Maintaining annual audited financial statements with an
13 unqualified opinion;

14 (D) Presenting annual audited financial statements to the
15 respective governing board;

16 (E) Maintaining quarterly financial statements certified by
17 the chief financial officer of the institution; and

18 (F) Implementing best practices from Sarbanes-Oxley, or
19 adopting the applicable tenets of Sarbanes-Oxley as best
20 practices.

21 (2) Marshall University, West Virginia University and the
22 research corporation of each:

23 (A) Shall comply with the OMB Circular A-133 annual
24 grant award audit requirements; and

25 (B) Is exempt from the provisions of section fourteen,
26 article four, chapter twelve of this code.

27 (3) Within thirty days of the completion of the financial
28 audit report, the governing boards of Marshall University and
29 West Virginia University each shall furnish to the Commission,
30 the Legislative Oversight Commission on Education Account-
31 ability and the Joint Committee on Government and Finance
32 copies of the annual audited financial statements.

33 (b) The Commission or Council, as appropriate, shall
34 ensure the fiscal integrity of any electronic process conducted
35 at its offices and at all other institutions using best business and
36 management practices.

37 (c) Marshall University, West Virginia University, the
38 Council and the Commission each shall implement a process
39 whereby, to the maximum extent practicable, employees of
40 Marshall University, West Virginia University, the Council,
41 Commission and all other state institutions of higher education
42 receive their wages via electronic transfer or direct deposit.

43 (d) Notwithstanding the provisions of section ten-a, article
44 three, chapter twelve of this code, and except as otherwise

45 provided in this subsection, the amount of any purchase made
46 with a purchasing card used by the Council, the Commission or
47 any other state institution of higher education may not exceed
48 five thousand dollars.

49 (1) Subject to approval of the Auditor, any emergency
50 payment and any routine, regularly scheduled payment,
51 including, but not limited to, utility payments, contracts and
52 real property rental fees, may exceed this limit by an amount to
53 be determined by the Auditor.

54 (2) The Council, Commission and any state institution of
55 higher education may use a purchasing card for travel expenses
56 directly related to the job duties of the traveling employee.
57 Where approved by the auditor, such expenses may exceed five
58 thousand dollars by an amount to be determined by the auditor.
59 Traveling expenses may include registration fees and airline
60 and other transportation reservations, if approved by the
61 president of the institution. Traveling expenses may not include
62 fuel or food purchases except, the state institutions of higher
63 education known as Marshall University and West Virginia
64 University may include in traveling expenses the purchase of
65 fuel and food.

66 (3) The state institutions known as Marshall University and
67 West Virginia University each shall maintain one purchasing
68 card for use only in a situation declared an emergency by the
69 institution's president. The Council, Commission and all other
70 institutions shall maintain one purchase card for use only in a
71 situation declared an emergency by the president of the
72 institution and approved by the appropriate chancellor.
73 Emergencies may include, but are not limited to, partial or total
74 destruction of a campus facility; loss of a critical component of
75 utility infrastructure; heating, ventilation or air condition failure
76 in an essential academic building; loss of campus road, parking
77 lot or campus entrance; or a local, regional, or national emer-
78 gency situation that has a direct impact on the campus.

79 (e) Notwithstanding the provisions of section ten-f, article
80 three, chapter twelve of this code, or any other provision of this
81 code or law to the contrary, the Auditor shall accept any
82 receiving report submitted in a format utilizing electronic
83 media. The Auditor shall conduct any audit or investigation of
84 the Council, Commission or any institution at its own expense
85 and at no cost to the Council, Commission or institution.

86 (f) The Council and the Commission each shall maintain a
87 rule in accordance with the provisions of article three-a, chapter
88 twenty-nine-a of this code. The rule shall provide for institu-
89 tions individually or cooperatively to maximize their use of any
90 of the following purchasing practices that are determined to
91 provide a financial advantage:

92 (1) Bulk purchasing;

93 (2) Reverse bidding;

94 (3) Electronic marketplaces; and

95 (4) Electronic remitting.

96 (g) Each institution shall establish a consortium with at
97 least one other institution, in the most cost-efficient manner
98 feasible, to consolidate the following operations and student
99 services:

100 (1) Payroll operations;

101 (2) Human resources operations;

102 (3) Warehousing operations;

103 (4) Financial transactions;

104 (5) Student financial aid application, processing and
105 disbursement;

106 (6) Standard and bulk purchasing; and

107 (7) Any other operation or service appropriate for consoli-
108 dation as determined by the Council or Commission.

109 (h) An institution may charge a fee to each institution for
110 which it provides a service or performs an operation. The fee
111 rate shall be in the best interest of both the institution being
112 served and the providing institution, as approved by the Council
113 and Commission.

114 (i) Any community and technical college, college and
115 university may provide the services authorized by this section
116 for the benefit of any governmental body or public or private
117 institution.

118 (j) Each institution shall strive to minimize its number of
119 low-enrollment sections of introductory courses. To the
120 maximum extent practicable, institutions shall use distance
121 learning to consolidate the course sections. Marshall Univer-
122 sity, West Virginia University, the Council and Commission
123 shall report the progress of reductions as requested by the
124 Legislative Oversight Commission on Education Accountabil-
125 ity.

126 (k) An institution shall use its natural resources and
127 alternative fuel resources to the maximum extent feasible. The
128 institution:

129 (1) May supply the resources for its own use and for use by
130 any other institution;

131 (2) May supply the resources to the general public at fair
132 market value;

133 (3) Shall maximize all federal or grant funds available for
134 research regarding alternative energy sources; and

135 (4) May develop research parks to further the purpose of
136 this section and to expand the economic development opportu-
137 nities in the state.

138 (l) Any cost-savings realized or fee procured or retained by
139 an institution pursuant to implementation of the provisions of
140 this section is retained by the institution.

141 (m) The provisions of subsection (b) of this section do not
142 apply to the state institutions known as Marshall University and
143 West Virginia University. Each is authorized, but not required,
144 to comply with the provisions of subsections (f), (g) and (h) of
145 this section.

146 (1) The governing boards of Marshall University and West
147 Virginia University, respectively, each shall promulgate a rule
148 on purchasing procedures pursuant to the provisions of section
149 six, article one of this chapter. Neither institution is subject to
150 the rules required by subsection (f) of this section.

151 (2) If either governing board elects to implement the
152 provisions of said subsection (g) of this section, the following
153 conditions apply:

154 (A) The governing board makes the determination regard-
155 ing any additional operation or service which is appropriate for
156 consolidation without input from the Council or Commission;

157 (B) The governing board sets the fee charged to any
158 institution for which it provides a service or performs an
159 operation. The fee rate shall be in the best interest of both the
160 institution being served and the providing institution, but it is
161 not subject to approval by the Council or Commission; and

162 (C) The governing board may not implement the provisions
163 of this subdivision in a manner which supercedes the require-

164 ments established in section twelve, article three-c of this
165 chapter.

§18B-5-10. Medical professional liability insurance and risk management functions.

1 (a) The Legislature finds that, while recent reforms have
2 helped to address the rising costs and limited availability of
3 medical malpractice and risk management insurance in West
4 Virginia, the state's doctoral-granting research universities and
5 their medical schools continue to face significant challenges
6 related to the cost and operation of insurance and risk manage-
7 ment programs.

8 (b) The Legislature further finds that the availability of
9 cost-efficient insurance and risk management programs is
10 essential to the long-term financial integrity and viability of
11 these universities and their medical and other health profes-
12 sional schools.

13 (c) It is the responsibility of the Legislature to make the
14 best use of available resources and to assure the availability of
15 high quality medical education to meet the needs of the citizens
16 of the state.

17 (d) Therefore, to aid the medical and other health profes-
18 sional schools in meeting these goals and objectives, the
19 following program is authorized:

20 (1) Upon the agreement of the West Virginia State Board
21 of Risk and Insurance Management, the health professionals
22 schools under the jurisdiction of the governing boards of
23 Marshall University, West Virginia University and the West
24 Virginia School of Osteopathic Medicine, respectively, may
25 participate, separately, in a self-insurance retention program in
26 conjunction with the state insurance program administered by
27 the West Virginia State Board of Risk and Insurance Manage-

28 ment to provide medical professional liability coverage to its
29 health care professionals and students.

30 (2) In administering the self-insurance retention program,
31 each governing board has the authority to administer, manage
32 and/or settle its own medical professional liability insurance
33 claims.

34 (e) Notwithstanding the provisions of article twelve,
35 chapter twenty-nine of this code, the West Virginia State Board
36 of Risk and Insurance Management is hereby authorized and
37 empowered to enter into separate agreements with the health
38 professionals schools under the jurisdiction of the governing
39 boards of Marshall University, West Virginia University, and
40 the West Virginia School of Osteopathic Medicine, respec-
41 tively, to develop and implement a self-insurance retention
42 program for medical professional liability insurance.

43 (f) Prior to the implementation of any self-insurance
44 retention program, the governing boards of Marshall Univer-
45 sity, West Virginia University, and the West Virginia School of
46 Osteopathic Medicine, respectively, shall submit the proposed
47 program plan to the state Insurance Commissioner for review:

48 (1) The review shall include, but is not limited to, claims
49 handling procedures, investment policies, and reserving
50 practices.

51 (2) A governing board may not implement a plan until it
52 has been reviewed by the state Insurance Commissioner.

53 (g) The Insurance Commissioner and Board of Risk and
54 Insurance Management each may promulgate an emergency
55 rule as necessary pursuant to the provisions of article three,
56 chapter twenty-nine-a of this code, to specify further the
57 requirements of self-insurance retention programs under this
58 section.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees

§18B-10-5. Fee waivers — Undergraduate schools.

§18B-10-6. Fee waivers – Professional and graduate schools.

§18B-10-6a. Undergraduate, graduate and professional fee waivers – Marshall University and West Virginia University.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees

1 (a) Each governing board shall fix tuition and other fees for
2 each school term for the different classes or categories of
3 students enrolling at each state institution of higher education
4 under its jurisdiction and may include among the tuition and
5 fees any one or more of the following as defined in section
6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees
13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees
16 collected to support existing systemwide and institutional debt
17 service and future systemwide and institutional debt service,
18 capital projects and campus renewal for educational and general
19 facilities.

20 (4) Subject to any covenants or restrictions imposed with
21 respect to revenue bonds payable from such accounts, an
22 institution may expend funds from each such special revenue
23 account for any purpose for which funds were collected within
24 that account regardless of the original purpose for which the
25 funds were collected.

26 (c) The purposes for which tuition and fees may be ex-
27 pended include, but are not limited to, health services, student
28 activities, recreational, athletic and extracurricular activities.
29 Additionally, tuition and fees may be used to finance a stu-
30 dent's attorney to perform legal services for students in civil
31 matters at the institutions: *Provided*, That the legal services are
32 limited only to those types of cases, programs or services
33 approved by the administrative head of the institution where the
34 legal services are to be performed.

35 (d) The Commission and Council jointly shall propose a
36 rule for legislative approval in accordance with the provisions
37 of article three-a, chapter twenty-nine-a of this code to govern
38 the fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and,
40 therefore, the Commission and Council jointly shall file the rule
41 required by subsection (d) of this section as an emergency rule
42 pursuant to the provisions of article three-a, chapter
43 twenty-nine-a of this code, subject to the prior approval of the
44 Legislative Oversight Commission on Education Accountabil-
45 ity.

46 (f) The schedule of all tuition and fees, and any changes
47 therein, shall be entered in the minutes of the meeting of the
48 appropriate governing board and the board shall file with the
49 Commission or Council, or both, as appropriate, and the
50 Legislative Auditor a certified copy of such schedule and
51 changes.

52 (g) The boards shall establish the rates to be charged
53 full-time students, as defined in section one-b of this article,
54 who are enrolled during a regular academic term.

55 (1) Undergraduate students taking fewer than twelve credit
56 hours in a regular term shall have their fees reduced pro rata
57 based upon one twelfth of the full-time rate per credit hour and
58 graduate students taking fewer than nine credit hours in a
59 regular term shall have their fees reduced pro rata based upon
60 one ninth of the full-time rate per credit hour.

61 (2) Fees for students enrolled in summer terms or other
62 nontraditional time periods shall be prorated based upon the
63 number of credit hours for which the student enrolls in accor-
64 dance with the above provisions.

65 (h) All fees are due and payable by the student upon
66 enrollment and registration for classes except as provided in
67 this subsection:

68 (1) The governing boards shall permit fee payments to be
69 made in installments over the course of the academic term. All
70 fees shall be paid prior to the awarding of course credit at the
71 end of the academic term.

72 (2) The governing boards also shall authorize the accep-
73 tance of credit cards or other payment methods which may be
74 generally available to students for the payment of fees. The
75 governing boards may charge the students for the reasonable
76 and customary charges incurred in accepting credit cards and
77 other methods of payment.

78 (3) If a governing board determines that a student's
79 finances are affected adversely by a legal work stoppage, it may
80 allow the student an additional six months to pay the fees for
81 any academic term. The governing board shall determine on a

82 case-by-case basis if the finances of a student are affected
83 adversely.

84 (4) The Commission and Council jointly shall propose a
85 rule in accordance with the provisions of article three-a, chapter
86 twenty-nine-a of this code, defining conditions under which an
87 institution may offer tuition and fee deferred payment plans
88 through the institution or through third parties.

89 (5) An institution may charge interest or fees for any
90 deferred or installment payment plans.

91 (i) In addition to the other fees provided in this section,
92 each governing board may impose, collect and distribute a fee
93 to be used to finance a nonprofit, student-controlled public
94 interest research group if the students at the institution demon-
95 strate support for the increased fee in a manner and method
96 established by that institution's elected student government.
97 The fee may not be used to finance litigation against the
98 institution.

99 (j) Institutions shall retain tuition and fee revenues not
100 pledged for bonded indebtedness or other purposes in accor-
101 dance with the tuition rule proposed by the Commission and
102 Council jointly pursuant to this section. The tuition rule shall:

103 (1) Provide a basis for establishing nonresident tuition and
104 fees;

105 (2) Allow institutions to charge different tuition and fees for
106 different programs;

107 (3) Provide that a board of governors may propose to the
108 Commission, Council or both, as appropriate, a mandatory
109 auxiliary fee under the following conditions:

110 (A) The fee shall be approved by the Commission, Council
111 or both, as appropriate, and either the students below the senior

112 level at the institution or the Legislature before becoming
113 effective;

114 (B) Increases may not exceed previous state subsidies by
115 more than ten percent;

116 (C) The fee may be used only to replace existing state funds
117 subsidizing auxiliary services such as athletics or bookstores;

118 (D) If the fee is approved, the amount of the state subsidy
119 shall be reduced annually by the amount of money generated
120 for the institution by the fees. All state subsidies for the
121 auxiliary services shall cease five years from the date the
122 mandatory auxiliary fee is implemented;

123 (E) The Commission, Council or both, as appropriate, shall
124 certify to the Legislature by the first day of October in the fiscal
125 year following implementation of the fee, and annually thereaf-
126 ter, the amount of fees collected for each of the five years;

127 (4) Establish methodology, where applicable, to ensure that,
128 within the appropriate time period under the compact, commu-
129 nity and technical college tuition rates for community and
130 technical college students in all independently accredited
131 community and technical colleges will be commensurate with
132 the tuition and fees charged by their peer institutions.

133 (k) A penalty may not be imposed by the Commission or
134 Council upon any institution based upon the number of nonresi-
135 dents who attend the institution unless the Commission or
136 Council determines that admission of nonresidents to any
137 institution or program of study within the institution is impeding
138 unreasonably the ability of resident students to attend the
139 institution or participate in the programs of the institution. The
140 institutions shall report annually to the Commission or Council
141 on the numbers of nonresidents and such other enrollment
142 information as the Commission or Council may request.

143 (1) Tuition and fee increases of the governing boards, except
144 for the governing boards of the state institutions of higher
145 education known as Marshall University and West Virginia
146 University, are subject to rules adopted by the Commission and
147 Council jointly pursuant to this section and in accordance with
148 the provisions of article three-a, chapter twenty-nine-a of this
149 code.

150 (1) Subject to the provisions of subdivision (4) of this
151 subsection, a governing board of an institution under the
152 jurisdiction of the Commission may propose tuition and fee
153 increases of up to nine and one-half percent for undergraduate
154 resident students for any fiscal year. The nine and one-half
155 percent total includes the amount of increase over existing
156 tuition and fees, combined with the amount of any newly
157 established, specialized fee which may be proposed by a
158 governing board.

159 (2) A governing board of an institution under the jurisdic-
160 tion of the Council may propose tuition and fee increases of up
161 to four and three quarters percent for undergraduate resident
162 students for any fiscal year. The four and three-quarters percent
163 total includes the amount of increase over existing tuition and
164 fees, combined with the amount of any newly established,
165 specialized fee which may be proposed by a governing board.

166 (3) The Commission or Council, as appropriate, shall
167 examine individually each request from a governing board for
168 an increase.

169 (4) The governing boards of Marshall University and West
170 Virginia University, as these provisions relate to the state
171 institutions of higher education known as Marshall University
172 and West Virginia University, each may annually:

173 (A) Increase tuition and fees for undergraduate resident
174 students to the maximum allowed by this section without
175 seeking approval from the Commission; and

176 (B) Set tuition and fee rates for post-baccalaureate resident
177 students and for all nonresident students, including establishing
178 regional tuition and fee rates, reciprocity agreements or both.

179 (C) The provisions of this subdivision do not apply to
180 tuition and fee rates of the administratively linked institution
181 known as Marshall Community and Technical College, the
182 administratively linked institution known as the Community
183 and Technical College at West Virginia University Institute of
184 Technology and the regional campuses known as West Virginia
185 University Institute of Technology and West Virginia Univer-
186 sity at Parkersburg.

187 (5) Any proposed tuition and fee increase for state institu-
188 tions of higher education other than the state institutions of
189 higher education known as Marshall University and West
190 Virginia University requires the approval of the Commission or
191 Council, as appropriate. In determining whether to approve or
192 deny the governing board's request, the Commission or Council
193 shall determine the progress the institution has made toward
194 meeting the conditions outlined in this subdivision and shall
195 make this determination the predominate factor in its decision.
196 The Commission or Council shall consider the degree to which
197 each institution has met the following conditions:

198 (A) Has maximized resources available through nonresident
199 tuition and fee charges to the satisfaction of the Commission or
200 Council;

201 (B) Is consistently achieving the benchmarks established in
202 the compact of the institution pursuant to the provisions of
203 article one-a of this chapter;

204 (C) Is continuously pursuing the statewide goals for
205 post-secondary education and the statewide compact established
206 in articles one and one-a of this chapter;

207 (D) Has demonstrated to the satisfaction of the Commission
208 or Council that an increase will be used to maintain high-quality
209 programs at the institution;

210 (E) Has demonstrated to the satisfaction of the Commission
211 or Council that the institution is making adequate progress
212 toward achieving the goals for education established by the
213 southern regional education board; and

214 (F) To the extent authorized, will increase by up to five
215 percent the available tuition and fee waivers provided by the
216 institution. The increased waivers may not be used for athlet-
217 ics.

218 (6) This section does not require equal increases among
219 institutions or require any level of increase at an institution.

220 (7) The Commission and Council shall report to the
221 Legislative Oversight Commission on Education Accountability
222 regarding the basis for each approval or denial as determined
223 using the criteria established in subdivision (5) of this subsec-
224 tion.

§18B-10-5. Fee waivers — Undergraduate schools.

1 Each governing board periodically may establish fee
2 waivers for students in undergraduate studies at institutions
3 under its jurisdiction entitling recipients to waiver of tuition,
4 capital and other fees subject to the following conditions and
5 limitations:

6 (a) Undergraduate fee waivers established by the governing
7 boards of Marshall University and West Virginia University,

8 respectively, for the state institutions of higher education
9 known as Marshall University and West Virginia University,
10 are subject to the provisions of section six-a of this article;

11 (b) For the governing boards of state institutions of higher
12 education other than the state institutions of higher education
13 known as Marshall University and West Virginia University,
14 the following conditions apply:

15 (1) An institution may not have in effect at any time a
16 number of undergraduate fee waivers which exceeds five
17 percent of the number of full-time equivalent undergraduate
18 students registered during the fall semester of the immediately
19 preceding academic year.

20 (2) Each undergraduate fee waiver entitles the recipient
21 thereof to attend a designated state institution of higher educa-
22 tion without payment of the tuition, capital and other fees as
23 may be prescribed by the governing board and is for a period of
24 time not to exceed eight semesters of undergraduate study.

25 (3) The governing board shall make rules pursuant to the
26 provisions of section six, article one of this chapter, governing
27 the award of undergraduate fee waivers; the issuance and
28 cancellation of certificates entitling the recipients to the benefits
29 thereof; the use of the fee waivers by the recipients; and the
30 rights and duties of the recipients with respect to the fee
31 waivers. These rules may not be inconsistent with the provi-
32 sions of this section.

33 (4) The awarding of undergraduate fee waivers shall be
34 entered in the minutes of the meetings of the governing board.

35 (5) Students enrolled in an administratively-linked commu-
36 nity and technical college shall be awarded a proportionate
37 share of the total number of undergraduate fee waivers awarded
38 by a governing board. The number to be awarded to students of

39 the community and technical college is based upon the full-time
40 equivalent enrollment of that institution.

§18B-10-6. Fee waivers – Professional and graduate schools.

1 In addition to the fee waivers authorized for undergraduate
2 study by the provisions of section five of this article, each
3 governing board periodically may establish fee waivers for
4 study in graduate and professional schools under its jurisdic-
5 tion, including medicine and dentistry, entitling the recipients
6 to waiver of tuition, capital, and other fees, subject to the
7 following conditions and limitations:

8 (a) Graduate and professional fee waivers established by the
9 governing boards of Marshall University and West Virginia
10 University, respectively, are subject to the provisions of section
11 six-a of this article;

12 (b) For the governing boards of state institutions of higher
13 education other than the state institutions of higher education
14 known as Marshall University and West Virginia University,
15 the following conditions apply:

16 (1) An institution may not have in effect at any time a
17 number of graduate and professional school fee waivers which
18 exceeds five percent of the number of full-time equivalent
19 graduate and professional students registered during the
20 corresponding fall semester, spring semester and summer term
21 of the immediately preceding academic year. In addition to the
22 above five percent, all graduate assistants employed by these
23 institutions shall be granted a fee waiver.

24 (2) Each graduate or professional school fee waiver entitles
25 the recipient to waiver of the tuition, capital and other fees as
26 may be prescribed by the governing boards and is for a period
27 of time not to exceed the number of semesters normally
28 required in the recipient's academic discipline.

29 (3) The governing boards shall make rules pursuant to the
30 provisions of section six, article one of this chapter, governing
31 the award of graduate and professional school fee waivers; the
32 issuance and cancellation of certificates entitling the recipients
33 to the benefits thereof; the use of the fee waivers by the
34 recipients; and the rights and duties of the recipients with
35 respect to the fee waivers. These rules may not be inconsistent
36 with the provisions of this section.

37 (4) The awarding of graduate and professional school fee
38 waivers shall be entered in the minutes of the meeting of each
39 governing board.

**§18B-10-6a. Undergraduate, graduate and professional fee waiv-
ers – Marshall University and West Virginia
University.**

1 (a) *Undergraduate fee waivers.* –

2 (1) The governing boards of Marshall University and West
3 Virginia University, respectively, may establish fee waivers for
4 students in undergraduate studies at institutions under their
5 jurisdiction which entitle recipients to waiver of tuition, capital
6 and other fees, in whole or in part.

7 (2) Each undergraduate fee waiver is for a period of time
8 not to exceed eight semesters of undergraduate study.

9 (3) Each governing board shall promulgate rules pursuant
10 to the provisions of section six, article one of this chapter to
11 govern the award of undergraduate fee waivers; the issuance
12 and cancellation of certificates entitling the recipients to the
13 benefits thereof; the use of the fee waivers by the recipients;
14 and the rights and duties of the recipients with respect to the fee
15 waivers. These rules may not be inconsistent with the provi-
16 sions of this section.

17 (4) The awarding of undergraduate fee waivers shall be
18 entered in the minutes of the meetings of the governing board.

19 (5) Students enrolled in an administratively linked commu-
20 nity and technical college shall be awarded a proportionate
21 share of the total number of undergraduate fee waivers awarded
22 by a governing board. The number to be awarded to students of
23 the community and technical college is based upon the full-time
24 equivalent enrollment of that institution.

25 (b) *Graduate and professional school fee waivers.* –

26 (1) In addition to the fee waivers authorized for undergrad-
27 uate study by subsection (a) of this section, the governing
28 boards of Marshall University and West Virginia University,
29 respectively, each may establish fee waivers for study in the
30 graduate and professional schools under its jurisdiction,
31 including medicine and dentistry, which entitle the recipients to
32 waiver of tuition, capital and other fees, in whole or in part.

33 (2) Each graduate or professional school fee waiver entitles
34 the recipient to waiver of the tuition, capital and other fees, in
35 whole or in part, as may be prescribed by the governing board
36 and is for a period of time not to exceed the number of semes-
37 ters normally required in the recipient's academic discipline.

38 (3) The governing boards each shall promulgate a rule
39 pursuant to the provisions of section six, article one of this
40 chapter, governing the award of graduate and professional
41 school fee waivers; the issuance and cancellation of certificates
42 entitling the recipients to the benefits thereof; the use of the fee
43 waivers by the recipients; and the rights and duties of the
44 recipients with respect to the fee waivers. These rules may not
45 be inconsistent with the provisions of this section.

46 (4) The awarding of graduate and professional school fee
47 waivers shall be entered in the minutes of the meeting of each
48 governing board.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-7. Regional Brownfield Assistance Centers.

1 (a) For the purposes of this section, “eligible entities”
2 means government entities as defined by the Comprehensive
3 Environmental Response, Compensation, and Liability Act of
4 1980, as amended, at 42 U. S. C. §9604 or nonprofit organiza-
5 tions as defined by the federal Financial Assistance Manage-
6 ment Improvement Act at 31 U. S. C. §6101.

7 (b) Marshall University and West Virginia University each
8 shall establish a nonprofit Regional Brownfield Assistance
9 Center through the corporations set out in article twelve of this
10 chapter for the purposes of expediting the redevelopment of
11 Brownfield sites. The Centers shall provide assistance to
12 eligible entities on state and federal Brownfield programs,
13 secure state and federal funding for Brownfield redevelopment
14 and acquire property eligible for state and federal Brownfield
15 assistance.

16 (c) The Center established by Marshall University serves
17 the following counties:

18 (1) McDowell, Mercer, Monroe, Raleigh, Summers and
19 Wyoming;

20 (2) Cabell, Lincoln, Logan, Mason, Mingo and Wayne;

21 (3) Boone, Clay, Kanawha and Putnam; and

22 (4) Braxton, Fayette, Greenbrier, Nicholas, Pocahontas and
23 Webster.

24 (d) The Center established by West Virginia University
25 serves the following counties:

26 (1) Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler,
27 Wirt and Wood;

28 (2) Brooke, Hancock, Marshall, Ohio and Wetzel;

29 (3) Barbour, Doddridge, Gilmer, Harrison, Lewis, Marion,
30 Monongalia, Preston, Randolph, Taylor, Tucker and Upshur;
31 and

32 (4) Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral,
33 Morgan and Pendleton.

34 (e) To accomplish the purposes of this section, the Regional
35 Brownfield Assistance Centers each have powers and duties
36 including, but not limited to, the following:

37 (1) Acquiring property that is eligible for state and federal
38 Brownfield assistance pursuant to the Small Business Liability
39 Relief and Brownfields Revitalization Act (Public Law No.
40 107-118, 185 stat. 2356) and the West Virginia Voluntary
41 Remediation and Redevelopment Act established in article
42 twenty-two, chapter twenty-two of this code;

43 (2) Serving as the developer of property or entering into
44 partnerships, agreements or other contractual arrangements with
45 other public or private entities for the purposes of managing and
46 coordinating remediation and redevelopment activities;

47 (3) Preparing an inventory of Brownfield sites within their
48 respective geographic regions by the first day of July, two
49 thousand six, and updating the inventory of sites annually;

50 (4) Promoting and coordinating the development of
51 Brownfield property by providing training and technical

52 assistance on Brownfield development, grant writing, site
53 assessments, remediation, community involvement and site
54 preparation to eligible entities;

55 (5) Administering federal Brownfield Job Training Grants,
56 the Brownfields Revolving Fund, and other federal Brownfield
57 financial assistance programs to assist eligible entities in their
58 Brownfield development efforts;

59 (6) Coordinating efforts to secure federal Brownfield
60 funding by establishing priority rankings and by other necessary
61 measures to maximize federal financial assistance and eliminate
62 overlapping competition for federal dollars;

63 (7) Coordinating the development and publication by the
64 first day of July, two thousand six, of a website to provide
65 education and appropriate information on Brownfields develop-
66 ment in West Virginia; and

67 (8) Coordinating with the West Virginia Development
68 Office and the Department of Environmental Protection to
69 establish and track key Brownfield economic statistics and
70 conduct Brownfield conferences, as appropriate.

ARTICLE 14. MISCELLANEOUS.

§18B-14-11. Legislative findings; creation of Governor's Commission on Graduate Study in Science, Technology, Engineering, and Mathematics; membership; report.

1 (a) The Legislature finds that West Virginia ranks below
2 most other states on key indicators of scientific and technical
3 capacity, including the number of scientists and engineers who
4 hold doctoral degrees, the number of science and engineering
5 post-doctorates and the number of science and engineering
6 graduate students.

7 (b) The Legislature further finds that this lack of scientific
8 and technical capacity places the state at a competitive disad-
9 vantage to other states in terms of generating economic
10 development and winning research grants, as evidenced by
11 limited amounts of academic research and development
12 funding, industrial research and development, small business
13 innovation grant awards, technology-related start-up companies
14 and the low number of high-tech jobs.

15 (c) To address these findings, there is created the Gover-
16 nor's Commission on Graduate Study in Science, Technology,
17 Engineering and Mathematics, which may be cited as the
18 STEM Commission, to address issues which include, but are
19 not limited to, the following:

20 (1) Promoting coordination between higher education and
21 K-12 education to create a seamless system of science and
22 mathematics education and to improve science and mathematics
23 education at all levels;

24 (2) Increasing the number of graduate students and
25 post-doctorates in science, technology, engineering and
26 mathematics, including the number of women and minority
27 graduate students in these fields;

28 (3) Increasing the number of West Virginia undergraduate
29 and graduate students who receive nationally competitive
30 scholarships and fellowships in science, technology, engineer-
31 ing and mathematics, such as Goldwater, Howard Hughes,
32 National Science Foundation and Udall Fellowships;

33 (4) Improving the quality of graduate faculty and programs
34 in science, technology, engineering and mathematics;

35 (5) Aligning graduate programs in science, technology,
36 engineering and mathematics with the goals and objectives of
37 the State EPSCoR Program, the State Science and Technology

38 Advisory Council, the West Virginia Development Office and
39 the Doctoral Scholars Program of the Southern Regional
40 Education Board; and

41 (6) Increasing the quantity and enhancing the quality of
42 academic research, as measured by federal and external
43 expenditures for research and development.

44 (d) *STEM Commission membership.* –

45 (1) The Commission is comprised of fourteen members
46 selected as follows:

47 (A) The Governor or designee, who serves as Chair;

48 (B) The Chancellor for the Higher Education Policy
49 Commission;

50 (C) The Director of Academic Affairs of the Higher
51 Education Policy Commission;

52 (D) The Executive Director of the State EPSCoR Program;

53 (E) The Executive Director of the West Virginia Develop-
54 ment Office or designee;

55 (F) The provosts of Marshall University and West Virginia
56 University or their designees;

57 (G) Five members appointed by the Governor who repre-
58 sent academic, business and research interests; and

59 (H) The Chair of the House of Delegates Committee on
60 Education and the Chair of the West Virginia Senate Commit-
61 tee on Education as ex officio, nonvoting members who serve
62 in an advisory capacity.

63 (2) At least two of the Governor's appointees are state
64 residents.

65 (3) The Governor shall make appointments to the Commis-
66 sion so that members may begin their deliberations no later than
67 the first day of July, two thousand five.

68 (e) The Commission shall complete its work and report its
69 findings, conclusions and recommendations, together with
70 drafts of any legislation necessary to effectuate the recommen-
71 dations, to the Legislative Oversight Commission on Education
72 Accountability, the Higher Education Policy Commission and
73 the State EPSCoR Advisory Council by the first day of Decem-
74 ber, two thousand five.

CHAPTER 87

**(Com. Sub. for H. B. 2570 — By Delegates Ron Thompson,
Perry and H. White)**

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §18-9-6 of said code, all relating generally to depositories for county, municipal or county board of education funds; excepting banking institutions from the requirement to post bond or other security for the deposit of county, municipal or county board of education funds when the deposits are placed in certificates of deposits through a designated state depository; and conditions.

Be it enacted by the Legislature of West Virginia:

That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-13-22a of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 18. Education.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

1 No designation is binding on any county, nor shall any
2 public money be deposited thereunder, until the banking
3 institution designated executes a bond with good and sufficient
4 sureties, to be accepted and approved by the county commis-
5 sion, payable to the State of West Virginia, in a sum as the
6 county commission shall direct, and which may not be less than
7 the maximum sum that is deposited in the depository at any one
8 time. The bond shall be executed by at least four resident
9 freeholders as sureties owning in the aggregate unencumbered
10 real estate having an assessed valuation thereon equal to the
11 penalty of the bond, or by a fidelity or indemnity company
12 authorized to do business within the State, satisfactory to, and
13 acceptable by the county commission, and having not less than
14 six hundred thousand dollars capital; and the bond shall be
15 conditioned for the receipt, safekeeping and payment over of all
16 money which may be deposited in or come under the custody
17 of the banking institution designated a county depository under
18 the provisions hereof, together with the interest thereon at the
19 rate specified by this article; and the bond shall be further
20 conditioned for the faithful performance, by the banking
21 institution so designated, of all the duties imposed by this
22 article upon a depository of public moneys: *Provided*, That the

23 clerk of the county commission shall keep a record of each
24 surety on all personal bonds given as hereinbefore provided and
25 the clerk shall notify the county commission of every recorded
26 conveyance of real estate made by any surety on said personal
27 bond.

28 An action shall lie on the bond at the instance of the county
29 commission, or the sheriff, for the recovery of any money
30 deposited in the depository, upon failure or default of the
31 depository to fully and faithfully account for and pay over any
32 and all public moneys deposited by the sheriff and of all
33 interests earned and accrued thereon as required by this article.
34 A bond may not be accepted by the county commission until it
35 has been submitted to the prosecuting attorney, and certified by
36 him or her to be in due and legal form, and conformable to the
37 provisions of this article, which certificate shall be endorsed
38 thereon: *Provided*, That the county commission may, in lieu of
39 the bond provided hereinbefore, accept as security for money
40 deposited as aforesaid, interest-bearing securities of the United
41 States, or of a state, county, district or municipal corporation,
42 or of the federal land banks, or endorsed county and district
43 warrants of the county in which the depository is located, or
44 letters of credit of the federal land banks, or federal home loan
45 banks, or any other letters of credit approved by the treasurer;
46 the face value of which securities may not be less than the sum
47 hereinbefore specified as the amount to be named in the bond
48 in lieu of which the securities are accepted; or the county
49 commission may accept the securities as partial security to the
50 extent of their face value for the money so deposited, and
51 require bond for the remainder of the full amount hereinbefore
52 specified, to be named in the bond, and in the bond so required,
53 the acceptance of securities as partial security, and the extent
54 thereof, shall be set forth: *Provided, however*, That a banking
55 institution is not required to provide a bond or security in lieu
56 of bond if the deposits accepted are placed in certificates of
57 deposit meeting the following requirements: (1) The funds are

58 invested through a designated state depository selected by the
59 county; (2) the selected depository arranges for the deposit of
60 the funds in certificates of deposit in one or more banks or
61 savings and loan associations wherever located in the United
62 States, for the account of the county; (3) the full amount of
63 principal and accrued interest of each certificate of deposit is
64 insured by the Federal Deposit Insurance Corporation; (4) the
65 selected depository acts as custodian for the county with respect
66 to such certificates of deposit issued for the county's account;
67 and (5) at the same time that the county's funds are deposited
68 and the certificates of deposit are issued, the selected depository
69 receives an amount of deposits from customers of other
70 financial institutions wherever located in the United States
71 equal to or greater than the amount of the funds invested by the
72 county through the selected depository. The hypothecation of
73 the securities shall be by proper legal transfer as collateral
74 security to protect and indemnify by trust any and all loss in
75 case of any default on the part of the banking institution in its
76 capacity as depository as aforesaid. All the securities shall be
77 delivered to or deposited for the account of the county commis-
78 sion, and withdrawal or substitution thereof may be permitted
79 from time to time upon approval by the county commission by
80 order of record, but the collateral security shall be released only
81 by order of record of the county commission when satisfied that
82 full and faithful accounting and payment of all the moneys has
83 been made under the provisions hereof. In the event actual
84 possession of the hypothecated securities are delivered to the
85 county commission, it shall make ample provision for the
86 safekeeping thereof and the interest thereon when paid shall be
87 turned over to the banking institution, so long as it is not in
88 default as aforesaid. The county commission may permit the
89 deposit under proper receipt of the securities with one or more
90 banking institutions within or without the State of West
91 Virginia and may contract with any institution for safekeeping
92 and exchange of any hypothecated securities, and may prescribe
93 the rules for handling and protecting the same.

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 13. TAXATION AND FINANCE.****PART VI. ACCOUNTING PRINCIPLES;
FUNDS; DISBURSEMENTS.****§8-13-22a. Investment of municipal funds.**

1 All municipal funds, the investment of which is not
2 governed by other provisions of this code and not required for
3 the payment of current obligations and not otherwise prohib-
4 ited, may be invested and reinvested in:

5 (1) Any direct obligation of, or obligation guaranteed as to
6 the payment of both principal and interest by, the United States
7 of America;

8 (2) Any evidence of indebtedness issued by any United
9 States government agency guaranteed as to the payment of both
10 principal and interest, directly or indirectly, by the United
11 States of America including, but not limited to, the following:
12 Government national mortgage association, federal land banks,
13 federal home loan banks, federal intermediate credit banks,
14 banks for cooperatives, Tennessee Valley Authority, United
15 States postal service, farmers home administration, ex-
16 port-import bank, federal financing bank, federal home loan
17 mortgage corporation, student loan marketing association and
18 federal farm credit banks;

19 (3) Any evidence of indebtedness issued by the federal
20 National Mortgage Association to the extent such indebtedness
21 is guaranteed by the government National Mortgage Associa-
22 tion;

23 (4) Any evidence of indebtedness that is secured by a first
24 lien deed of trust or mortgage upon real property situate within

25 this State, if the payment thereof is substantially insured or
26 guaranteed by the United States of America or any agency
27 thereof;

28 (5) Direct and general obligations of this State;

29 (6) Any undivided interest in a trust, the corpus of which is
30 restricted to mortgages on real property and, unless all of such
31 property is situate within the State and insured, the trust at the
32 time of the acquisition of the undivided interest, is rated in one
33 of the three highest rating grades by an agency which is
34 nationally known in the field of rating pooled mortgage trusts;

35 (7) Any bond, note, debenture, commercial paper or other
36 evidence of indebtedness of any private corporation or associa-
37 tion: *Provided*, That any such security is, at the time of its
38 acquisition, rated in one of the three highest rating grades by an
39 agency which is nationally known in the field of rating corpo-
40 rate securities: *Provided, however*, That if any commercial
41 paper or any such security will mature within one year from the
42 date of its issuance, it shall, at the time of its acquisition, be
43 rated in one of the two highest rating grades by any such
44 nationally known agency and commercial paper or other
45 evidence of indebtedness of any private corporation or associa-
46 tion shall be purchased only upon the written recommendation
47 from an investment advisor that has over three hundred million
48 dollars in other funds under its management;

49 (8) Negotiable certificates of deposit issued by any bank,
50 trust company, national banking association or savings institu-
51 tion which mature in less than one year and are fully collateral-
52 ized;

53 (9) Interest earning deposits including certificates of
54 deposit, with any duly designated state depository, which
55 deposits are fully secured by a collaterally secured bond as
56 provided in section four, article one, chapter twelve of this

57 code: *Provided*, That a banking institution is not required to
58 provide this collaterally secured bond, or other security in lieu
59 of bond, if the deposits accepted are placed in certificates of
60 deposit meeting the following requirements: (A) The funds are
61 invested through a designated state depository selected by the
62 municipality; (B) the selected depository arranges for the
63 deposit of the funds in certificates of deposit in one or more
64 banks or savings and loan associations wherever located in the
65 United States, for the account of the municipality; (C) the full
66 amount of principal and accrued interest of each certificate of
67 deposit is insured by the Federal Deposit Insurance Corpora-
68 tion; (D) the selected depository acts as custodian for the
69 municipality with respect to such certificates of deposit issued
70 for the municipality's account; and (E) at the same time that the
71 municipality's funds are deposited and the certificates of
72 deposit are issued, the selected depository receives an amount
73 of deposits from customers of other financial institutions
74 wherever located in the United States equal to or greater than
75 the amount of the funds invested by the municipality through
76 the selected depository; and

77 (10) Mutual funds registered with the Securities and
78 Exchange Commission which have assets in excess of three
79 hundred million dollars.

CHAPTER 18. EDUCATION.

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 of
3 the county board of education, whether or not deposited in a
4 bank or depository, unless the sheriff has been designated

5 treasurer of the board of education as provided in this section.
6 The transfer of funds shall be made as of the balances on hand
7 on the thirtieth day of June of the year in which the board of
8 education appoints a treasurer other than the sheriff, and shall
9 be completed no later than the first day of August of that year.
10 The transfer shall be adjudged complete and final upon the
11 approval of the sheriff's official settlement for the fiscal year
12 ending on the thirtieth day of June of the year in which the
13 board of education appoints a treasurer other than the sheriff,
14 and any minor adjustment made necessary by the actually
15 known figures shall also be made at that time. All balances in
16 all county school funds at the end of each month after the
17 thirtieth day of June of the year in which the board of education
18 appoints a treasurer other than the sheriff shall be transferred by
19 the 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 of
22 education shall upon recommendation of the county superinten-
23 dent appoint a treasurer for the board. The treasurer is the fiscal
24 officer of the board, or an employee commonly designated as
25 the person in charge of the financial affairs of the county board,
26 or the county sheriff: *Provided*, That once a board of education
27 has appointed a treasurer other than the sheriff, the sheriff may
28 not be named treasurer of the board in a subsequent year. Upon
29 appointment this person shall be titled and referred to as
30 treasurer of the board of education. For the faithful performance
31 of this duty, the treasurer shall execute a bond, to be approved
32 by the board of education, in the penalty to be fixed by the
33 board of education, not to exceed the amount of school funds
34 which it is estimated the treasurer will handle within any period
35 of two months. The premium on the bond shall be paid by the
36 board of education.

37 The board of education may open a bank account, or
38 accounts, as required to adequately and properly transact the

39 business of the district in a depository, or banks, within the
40 county. The depositories, or banks, shall provide bond to cover
41 the maximum amount to be deposited at any one time. How-
42 ever, the county board of education may, in lieu of such bond,
43 accept as security for money deposited securities of the United
44 States, or of a state, county, district or municipal corporation,
45 or federal agency securities: *Provided*, That a banking institu-
46 tion is not required to provide a bond or security in lieu of bond
47 if the deposits accepted are placed in certificates of deposit
48 meeting the following requirements: (1) The funds are invested
49 through a designated state depository selected by the county
50 board of education; (2) the selected depository arranges for the
51 deposit of the funds in certificates of deposit in one or more
52 banks or savings and loan associations wherever located in the
53 United States, for the account of the county board of education;
54 (3) the full amount of principal and accrued interest of each
55 certificate of deposit is insured by the Federal Deposit Insur-
56 ance Corporation; (4) the selected depository acts as custodian
57 for the county board of education with respect to such certifi-
58 cates of deposit issued for the county's account; and (5) at the
59 same time that the county board of education's funds are
60 deposited and the certificates of deposit are issued, the selected
61 depository receives an amount of deposits from customers of
62 other financial institutions wherever located in the United
63 States equal to or greater than the amount of the funds invested
64 by the county board of education through the selected deposi-
65 tory. One hundred ten percent of the face or par value of the
66 securities may not be less than the sum hereinbefore specified
67 as the amount to be named in the bond in lieu of which
68 the securities are accepted, or the county board of education
69 may accept the securities as partial security to the extent of their
70 face value for the money so deposited and require bond for the
71 remainder of the full amount hereinbefore specified, to be
72 named in the bond, and, in the bond so required, the acceptance
73 of securities as partial security and the extent thereof shall be

74 set forth. The hypothecation of the securities shall be by proper
75 legal transfer as collateral security to protect and indemnify by
76 trust any and all loss in case of any default on the part of the
77 banking institution in its capacity as depository as aforesaid. All
78 such securities shall be delivered to or deposited for the account
79 of the county board of education, and withdrawal or substitution
80 thereof may be permitted from time to time upon approval by
81 the county board of education by order of record, but the
82 collateral security shall be released only by order of record of
83 the county board of education when satisfied that full and
84 faithful accounting and payment of all the moneys has been
85 made under the provisions hereof. In the event actual posses-
86 sion of the hypothecated securities is delivered to the county
87 board of education, it shall make ample provision for the
88 safekeeping thereof, and the interest thereon when paid shall be
89 turned over to the banking institution, so long as it is not in
90 default as aforesaid. The county board of education may permit
91 the deposit under proper receipt of such securities with one or
92 more banking institutions within the State of West Virginia and
93 may contract with any such institution for safekeeping and
94 exchange of any such hypothecated securities, and may
95 prescribe the rules for handling and protecting the same.

96 On and after the first day of July, one thousand nine
97 hundred seventy-three, all levies and any other school moneys
98 received by the sheriff and paid to the treasurer of the county
99 board of education shall be deposited in these accounts, and all
100 proper payments from such funds shall be made by the desig-
101 nated depository or bank upon order or draft presented for
102 payment and signed by the duly authorized signatories of the
103 board of education: *Provided*, That in determining the deposi-
104 tory for board of education funds a board member who has a
105 pecuniary interest in a bank within the county shall not partici-
106 pate in the determination of the depository for such funds.

107 If it is considered that sufficient funds are on hand in any
108 account at any one time which may be more than are normally
109 required for the payment of incurred expenses, the funds in the
110 amount so considered available may be invested by the trea-
111 surer of the county board with the West Virginia municipal
112 bond commission, or in guaranteed certificates of deposit issued
113 by the depository or bank, or other guaranteed investments such
114 as treasury bills, treasury notes or certificates of deposit issued
115 by either the United States government or a banking institution
116 in which federal or state guarantees are applicable. Interest
117 earned in such investments is to be credited to the fund from
118 which the moneys were originally available.

CHAPTER 88

**(H. B. 2837 — By Mr. Speaker, Mr. Kiss,
and Delegates Campbell, Ron Thompson and Perry)**

[Passed April 7, 2005 in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7c, relating to directing the State Board of Education to develop a program of instruction on personal finance that may be integrated into the curriculum in the secondary schools.

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 §18-2-7c, to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.**§18-2-7c. Program in personal finance.**

1 (a) The Legislature finds and declares that persons with an
2 understanding of personal finance are better prepared to manage
3 their money and that providing a personal finance program in
4 secondary schools in West Virginia will prepare students to
5 handle their finances.

6 (b) To provide students a basic understanding of personal
7 finance, the State Board shall develop a program of instruction
8 on personal finance which may be integrated into the curricu-
9 lum of an appropriate existing course or courses for students in
10 secondary schools.

CHAPTER 89

**(Com. Sub. for H. B. 2466— By Delegates Spencer,
Moore and Marshall)**

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to repeal §18-14-1 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-5-32 of said code, all relating to education; eliminating provisions that created unlawful classifications based on race; deleting an obsolete provision relating to the cooperative extension service; and removing obsolete language relating to Bluefield State College.

Be it enacted by the Legislature of West Virginia:

That §18-14-1 of the Code of West Virginia, 1931, as amended, be repealed; and that §18-5-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.

1 (a) The county board, upon the recommendation of the
2 county superintendent, may employ an assistant whose term of
3 employment shall be not less than one nor more than four years:
4 *Provided*, That his or her term shall not extend beyond that of
5 the incumbent county superintendent.

6 (b) The board shall not employ more than one assistant for
7 each two hundred teachers or major fraction thereof.

8 (c) The county board, upon the recommendation of the
9 county superintendent, is authorized to employ general and
10 special supervisors or directors of instruction and of other
11 educational activities as may be considered necessary.

12 (d) The employment of the assistant superintendent shall be
13 on a twelve-month basis. The period of employment for all
14 others named herein shall be at the discretion of the county
15 board.

16 (e) Rules for qualifications of assistant superintendents, and
17 directors and supervisors of instruction and of other educational
18 activities shall be fixed by the State Board: *Provided*, That the
19 qualifications required for any assistant superintendent shall in
20 no event be higher than those required for the county superin-
21 tendent: *Provided, however*, That the rules do not affect the
22 status of any incumbent nor his or her right to succeed himself
23 or herself in his or her assigned position.

24 (f) The county board of education is authorized to reim-
25 burse the employees for their necessary traveling expenses upon
26 presentation of a monthly, itemized, sworn statement approved
27 by the county superintendent.

28 (g) Any person employed under the foregoing provision of
29 this section, provided he or she holds a valid teacher's certifi-
30 cate, shall be given continuing contract status as a teacher and
31 shall hold that status unless dismissed for statutory reasons.

32 (h) All acts or parts of acts inconsistent with this section are
33 hereby repealed.

CHAPTER 90

(Com. Sub. for S. B. 94 — By Senator Plymale)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to the school calendar; defining terms; correcting references; providing additional flexibility for instructional support and enhancement days; and authorizing limited use of accrued instructional time for professional development and continuing education for certain purposes.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.**§18-5-45. School calendar.**

1 (a) As used in this section, the following terms have the
2 following meanings:

3 (1) “Instructional day” means a day within the instructional
4 term which meets the following criteria:

5 (A) Instruction is offered to students for at least the
6 minimum amounts of time provided by State Board rule;

7 (B) Instructional time is used for instruction, cocurricular
8 activities and approved extracurricular activities and, pursuant
9 to the provisions of subdivision (12), subsection (b), section
10 five, article five-a of this chapter, faculty senates; and

11 (C) Such other criteria as the State Board determines
12 appropriate.

13 (2) “Accrued instructional time” means instructional time
14 accruing during the instructional term from time added to the
15 instructional day beyond the time required by State Board rule
16 for an instructional day. Accrued instructional time may be
17 accumulated and used in larger blocks of time during the school
18 year for instructional or noninstructional activities as further
19 defined by the State Board.

20 (3) “Extracurricular activities” are activities under the
21 supervision of the school such as athletics, noninstructional
22 assemblies, social programs, entertainment and other similar
23 activities as further defined by the State Board.

24 (4) “Cocurricular activities” are activities that are closely
25 related to identifiable academic programs or areas of study that
26 serve to complement academic curricula as further defined by
27 the State Board.

28 (b) *Findings.* --

29 (1) The primary purpose of the school system is to provide
30 instruction for students.

31 (2) The school calendar, as defined in this section, is
32 designed to define the school term both for employees and for
33 instruction.

34 (3) The school calendar traditionally has provided for one
35 hundred eighty actual days of instruction but numerous circum-
36 stances have combined to cause the actual number of instruc-
37 tional days to be less than one hundred eighty.

38 (4) The quality and amount of instruction offered during the
39 instructional term is affected by the extracurricular and
40 cocurricular activities allowed to occur during scheduled
41 instructional time.

42 (5) Within reasonable guidelines, the school calendar
43 should be designed at least to guarantee that one hundred eighty
44 actual days of instruction are possible.

45 (c) The county board shall provide a school term for its
46 schools that contains the following:

47 (1) An employment term for teachers of no less than two
48 hundred days, exclusive of Saturdays and Sundays; and

49 (2) Within the employment term, an instructional term for
50 students of no less than one hundred eighty separate instruc-
51 tional days.

52 (d) The instructional term for students shall include one
53 instructional day in each of the months of October, December,
54 February, April and June which is an instructional support and
55 enhancement day scheduled by the board to include both

56 instructional activities for students and professional activities
57 for teachers to improve student instruction. Instructional
58 support and enhancement days are subject to the following
59 provisions:

60 (I) Two hours of the instructional support and enhancement
61 day shall be used for instructional activities for students. The
62 instructional activities for students are subject to the following
63 provisions:

64 (A) The instructional activities for students require the
65 direct supervision or involvement by teachers;

66 (B) The instructional activities for students shall be limited
67 to two hours;

68 (C) The instructional activities for students shall be
69 determined and scheduled at the local school level;

70 (D) The instructional activities for students may include,
71 but are not limited to, both in-school and outside of school
72 activities such as student mentoring, tutoring, counseling,
73 student research and other projects or activities of an instruc-
74 tional nature, community service, career exploration, parent and
75 teacher conferences, visits to the homes of students, college and
76 financial aid workshops and college visits;

77 (E) To ensure that the students who attend are properly
78 supervised, the instructional activities for students shall be
79 arranged by appointment with the individual school through the
80 principal, a teacher or other professional personnel at the
81 school; and

82 (F) Each school shall establish a policy relating to the use
83 of the two-hour block scheduled for instructional activities for
84 students;

85 (2) The instructional support and enhancement day shall
86 include a two-hour block of time for professional activities for
87 teachers during which the faculty senate shall have the opportu-
88 nity to meet;

89 (3) All time remaining in the school day after meeting the
90 requirements of subdivisions (1) and (2) of this subsection, not
91 including the duty-free lunch period, shall be used for other
92 professional activities for teachers to improve student instruc-
93 tion which may include, but are not limited to, professional
94 staff development, curriculum team meetings, individualized
95 education plan meetings and other meetings between teachers,
96 principals, aides and paraprofessionals to improve student
97 instruction as determined and scheduled at the local school
98 level;

99 (4) Notwithstanding any other provision of law or policy to
100 the contrary, the presence of any specific number of students in
101 attendance at the school for any specific period of time shall not
102 be required on instructional support and enhancement days and
103 the transportation of students to the school shall not be re-
104 quired;

105 (5) Instructional support and enhancement days are also a
106 scheduled work day for all service personnel and shall be used
107 for training or other tasks related to their job classification if
108 their normal duties are not required; and

109 (6) Nothing in this section may be construed to require that
110 the instructional activities for students, faculty senate meetings
111 and other professional activities for teachers be scheduled in
112 any certain order.

113 (e) The instructional term shall commence no earlier than
114 the twenty-sixth day of August and terminate no later than the
115 eighth day of June.

116 (f) Noninstructional days shall total twenty and shall be
117 comprised of the following:

118 (1) Seven holidays as specified in section two, article five,
119 chapter eighteen-a of this code;

120 (2) Election day as specified in section two, article five,
121 chapter eighteen-a of this code;

122 (3) Six days to be designated by the county board to be used
123 by the employees outside the school environment; and

124 (4) Six days to be designated by the county board for any of
125 the following purposes:

126 (A) Curriculum development;

127 (B) Preparation for opening and closing school;

128 (C) Professional development;

129 (D) Teacher-pupil-parent conferences;

130 (E) Professional meetings; and

131 (F) Making up days when instruction was scheduled but not
132 conducted.

133 (g) Three of the days described in subdivision (4), subsec-
134 tion (f) of this section shall be scheduled prior to the twenty-
135 sixth day of August for the purposes of preparing for the
136 opening of school and staff development.

137 (h) At least one of the days described in subdivision (4),
138 subsection (f) of this section shall be scheduled after the eighth
139 day of June for the purpose of preparing for the closing of
140 school. If one hundred eighty separate instruction days occur

141 prior to the eighth day of June, this day may be scheduled on or
142 before the eighth day of June.

143 (i) At least four of the days described in subdivision (3),
144 subsection (f) of this section shall be scheduled after the first
145 day of March.

146 (j) At least two of the days described in subdivision (4),
147 subsection (f) of this section will be scheduled for professional
148 development. The professional development conducted on
149 these days will be consistent with the goals established by the
150 state board pursuant to the provisions of section twenty-three-a,
151 article two of this chapter.

152 (k) Subject to the provisions of subsection (h) of this
153 section, all noninstructional days will be scheduled prior to the
154 eighth day of June.

155 (l) The State Board may not schedule the primary statewide
156 assessment program prior to the fifteenth day of May of the
157 instructional year unless the State Board determines that the
158 nature of the test mandates an earlier testing date.

159 (m) If, on or after the first day of March, the county board
160 determines that it is not possible to complete one hundred
161 eighty separate days of instruction, the county board shall
162 schedule instruction on any available noninstructional day,
163 regardless of the purpose for which the day originally was
164 scheduled, and the day will be used for instruction, subject to
165 the following:

166 (1) The noninstructional days scheduled for professional
167 development shall be the last available noninstructional days to
168 be rescheduled as instructional days;

169 (2) On or after the first day of March, the county board also
170 may require additional minutes of instruction in the school day

171 to make up for lost instructional days in excess of the days
172 available through rescheduling and, if in its judgment it is
173 reasonable and necessary to improve student performance, to
174 avoid scheduling instruction on noninstructional days previ-
175 ously scheduled for professional development; and

176 (3) The provisions of this subsection do not apply to: (1)
177 Holidays; and (2) election day.

178 (n) The following applies to accrued instructional time:

179 (1) Except as provided in subsection (m) of this section,
180 accrued instructional time may not be used to avoid one
181 hundred eighty separate days of instruction;

182 (2) Accrued instructional time may not be used to lengthen
183 the time provided in law for faculty senates;

184 (3) The use of accrued instructional time for extracurricular
185 activities will be limited by the State Board;

186 (4) Accrued instructional time may be used by schools and
187 counties to provide additional time for professional staff
188 development and continuing education as may be needed to
189 improve student performance and meet the requirements of the
190 federal mandates affecting elementary and secondary education.
191 The amount of accrued instructional time used for this purpose
192 may not exceed three instructional days; and

193 (5) Other requirements or restrictions the State Board may
194 provide in the rule required to be promulgated by this section.

195 (o) The following applies to cocurricular activities:

196 (1) The State Board shall determine what activities may be
197 considered cocurricular;

198 (2) The State Board shall determine the amount of instruc-
199 tional time that may be consumed by cocurricular activities; and

200 (3) Other requirements or restrictions the State Board may
201 provide in the rule required to be promulgated by this section.

202 (p) The following applies to extracurricular activities:

203 (1) Except as provided by subdivision (3) of this subsection,
204 extracurricular activities may not be scheduled during instruc-
205 tional time;

206 (2) The use of accrued instructional time for extracurricular
207 activities will be limited by the State Board; and

208 (3) The State Board shall provide for the attendance by
209 students of certain activities sanctioned by the Secondary
210 School Activities Commission when those activities are related
211 to statewide tournaments or playoffs or are programs required
212 for Secondary School Activities Commission approval.

213 (q) Noninstructional interruptions to the instructional day
214 shall be minimized to allow the classroom teacher to teach.

215 (r) Nothing in this section prohibits establishing year-round
216 schools in accordance with rules to be established by the State
217 Board.

218 (s) Prior to implementing the school calendar, the county
219 board shall secure approval of its proposed calendar from the
220 State Board or, if so designated by the State Board, from the
221 State Superintendent.

222 (t) The county board may contract with all or part of the
223 personnel for a longer term.

224 (u) The minimum instructional term may be decreased by
225 order of the state superintendent in any county declared a

226 federal disaster area and where the event causing the declara-
227 tion is substantially related to a reduction of instructional days.

228 (v) Where the employment term overlaps a teacher's or
229 service personnel's participation in a summer institute or
230 institution of higher education for the purpose of advancement
231 or professional growth, the teacher or service personnel may
232 substitute, with the approval of the county superintendent, the
233 participation for up to five of the noninstructional days of the
234 employment term.

235 (w) The State Board shall promulgate a rule in accordance
236 with the provisions of article three-b, chapter twenty-nine-a of
237 this code for the purpose of implementing the provisions of this
238 section.

CHAPTER 91

(Com. Sub. for H. B. 2578 — By Delegates Williams,
Crosier and Sumner)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §18-2E-3e of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-5a and §18-9A-5b of said code, all relating to repealing section creating the West Virginia Science Education Enhancement Initiative Grant Program; increasing the ratios of professional and service personnel to students in net enrollment; establishing the ratios for certain school years; and making certain findings; stating legislative intent to examine state basic foundation program and address staffing and other needs as indicated by examination.

Be it enacted by the Legislature of West Virginia:

That §18-2E-3e of the Code of West Virginia, 1931, as amended, be repealed; and that §18-9A-5a and §18-9A-5b of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

1 (a) The purpose of this section is to establish maximum
2 ratios between the numbers of professional educators and
3 service personnel in the counties which are funded through the
4 public school support plan and the net enrollment in the
5 counties. These ratios are in addition to the ratios provided in
6 sections four and five of this article. It is the intent of the
7 Legislature to adjust these ratios pursuant to legislative act as
8 may be appropriate when additional personnel are needed to
9 perform additional duties.

10 (b) Beginning on the first day of July, two thousand five,
11 and each school year thereafter, in computing the basic founda-
12 tion allowance to a county for professional educators and the
13 basic foundation allowance to a county for service personnel
14 under sections four and five of this article, a county shall not
15 receive an allowance for these personnel which number per one
16 thousand students in net enrollment is in excess of the number
17 of professional educators and the number of service personnel
18 in the county computed as follows:

	Maximum professional educators per 1000 students in net enrollment		Maximum service personnel per 1000 students in net enrollment	
	High density County	Low density County	High density County	Low density County
For the school year 2005-2006	74.10	74.20	43.73	44.69
2006-2007	74.20	74.40	43.85	44.89
and thereafter	74.30	74.60	43.97	45.10

(c) Every county shall use methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

(a) Commencing with the school year beginning on the first day of July, two thousand five, two million five hundred thousand dollars shall be appropriated for the purpose of increasing the ratios of professional and service personnel per one thousand students in net enrollment. For each of the eleven following school years, an additional two million five hundred thousand dollars shall be added to the appropriation for this purpose.

(b) The Legislature finds that the state basic foundation program initially was enacted during the regular session of the Legislature, one thousand nine hundred seventy-one, as a seven-step formula driven largely by student enrollment. Although it has been amended many times over the intervening years to effect program improvements, respond to changing enrollment patterns and accommodate budgetary priorities, it remains a formula driven primarily by student enrollment. As such, the state basic foundation program has been credited with providing base level funding from the state which is very equitable on a per student basis among the county school

20 systems. However, the intervening years also have seen
21 substantial changes in the educational environment, the most
22 profound of which include the decline in student enrollment
23 from about four hundred four thousand students when the state
24 basic foundation program was created to about two hundred
25 seventy-eight thousand students in the two thousand five school
26 year, the growth of technology delivered instruction, the advent
27 of performance-based accountability and the accompanying
28 responsibility to target resources to make needed improve-
29 ments. Therefore, as it pursues the objectives set forth in
30 subsection (a) of this section, it is the intent of the Legislature
31 to examine further the state basic foundation program in context
32 with the changing educational environment and address the
33 staffing and other needs of the public schools as may be
34 indicated through that examination.

CHAPTER 92

**(S. B. 604 — By Senators Unger, Helmick, Sharpe, Chafin, Plymale,
Prezioso, Edgell, Love, Bailey, Bowman, Minear, Boley,
Facemyer, Yoder, Guills and Sprouse)**

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §18-9A-15 and §18-9A-22 of the Code of West Virginia, 1931, as amended, all relating to allowances of public school support; requiring appropriation for increased enrollment based on projection; requiring initial distribution to be based on projection; requiring refund in certain instances; including students who have not attained the age of five; and authorizing grant allowances for certain counties with low student net enrollment under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18-9A-15 and §18-9A-22 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-15. Allowance for increased enrollment.

§18-9A-22. Allowance to improve economies of scale of low student enrollment counties.

§18-9A-15. Allowance for increased enrollment.

1 (a) To provide for the support of increased net enrollments
2 in the counties in a school year over the net enrollments used in
3 the computation of total state aid for that year, there shall be
4 appropriated for that purpose from the general revenue fund an
5 amount to be determined in accordance with this section.

6 (b) On or before the first day of September, two thousand
7 five, the State Board shall promulgate a rule pursuant to article
8 three-b, chapter twenty-nine-a of this code that establishes an
9 objective method for projecting the increase in net enrollment
10 for each school district. The State Superintendent shall use the
11 method prescribed by the rule to project the increase in net
12 enrollment for each school district.

13 (c) The State Superintendent shall multiply the average
14 total state aid per net pupil by the sum of the projected in-
15 creases in net enrollment for all school districts and report this
16 amount to the Governor for inclusion in his or her proposed
17 budget to the Legislature. The Legislature shall appropriate to
18 the West Virginia Department of Education the amount
19 calculated by the State Superintendent and proposed by the
20 Governor.

21 (d) The State Superintendent shall calculate each school
22 district's share of the appropriation by multiplying the projected

23 increase in net enrollment for the school district by the average
24 total state aid per net pupil and shall distribute sixty percent of
25 each school district's share to the school district on or before
26 the first day of September of each year. The State Superinten-
27 dent shall make a second distribution of the remainder of the
28 appropriation in accordance with subsection (e) of this section.

29 (e) After the first distribution pursuant to subsection (d) of
30 this section is made and after the actual increase in net enroll-
31 ment is available, the State Superintendent shall compute the
32 total actual amount to be allocated to each school district for the
33 year. The total actual amount to be allocated to each school
34 district for the year is the actual increase in the school district's
35 net enrollment multiplied by the average total state aid per net
36 pupil. The State Superintendent shall make the second distribu-
37 tion to each school district in an amount determined so that the
38 total amount distributed to the district for the year, in both the
39 first and second distributions, equals the actual increase in net
40 enrollment multiplied by the average total state aid per net
41 pupil. The State Superintendent shall make the second distribu-
42 tion on or before the thirty-first day of December of each year:
43 *Provided*, That if the amount distributed to a school district
44 during the first distribution is greater than the total amount to
45 which a district is entitled to receive for the year, the district
46 shall refund the difference to the Department of Education prior
47 to the thirtieth day of June of the fiscal year in which the excess
48 distribution is made.

49 (f) If the amount of the appropriation for increased enroll-
50 ment is not sufficient to provide payment in full for the total of
51 these several allocations, each county allocation shall be
52 reduced to an amount which is proportionate to the appropria-
53 tion compared to the total of the several allocations and the
54 allocations as thus adjusted shall be distributed to the counties
55 as provided in this section: *Provided*, That the Governor shall
56 request a supplemental appropriation at the next legislative
57 session for the reduced amount.

58 (g) No provision of this section shall be construed to in any
59 way affect the allocation of moneys for educational purposes to
60 a county under other provisions of law.

**§18-9A-22. Allowance to improve economies of scale of low
student enrollment counties.**

1 (a) The Legislature finds that counties whose net enroll-
2 ment falls below a certain level may not have the economies of
3 scale to support the proper operation of the school system and
4 the education of their students. The Legislature further finds
5 that to make a determination of whether additional assistance is
6 needed by such a county, and if it is, then in what form and
7 amount, it is necessary to examine the local circumstances and
8 ensure the efficient use of available resources. Therefore, the
9 purpose of this section is to provide a process for examining the
10 economies of scale of counties with low student net enrollment
11 and providing additional assistance to them if necessary,
12 including, but not limited to, the grant of funds.

13 (b) Upon the written request of a county with a student net
14 enrollment of less than one thousand four hundred students, the
15 State Superintendent shall examine whether all of the resources
16 available to the county are being efficiently utilized and
17 whether additional assistance is needed within the county to
18 improve its economies of scale. The State Superintendent may
19 take any of the following actions:

20 (1) If the State Superintendent finds that all of the resources
21 of the county are not being used efficiently, the State Superin-
22 tendent shall recommend areas of improvement to the county
23 and, if requested by the county, may provide technical assis-
24 tance to make the improvements;

25 (2) If the State Superintendent finds that additional assis-
26 tance is needed to improve the economies of scale of the
27 county, the State Superintendent shall determine whether the

28 economies of scale may be increased with additional resources
29 through the regional education service agency through coopera-
30 tive agreements with adjoining counties and by technical
31 assistance and other programs available to the State Superinten-
32 dent. The State Superintendent shall take the actions that are
33 within his or her authority to increase the economies of scale of
34 the county through these means; and

35 (3) If the State Superintendent finds that additional assis-
36 tance is needed to improve the economies of scale of the county
37 after the actions provided in subdivisions (1) and (2) of this
38 subsection are exhausted, the State Superintendent may, subject
39 to appropriations made by the Legislature therefor, make a
40 grant of funds to the county to assist in improving its economies
41 of scale. The grant of funds may include any restrictions,
42 conditions and purposes that the State Superintendent deter-
43 mines necessary to improve the economies of scale of the
44 county.

CHAPTER 93

(H. B. 2783 — By Mr. Speaker, Mr. Kiss)

[Passed March 25, 2005; in effect from passage.]

[Approved by the Governor on April 6, 2005.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-10B-10, relating to vocational rehabilitation facilities; authorizing rental of vocational rehabilitation facilities by school groups or other youth or civic organizations; and providing that rental revenue be used to defray the cost, maintenance and replacement of recreational equipment and facilities.

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 §18-10B-10, to read as follows:

ARTICLE 10B. VOCATIONAL REHABILITATION FACILITIES.

§18-10B-10. Authorized rental of State Vocational Rehabilitation facilities.

1 Notwithstanding any other provision of this code to the
 2 contrary, the Director may allow school groups and other youth
 3 or civic organizations or groups to use state vocational rehabili-
 4 tation facilities and shall charge and collect a reasonable rent
 5 for the facilities: *Provided*, That all such rental revenue shall be
 6 used exclusively to defray the cost, maintenance and repair or
 7 replacement of the vocational rehabilitation facilities.

CHAPTER 94

(S. B. 248 — By Senators Plymale, Edgell,
 Dempsey, Minard and Jenkins)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of the Code of West Virginia, 1931, as amended, all relating to public and higher education technology strategic plan; making findings and stating intent and purpose; providing for Advisory Council for Educational Technology; providing powers and duties; providing for

goals and strategies for technology strategic plan; requiring approval of the plan by the Legislative Oversight Commission on Education Accountability; requiring allocation and expenditure of technology appropriations in accordance with the plan with certain exceptions; and report to Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2J. PUBLIC AND HIGHER EDUCATION UNIFIED EDUCATIONAL TECHNOLOGY STRATEGIC PLAN.

§18-2J-1. Findings; intent and purpose of article.

§18-2J-2. Governor's Advisory Council for Educational Technology.

§18-2J-3. Powers and duties of Governor's Advisory Council for Educational Technology.

§18-2J-4. Educational technology strategic plan goals and strategies.

§18-2J-5. Unified educational technology strategic plan; submission of legislative rule to Legislative Oversight Commission on Education Accountability.

§18-2J-6. Allocation and expenditure of appropriations.

§18-2J-7. Report to the Legislative Oversight Commission on Education Accountability.

§18-2J-1. Findings; intent and purpose of article.

1 (a) The Legislature finds that technology may be used in the
2 public school system for many purposes including, but not
3 limited to, the following:

4 (1) As an instructional tool that enables teachers to meet the
5 individual instructional needs of students who differ in learning
6 styles, learning rates and the motivation to learn;

7 (2) As an effective resource for providing corrective,
8 remedial and enrichment activities to help students achieve

9 proficiency at grade level or above in the basic skills of reading,
10 composition and arithmetic that are essential for advancement
11 to more rigorous curriculum and success in higher education,
12 occupational and avocational pursuits;

13 (3) To ensure that all students have a basic level of com-
14 puter literacy that will enable them to participate fully in a
15 society in which computers are an ever more prevalent medium
16 for social, economic and informational interaction;

17 (4) To provide greater access for students to advanced
18 curricular offerings, virtual field trips, problemsolving, team-
19 building exercises, reference information and source knowledge
20 than could be provided efficiently through traditional on-site
21 delivery formats;

22 (5) To help students obtain information on post-secondary
23 educational opportunities, financial aid and the skills and
24 credentials required in various occupations that will help them
25 better prepare for a successful transition following high school;

26 (6) To help students learn to think critically, apply aca-
27 demic knowledge in real-life situations, make decisions and
28 gain an understanding of the modern workplace environment
29 through simulated workplace programs;

30 (7) As a resource for teachers by providing them with
31 access to sample lesson plans, curriculum resources, on-line
32 staff development, continuing education and college course-
33 work; and

34 (8) As a tool for managing information, reporting on
35 measures of accountability, analyzing student learning and
36 helping to improve student, school and school system perfor-
37 mance;

38 (b) The Legislature finds that technology may be used in
39 the system of higher education for many purposes including,
40 but not limited to, the following:

41 (1) For teaching, learning and research for all students
42 across all disciplines and programs;

43 (2) By students, staff and faculty to discover, create,
44 communicate and collaborate, as well as to enhance research
45 and economic development activities;

46 (3) For digital age literacy, problemsolving, creativity,
47 effective communication, collaboration and high productivity
48 skills essential for West Virginia citizens in a rapidly changing
49 global economy;

50 (4) By libraries in higher education to offer reference
51 services in a virtual environment online;

52 (5) By libraries in higher education to create and share
53 cataloging records and that it is possible to create a seamless
54 resource for sharing these resources between public and higher
55 education; and

56 (6) To offer electronic document delivery services to
57 distance education students and to a multitude of professionals
58 throughout the state.

59 (c) The Legislature further finds that all of the uses of
60 technology in the public school and higher education systems
61 are not necessarily exclusive and, therefore, that areas exist
62 wherein cooperation and collaboration between the public
63 schools, the institutions of higher education and their respective
64 governing bodies will enable them to combine and share
65 resources, improve efficiency and better serve their students.

66 (d) The intent and purpose of this article is to establish a
67 unified approach to the planning, procurement and implementa-

68 tion of technology and technology services in the public
69 schools, the institutions of higher education and their respective
70 governing bodies that will guide the administration and
71 allocation of educational technology funds.

**§18-2J-2. Governor's Advisory Council for Educational Technol-
ogy.**

1 (a) There is established, under the Governor's Office of
2 Technology, the Governor's Advisory Council for Educational
3 Technology composed of fifteen members as follows:

4 (1) The Governor's educational technology advisor, ex
5 officio, who shall chair the council;

6 (2) The Governor's Chief Technology Officer, ex officio;

7 (3) One public school technology coordinator;

8 (4) One public elementary, middle or junior high school
9 teacher;

10 (5) One public secondary school teacher;

11 (6) A technology representative from Marshall University;

12 (7) A technology representative from West Virginia
13 University;

14 (8) One member of the Center for Professional Develop-
15 ment Board;

16 (9) Three individuals from the private sector with expertise
17 in education technology;

18 (10) One public secondary or higher education student;

19 (11) One representative of the Office of Business Develop-
20 ment;

21 (12) One member of the Higher Education Policy Commis-
22 sion, or his or her designee; and

23 (13) One member of the State Board, or his or her designee.

24 (b) The Advisory Council shall meet as necessary, but shall
25 hold no less than four meetings annually. Eight members
26 constitute a quorum for conducting the business of the advisory
27 council. All members of the Advisory Council are entitled to
28 vote.

29 (c) The thirteen members of the Council who are not
30 members ex officio shall be appointed by the Governor with the
31 advice and consent of the Senate for terms of three years,
32 except that of the original appointments, four members shall be
33 appointed for one year; four members shall be appointed for
34 two years; and five members shall be appointed for three years.
35 No member may serve more than two consecutive full terms,
36 nor may a member be appointed to a term which results in the
37 member serving more than seven consecutive years.

38 (d) Members of the Advisory Council shall serve without
39 compensation, but shall be reimbursed by the Governor for all
40 reasonable and necessary expenses actually incurred in the
41 performance of their official duties under this article upon
42 presentation of an itemized sworn statement of their expenses,
43 except that any member of the Advisory Council who is an
44 employee of the state shall be reimbursed by the employing
45 agency.

**§18-2J-3. Powers and duties of Governor's Advisory Council for
Educational Technology.**

1 In addition to any other powers and duties assigned to it by
2 this article and in this code, the Governor's Advisory Council
3 for Educational Technology shall:

4 (1) Assess the broad spectrum of technology needs present
5 within the state's education systems as the basis for construct-
6 ing a unified educational technology strategic plan that will
7 guide the administration and allocation of educational technol-
8 ogy funds;

9 (2) Assemble and integrate into the planning process the
10 perspectives of students, teachers, faculty and administrators
11 regarding educational technology programs;

12 (3) Assess, evaluate and publicize the effects of technology
13 use by educators and students toward student learning and
14 achievement;

15 (4) Explore new approaches to improve administration,
16 accountability and student achievement within the education
17 systems through technology application;

18 (5) Develop a unified educational technology strategic plan
19 as required in section five of this article;

20 (6) Monitor the technology programs of the agencies and
21 education systems affected by the educational technology
22 strategic plan to assess its implementation and effectiveness;
23 and

24 (7) Advise the Governor and the Legislature on any matters
25 the Council considers important inform to the Governor and the
26 Legislature on the state of education technology in the public
27 schools and the institutions of higher education and on any
28 matters requested by the Governor and the Legislature.

**§18-2J-4. Educational technology strategic plan goals and strate-
gies.**

1 (a) The following are goals that the Governor's Advisory
2 Council for Educational Technology should consider when

3 constructing the educational technology strategic plan. Each
4 goal shall apply to public education, higher education or both,
5 as appropriate:

6 (1) Maintaining a reasonable balance in the resources
7 allocated among the customary diverse uses of technology in
8 the public school and higher education systems, while allowing
9 flexibility to address unanticipated priority needs and unusual
10 local circumstances and ensuring efficient and equitable use of
11 technology at all levels from primary school through higher
12 education, including vocational and adult education;

13 (2) Providing for uniformity in technological hardware and
14 software standards and procedures to achieve interoperability
15 between the public school and higher education systems to the
16 extent that the uniformity is considered prudent for reducing
17 acquisition cost, avoiding duplication, promoting expeditious
18 repair and maintenance and facilitating user training, while
19 allowing flexibility for local innovations and options when the
20 objectives relating to uniformity are reasonably met;

21 (3) Preserving the integrity of governance, administration,
22 standards and accountability for technology within the public
23 school and higher education systems, respectively, while
24 encouraging collaborative service delivery and infrastructure
25 investments with other entities that will reduce cost, avoid
26 duplication or improve services, particularly with respect to
27 other entities such as the educational broadcasting system,
28 public libraries and other governmental agencies with compati-
29 ble technology interests;

30 (4) Improving the long-term ability of the state to effi-
31 ciently manage and direct the resources available for technol-
32 ogy in the public school and higher education systems to
33 establish appropriate infrastructure that ensures, to the extent
34 practicable, a sustainable, cost-effective and transparent
35 migration to new technology platforms;

36 (5) Fostering closer communication between faculty,
37 students and administrators and promoting the collaboration of
38 schools, libraries, researchers, community members, state
39 agencies, organizations, business and industry, post-secondary
40 institutions and public virtual learning environments to meet the
41 needs of all learners; and

42 (6) Creating and maintaining compatible and secure
43 technology systems that enhance the efficient operation of the
44 education systems.

45 (b) The following are strategies that the Governor's
46 Advisory Council for Educational Technology must address in
47 the educational technology strategic plan. Unless specifically
48 identified otherwise, each strategy shall apply to public
49 education, higher education or both, as appropriate:

50 (1) The strategy for using technology in the public school
51 and higher education systems consistent with the findings,
52 intent and purpose of this article and other uses considered
53 necessary to improve student performance and progress. In
54 addition, these uses may include:

55 (A) Providing for individualized instruction and accommo-
56 dating a variety of learning styles of students through computer-
57 based technology, video and other technology-based instruc-
58 tion;

59 (B) Advancing learning through alternative approaches in
60 curriculum to integrate education, research and technology into
61 lifelong learning strategies;

62 (C) Increasing student access to high quality blended
63 distance learning curriculum using real time interactive and
64 online distance education tools;

65 (D) Recognizing that information literacy is a fundamental
66 competency for lifelong learning and information literacy is
67 incorporated into the curricula of higher education and the
68 workplace; and

69 (E) Improving teaching and learning and the ability to
70 increase student achievement by meeting individual student
71 needs;

72 (2) The strategy for allocating the resources available and
73 developing the capacity necessary to achieve the purposes
74 addressed in the plan. The strategy shall:

75 (A) Allow for reasonable flexibility for county boards and
76 regional education service agencies to receive assistance with
77 the development and implementation of technological solutions
78 designed to improve performance, enrich the curriculum and
79 increase student access to high-level courses;

80 (B) Allow for reasonable flexibility for county boards,
81 regional education service agencies and institutional boards of
82 governors to implement technological solutions that address
83 local priorities consistent with achieving the major objectives
84 set forth in the education technology strategic plan; and

85 (C) Use the most cost-effective alternative allowable
86 pursuant to section six of this article for expending funds for
87 technology acquisition and implementation consistent with the
88 goals of the plan;

89 (D) Encourage development by the private sector of
90 technologies and applications appropriate for education; and

91 (E) Encourage the pursuit of funding through grants, gifts,
92 donations or any other source for uses related to education
93 technology;

94 (3) For public education, the strategy for using technology
95 to increase and maintain equity in the array and quality of
96 educational offerings, expand the curriculum, deliver high-
97 quality professional development and strengthen professional
98 qualifications among the counties notwithstanding circum-
99 stances of geography, population density and proximity to
100 traditional teacher preparation;

101 (4) For public education, the strategy for developing and
102 using the capacity of the public school system to implement,
103 support and maintain technology in the public schools through
104 the allocation of funds either directly or through contractual
105 agreements with county boards and regional education service
106 agencies for labor, materials and other costs associated with the
107 installation, set-up, internet hook-up, wiring, repair and
108 maintenance of technology in the public schools and state
109 institutions of higher education;

110 (5) The strategy for ensuring that the capabilities and
111 capacities of the technology infrastructure within the state and
112 its various regions is adequate for acceptable performance of
113 the technology being implemented in the public schools and the
114 state institutions of higher education, for developing the
115 necessary capabilities and capacities or for pursuing alternative
116 solutions;

117 (6) The strategy for maximizing student access to learning
118 tools and resources at all times including before and after
119 school or class, in the evenings, on weekends and holidays, and
120 for public education, noninstructional days and during vacations
121 for student use for homework, remedial work, independent
122 learning, career planning and adult basic education;

123 (7) The strategy for improving the efficiency and productiv-
124 ity of administrators;

125 (8) The strategy for taking advantage of bulk purchasing
126 abilities to the maximum extent feasible. This may include, but
127 is not limited to:

128 (A) A method of recording all technology purchases across
129 both the public education system and the higher education
130 system;

131 (B) Combining the purchasing power of the public educa-
132 tion system and the higher education system with the purchas-
133 ing power of other state entities or all state entities; and

134 (C) A method of allowing public education and higher
135 education to purchase from competitively bid contracts initiated
136 through the southern regional education board educational
137 technology cooperative and the American
138 TelEdCommunications Alliance; and

139 (9) A strategy for allowing any other flexibility that is
140 determined to be needed for the effective use of technology in
141 public education and higher education.

142 (c) Nothing in this section may be construed to conflict
143 with a state higher education institution's mission as set forth
144 in its compact.

**§18-2J-5. Unified educational technology strategic plan; submis-
sion of legislative rule to Legislative Oversight
Commission on Education Accountability.**

1 (a) The Governor's Advisory Council for Educational
2 Technology shall develop a unified educational technology
3 strategic plan and submit the plan to the Legislative Oversight
4 Commission on Education Accountability for approval on or
5 before the first day of October, two thousand five. On or before
6 the first day of October in each year thereafter, the Council
7 shall update the plan and submit the plan to the Commission for

8 approval. The time line for updating and revising the rule and
9 plan also shall be in accordance with the federal E-rate discount
10 program. The plan is not effective until approved by the
11 Commission.

12 (b) On or before the fifteenth day of June, two thousand
13 five, and each year thereafter, each state institution of higher
14 education shall submit a technology plan for the next fiscal year
15 to the Higher Education Policy Commission. The plan shall be
16 in a form and contain the information determined by the
17 Governor's Advisory Council for Educational Technology. On
18 or before the thirtieth day of June, two thousand five, and each
19 year thereafter, the Higher Education Policy Commission shall
20 submit the plans to the Governor's Advisory Council for
21 Educational Technology for its consideration in constructing
22 the unified educational technology strategic plan.

§18-2J-6. Allocation and expenditure of appropriations.

1 (a) After the thirtieth day of June, two thousand five,
2 notwithstanding any other provision of this code to the contrary,
3 and specifically section seven, article two-e of this chapter, the
4 State Board, regional education service agencies, the Higher
5 Education Policy Commission and the state institutions of
6 higher education shall allocate and expend state appropriations
7 for technology in the public schools or the state institutions of
8 higher education, as appropriate, in accordance with the unified
9 educational technology strategic plan subject to the following:

10 (1) Expenditures from grants which can only be used for
11 certain purposes are not required to be made in accordance with
12 the plan;

13 (2) If the plan is not approved by the Legislative Oversight
14 Commission on Education Accountability, the plan has no
15 effect;

16 (3) For public education, the expenditures shall be made
17 directly, or through lease-purchase arrangements pursuant to the
18 provisions of article three, chapter five-a of this code, or
19 through contractual agreements or grants to county boards and
20 regional education service agencies or any combination of the
21 foregoing options as shall best implement the strategic plan in
22 the most cost effective manner;

23 (4) Nothing in this section nor in the prior enactment of this
24 section restricts the expenditure of educational technology
25 funds appropriated for the fiscal year, two thousand five, for the
26 purposes for which they were allocated; and

27 (5) Except as provided in subdivision (2) of this subsection,
28 no more than fifty percent of the state appropriations for the
29 fiscal year, two thousand six, to the Department of Education
30 for educational technology in kindergarten through the twelfth
31 grade may be expended or encumbered except in accordance
32 with the Unified educational technology strategic plan.

33 (b) Nothing in this section requires any specific level of
34 appropriation by the Legislature.

**§18-2J-7. Report to the Legislative Oversight Commission on
Education Accountability.**

1 The State Board and the Higher Education Policy Commis-
2 sion shall report to the Legislative Oversight Commission on
3 Education Accountability annually as soon as practical follow-
4 ing the approval, annual update or revision of the unified
5 educational technology strategic plan. The report shall include
6 the proposed allocations of funds or planned expenditures for
7 educational technology within the respective public school and
8 higher education systems during the next fiscal year in accor-
9 dance with the plan compared with the previous year's alloca-
10 tions and expenditures.

CHAPTER 95

(H. B. 2350 — By Delegates Schadler,
Marshall, Leggett and Williams)

[Passed April 5, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2005.]

AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to conditions for awarding teaching certificates.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state shall
2 be under the general direction and control of the State Board of
3 Education after consultation with the Secretary of Education
4 and the Arts and the chancellor for higher education who shall
5 represent the interests of teacher preparation programs within
6 the institutions of higher education in this state as those
7 institutions are defined in section two, article one, chapter
8 eighteen-b of this code.

9 The education of professional educators in the state
10 includes all programs leading to certification to teach or serve

11 in the public schools including: (1) Those programs in all
12 institutions of higher education, including student teaching in
13 the public schools; (2) beginning teacher internship programs;
14 (3) the granting of West Virginia certification to persons who
15 received their preparation to teach outside the boundaries of this
16 state, except as provided in subsection (b) of this section; (4)
17 any alternative preparation programs in this state leading to
18 certification, including programs established pursuant to the
19 provisions of section one-a of this article and programs which
20 are in effect on the effective date of this section; and (5) any
21 continuing professional education, professional development
22 and in-service training programs for professional educators
23 employed in the public schools in the state.

24 (b) The State Board of Education, after consultation with
25 the Secretary of Education and the Arts and the chancellor for
26 higher education who shall represent the interests of teacher
27 preparation programs within the institutions of higher education
28 in this state as those institutions are defined in section two,
29 article one, chapter eighteen-b of this code, shall adopt stan-
30 dards for the education of professional educators in the state
31 and for the awarding of certificates valid in the public schools
32 of this state subject to the following conditions:

33 (1) The standards approved by the Board for teacher
34 preparation shall include a provision for the study of multicul-
35 tural education. As used in this section, multicultural education
36 means the study of the pluralistic nature of American society
37 including its values, institutions, organizations, groups, status
38 positions and social roles;

39 (2) Effective the first day of January, one thousand nine
40 hundred ninety-three, the standards approved by the Board shall
41 also include a provision for the study of classroom management
42 techniques and shall include methods of effective management
43 of disruptive behavior which shall include societal factors and
44 their impact on student behavior; and

45 (3) Effective on the effective date of this section, any
46 teacher who: (i) Has graduated from a teacher preparation
47 program at a regionally accredited institution of higher educa-
48 tion; (ii) possesses the minimum of a bachelor's degree; and
49 (iii) holds a valid teaching certificate or certificates issued by
50 another state, or holds a certificate of eligibility issued by
51 another state and meets all of the requirements of the state for
52 full certification except employment, shall be, upon application,
53 awarded a teaching certificate or certificates for the same grade
54 level or levels and subject area or areas valid in the public
55 schools of this state, subject only to the provisions of section
56 ten of this article.

57 (c) To give prospective teachers the teaching experience
58 needed to demonstrate competence as a prerequisite to certifica-
59 tion, the State Board of Education may enter into an agreement
60 with county boards for the use of the public schools. Such
61 agreement shall recognize student teaching as a joint responsi-
62 bility of the teacher preparation institution and the cooperating
63 public schools and shall include: (1) The minimum qualifica-
64 tions for the employment of public school teachers selected as
65 supervising teachers; (2) the remuneration to be paid public
66 school teachers by the State Board, in addition to their contrac-
67 tual salaries, for supervising student teachers; and (3) minimum
68 standards to guarantee the adequacy of the facilities and
69 program of the public school selected for student teaching. The
70 student teacher, under the direction and supervision of the
71 supervising teacher, shall exercise the authority of a substitute
72 teacher.

73 (d) The State Superintendent of Schools may issue certifi-
74 cates to graduates of teacher education programs and alternative
75 teacher education programs approved by the State Board of
76 Education and in accordance with this section and rules adopted
77 by the State Board after consultation with the Secretary of
78 Education and the Arts and the chancellor for higher education.

79 A certificate to teach shall not be granted to any person who is
80 not a citizen of the United States, is not of good moral character
81 and physically, mentally and emotionally qualified to perform
82 the duties of a teacher and who has not attained the age of
83 eighteen years on or before the first day of October of the year
84 in which his or her certificate is issued; except that an exchange
85 teacher from a foreign country, or an alien person who meets
86 the requirements to teach, may be granted a permit to teach
87 within the public schools of the state.

88 (e) In consultation with the Secretary of Education and the
89 Arts and the chancellor for higher education, institutions of
90 higher education approved for teacher preparation may cooper-
91 ate with each other, with the center for professional develop-
92 ment and with one or more county boards in the organization
93 and operation of centers to provide selected phases of the
94 teacher preparation program such as student teaching, begin-
95 ning teacher internship programs, instruction in methodology
96 and seminar programs for college students, teachers with
97 provisional certification, professional support team members
98 and supervising teachers.

99 The institutions of higher education, the center for profes-
100 sional development and county boards may by mutual agree-
101 ment budget and expend funds for the operation of the centers
102 through payments to the appropriate fiscal office of the partici-
103 pating institutions, the center for professional development and
104 the county boards.

105 (f) The provisions of this section shall not be construed to
106 require the discontinuation of an existing student teacher
107 training center or school which meets the standards of the State
108 Board of Education.

109 (g) All institutions of higher education approved for teacher
110 preparation in the school year of one thousand nine hundred

111 sixty-two—sixty-three shall continue to hold that distinction so
112 long as they meet the minimum standards for teacher prepara-
113 tion. Nothing contained herein shall infringe upon the rights
114 granted to any institution by charter given according to law
115 previous to the adoption of this code.

CHAPTER 96

(H. B. 2528 — By Delegates Campbell, Williams, Perry and Beach)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §18A-3-1a of the Code of West Virginia, 1931, as amended, relating to alternative programs for the education of teachers; providing for alternative program certificate, eligibility, issuance, scope and renewal limitation; changing activities, components and phases of training for alternative programs; providing for program coordination, training and approval; authorizing separate programs to prepare highly qualified special education teachers; requiring position to be posted in certain instances; and establishing hiring preference.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1a. Alternative programs for the education of teachers.

1 (a) By the fifteenth day of August, two thousand five, the
2 state board, after consultation with the Secretary of Education
3 and the Arts, shall promulgate rules in accordance with the
4 provisions of article three-b, chapter twenty-nine-a of this code
5 for the approval and operation of teacher education programs
6 which are an alternative to the regular college or university
7 programs for the education of teachers. To participate in an
8 approved alternative teacher education program, the candidate
9 must hold an alternative program teacher certificate issued by
10 the Superintendent and endorsed for the instructional field in
11 which the candidate seeks certification. An alternative program
12 teacher certificate is a certificate issued for one year to a
13 candidate who does not meet the standard educational require-
14 ments for certification. The certificate may be renewed no more
15 than two times. No individual may hold an alternative program
16 teacher certificate for a period exceeding three years. The
17 alternative program teacher certificate shall be considered a
18 professional teaching certificate for the purpose of the issuance
19 of a continuing contract. To be eligible for an alternative
20 program teacher certificate, an applicant shall:

21 (1) Possess at least a bachelor's degree from a regionally
22 accredited institution of higher education in a discipline taught
23 in the public schools except that the rules established by the
24 board may exempt candidates in selected vocational and
25 technical areas who have at least ten years experience in the
26 subject field from this requirement;

27 (2) Pass an appropriate state board approved basic skills
28 and subject matter test in the area for which licensure is being
29 sought;

30 (3) Be a citizen of the United States, be of good moral
31 character and physically, mentally and emotionally qualified to
32 perform the duties of a teacher, and have attained the age of
33 eighteen years on or before the first day of October of the year
34 in which the alternative program teacher certificate is issued;

35 (4) Have been offered employment by a county board in an
36 area of critical need and shortage; and

37 (5) Qualify following a criminal history check pursuant to
38 section ten of this article.

39 Persons who satisfy the requirements set forth in subdivi-
40 sions (1) through (5) of this subsection shall be granted a formal
41 document which will enable them to work in a public school in
42 West Virginia.

43 (b) The rules adopted by the board shall include provisions
44 for the approval of alternative teacher education programs
45 which may be offered by schools, school districts, consortia of
46 schools or regional educational service agency and for the
47 setting of tuition charges to offset the program costs. An
48 approved alternative teacher education program shall be in
49 effect for a school, school district, consortium of schools or
50 regional educational service agency before an alternative
51 program teacher may be employed in that school, school
52 district, consortium of schools or regional educational service
53 agency. An approved alternative program shall provide
54 essential knowledge and skills to alternative program teachers
55 through the following phases of training:

56 (1) *Instruction.* — The alternative preparation program
57 shall provide a minimum of eighteen semester hours of instruc-
58 tion in the areas of student assessment; development and
59 learning; curriculum; classroom management; the use of
60 educational computers and other technology; and special
61 education and diversity. All programs shall contain a minimum
62 of three semester hours of instruction in special education and
63 diversity out of the minimum eighteen required semester hours.

64 (2) *Phase I.* — Phase I shall consist of a period of intensive
65 on-the-job supervision by an assigned mentor and the school
66 administrator for a period of not less than two weeks and no

67 more than four weeks. The assigned mentor shall meet the
68 requirements for mentor set forth in section two-b of this article
69 and be paid the stipend pursuant to that section. During this
70 time, the teacher shall be observed daily. This phase shall
71 include an orientation to the policies, organization and curricu-
72 lum of the employing district. The alternative program teacher
73 shall begin to receive formal instruction in those areas listed in
74 subdivision (1) of this subsection.

75 (3) *Phase II.* — Phase II shall consist of a period of
76 intensive on-the-job supervision beginning the first day
77 following the completion of Phase I and continuing for a period
78 of at least ten weeks. During Phase II, the alternative program
79 teacher shall be visited and critiqued no less than one time per
80 week by members of a professional support team, defined in
81 subsection (c) of this section, and shall be observed and
82 formally evaluated at the end of five weeks and at the end of ten
83 weeks by the appropriately certified members of the team. At
84 the end of the ten-week period, the alternative program teacher
85 shall receive a formal written progress report from the chairper-
86 son of the support team. The alternative program teacher shall
87 continue to receive formal instruction in those areas listed
88 above under subdivision (1) of this subsection.

89 (4) *Phase III.* — Phase III shall consist of an additional
90 period of continued supervision and evaluation of no less than
91 twenty weeks duration. The professional support team will
92 determine the requirements of this phase with at least one
93 formal evaluation being conducted at the completion of the
94 phase. The alternative program teacher shall continue to receive
95 formal instruction in those areas listed above under subdivision
96 (1) of this subsection, and receive opportunities to observe the
97 teaching of experienced colleagues.

98 (c) Training and supervision of alternative program teachers
99 shall be provided by a professional support team comprised of

100 a school principal, an experienced classroom teacher who
101 satisfies the requirements for mentor for the Beginning Educa-
102 tor Internship as specified in section two-b of this article, a
103 college or university education faculty member and a curricu-
104 lum supervisor. Districts or schools which do not employ
105 curriculum supervisors or have been unable to establish a
106 relationship with a college or university shall provide for
107 comparable expertise on the team. The school principal shall
108 serve as chairperson of the team. In addition to other duties
109 assigned to it under this section and section one-b of this article,
110 the professional support team shall submit a written evaluation
111 of the alternative program teacher to the county superintendent.
112 The written evaluation shall be in a form specified by the
113 county superintendent and submitted on a date specified by the
114 county superintendent that is prior to the first Monday of May.
115 The evaluation shall report the progress of the alternative
116 program teacher toward meeting the academic and performance
117 requirements of the program.

118 (d) The training for professional support team members
119 shall be coordinated and provided by the Center for Profes-
120 sional Development in coordination with the school district,
121 consortium of schools, regional educational service agency, and
122 institution of higher education, or any combination of these
123 agencies as set forth in the plan approved by the state board
124 pursuant to subsection (e) of this section.

125 (e) A school, school district, consortium of schools or
126 regional educational service agency seeking to employ an
127 alternative program teacher must submit a plan to the state
128 board and receive approval. Each plan shall describe how the
129 proposed training program will accomplish the key elements of
130 an alternative program for the education of teachers as set forth
131 in this section. Each school, school district, consortium of
132 schools or regional educational service agency shall show

133 evidence in its plan of having sought joint sponsorship of their
134 training program with institutions of higher education.

135 (f) The state board shall promulgate a rule in accordance
136 with article three-b, chapter twenty-nine-a of this code for the
137 approval and operation of alternative education programs to
138 prepare highly qualified special education teachers that are
139 separate from the programs established under the other provi-
140 sions of this section and are applicable only to teachers who
141 have at least a bachelor's degree in a program for the prepara-
142 tion of teachers from a regionally accredited institution of
143 higher education. These programs are subject to the other
144 provisions of this section only to the extent specifically
145 provided for in the rule. These programs may be an alternative
146 to the regular college and university programs for the education
147 of special education teachers and also may address the content
148 area preparation of certified special education teachers. The
149 programs shall incorporate professional development to the
150 maximum extent possible to help teachers who are currently
151 certified in special education to obtain the required content area
152 preparation. Participation in an alternative education program
153 pursuant to this subsection shall not affect any rights, privileges
154 or benefits to which the participant would otherwise be entitled
155 as a regular employee, nor does it alter any rights, privileges or
156 benefits of participants on continuing contract status. The state
157 board shall report to the Legislative Oversight Commission on
158 Education Accountability on the programs authorized under this
159 subsection during the July, two thousand five, interim meetings
160 or as soon thereafter as practical prior to implementation of the
161 programs.

162 (g) The state board shall promulgate a rule in accordance
163 with article three-b, chapter twenty-nine-a of this code for the
164 approval and operation of alternative education programs to
165 prepare highly qualified special education teachers that are

166 separate from the programs established under the other provi-
167 sions of this section and are applicable only to persons who
168 hold a bachelor's degree from a regionally accredited institution
169 of higher education. These programs are subject to the other
170 provisions of this section only to the extent specifically
171 provided for in this rule. These programs may be an alternative
172 to the regular college and university programs for the education
173 of special education teachers and also may address the content
174 area preparation of such persons. The state board shall report to
175 the Legislative Oversight Commission on Education Account-
176 ability on the programs authorized under this subsection during
177 the July, two thousand five, interim meetings or as soon
178 thereafter as practical prior to implementation of the programs.

179 (h) For the purposes of this section, "area of critical need
180 and shortage" means an opening in an established, existing or
181 newly created position which has been posted in accordance
182 with the provisions of section seven-a, article four of this
183 chapter, and for which no fully qualified applicant has been
184 employed.

185 (i) The recommendation to rehire an alternative education
186 program teacher pursuant to section eight-a, article two of this
187 chapter is subject to the position being posted and no fully
188 qualified applicant being employed: *Provided*, That this
189 provision does not apply to teachers who hold a valid West
190 Virginia professional teaching certificate and who are employed
191 under a program operated pursuant to subsection (f).

192 (j) When making decisions affecting the hiring of an
193 alternative program teacher under the provisions of this section,
194 a county board shall give preference to applicants who hold a
195 valid West Virginia professional teaching certificate.

CHAPTER 97

(H. B. 2527 — By Delegates Campbell, Williams, Perry and Beach)

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 14, 2005.]

AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to competency testing for service personnel; and authorizing employees of multicounty vocational school that serves county to administer tests.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel.

1 (a) The State Board of Education shall develop and cause
2 to be made available competency tests for all of the classifica-
3 tion titles defined in section eight and listed in section eight-a
4 of this article for service personnel. Each classification title
5 defined and listed is considered a separate classification
6 category of employment for service personnel and has a
7 separate competency test, except for those class titles having
8 Roman numeral designations, which are considered a single
9 classification of employment and have a single competency
10 test. The cafeteria manager class title is included in the same
11 classification category as cooks and has the same competency
12 test. The executive secretary class title is included in the same

13 classification category as secretaries and has the same compe-
14 tency test. The classification titles of chief mechanic, mechanic
15 and assistant mechanic are included in one classification title
16 and have the same competency test.

17 (b) The purpose of these tests is to provide county boards
18 of education a uniform means of determining whether school
19 service personnel employees who do not hold a classification
20 title in a particular category of employment meet the definition
21 of the classification title in another category of employment as
22 defined in section eight of this article. Competency tests may
23 not be used to evaluate employees who hold the classification
24 title in the category of their employment.

25 (c) The competency test consists of an objective written or
26 performance test, or both: *Provided*, That applicants have the
27 opportunity to take the written test orally if requested. Oral tests
28 are recorded mechanically and kept on file. The oral test is
29 administered by persons who do not know the applicant
30 personally. The performance test for all classifications and
31 categories other than bus operator is administered by an
32 employee of the county board of education or an employee of
33 a multi-county vocational school that serves the county at a
34 location designated by the Superintendent and approved by the
35 Board. The location may be a vocational school that serves the
36 county. A standard passing score is established by the State
37 Department of Education for each test and is used by county
38 boards of education. The subject matter of each competency test
39 is commensurate with the requirements of the definitions of the
40 classification titles as provided in section eight of this article.
41 The subject matter of each competency test is designed in such
42 a manner that achieving a passing grade does not require
43 knowledge and skill in excess of the requirements of the
44 definitions of the classification titles. Achieving a passing score
45 conclusively demonstrates the qualification of an applicant for
46 a classification title. Once an employee passes the competency

47 test of a classification title, the applicant is fully qualified to fill
48 vacancies in that classification category of employment as
49 provided in section eight-b of this article and shall not be
50 required to take the competency test again.

51 (d) An applicant who fails to achieve a passing score is
52 given other opportunities to pass the competency test when
53 making application for another vacancy within the classification
54 category.

55 (e) Competency tests are administered to applicants in a
56 uniform manner under uniform testing conditions. County
57 boards of education are responsible for scheduling competency
58 tests, notifying applicants of the date and time of the one day of
59 training prior to taking the test and the date and time of the test.
60 County boards of education may not use a competency test
61 other than the test authorized by this section.

62 (f) When scheduling of the competency test conflicts with
63 the work schedule of a school employee who has applied for a
64 vacancy, the employee is excused from work to take the
65 competency test without loss of pay.

66 (g) A minimum of one day of appropriate in-service
67 training is provided to employees to assist them in preparing to
68 take the competency tests.

69 (h) Competency tests are used to determine the qualifica-
70 tion of new applicants seeking initial employment in a particu-
71 lar classification title as either a regular or substitute employee.

72 (i) Notwithstanding any provisions in this code to the
73 contrary, once an employee holds or has held a classification
74 title in a category of employment, that employee is considered
75 qualified for the classification title even though that employee
76 no longer holds that classification.

- 77 (j) The requirements of this section do not alter the defini-
78 tions of class titles as provided in section eight of this article or
79 the procedure and requirements of section eight-b of this article.

CHAPTER 98

(Com. Sub. for S. B. 401 — By Senator Plymale)

[Passed April 1, 2005; in effect from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-2A-7, relating to institutional boards of governors; orders, resolutions, policies, rules and obligations of the governing boards; division of assets and liabilities by date certain; and financial audits.

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-2A-7, to read as follows:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-7. Transfer of orders, resolutions, policies and rules, obligations, etc.; division of assets and liabilities; financial audits.

- 1 (a) When a board of governors is established for the
2 Community and Technical College of Shepherd or New River
3 Community and Technical College, all orders, resolutions,
4 policies and rules adopted or promulgated by the community

5 and technical college's sponsoring institution relating to the
6 community and technical college or community and technical
7 college education, or which the newly established board of
8 governors finds necessary for the exercise of its lawful powers
9 and duties pursuant to the provisions of this chapter, shall
10 continue in effect until rescinded, revised, altered or amended
11 by the newly established board of governors. Nothing in this
12 section requires the initial rules or policies of the community
13 and technical college to be promulgated again under the rule
14 adopted by the council for community and technical college
15 education pursuant to section six, article one of this chapter
16 unless such rules or policies are rescinded, revised, altered or
17 amended.

18 (b) Each valid agreement and obligation, undertaken or
19 agreed to on behalf of either of the above community and
20 technical colleges by its sponsoring institution before a board
21 of governors is established for the community and technical
22 college is hereby transferred to the board of governors of the
23 community and technical college once established.

24 (c) The boards of governors of each former sponsoring
25 institution and community and technical college shall jointly
26 agree on a division of all assets and liabilities between the
27 sponsoring institution and the community and technical college.
28 If the boards of governors are unable to reach agreement
29 concerning a division of assets and liabilities on or before the
30 first day of May following the date on which the board of
31 governors of the community and technical college is estab-
32 lished, the boards of governors shall submit a summary of
33 issues in dispute to the higher education policy commission and
34 the council for community and technical college education
35 which shall jointly resolve all outstanding issues concerning the
36 division of assets and liabilities.

37 (d) The division of all assets and liabilities between the
38 former sponsoring institution and community and technical
39 college shall be effective on the first day of July following the
40 date on which the board of governors of the community and
41 technical college is established.

42 (e) Any financial audit conducted for the period before the
43 effective date of the division of assets and liabilities shall treat
44 the community and technical college as an administratively
45 linked institution.

CHAPTER 99

(Com. Sub. for S. B. 674 — By Senator Plymale)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to state institution of higher education bookstore operations and textbook sales; minimizing costs to students; requiring Legislative Oversight Commission on Education Accountability to obtain certain textbook study report; prohibiting institution employees from receiving benefits for requiring specific textbooks and providing exceptions; requiring institutions to post listing of required textbooks at certain campus locations; requiring institutions to promulgate a rule governing textbook sales and bookstore operations; and application to bookstores operated by private contractor and institutional auxiliary services.

Be it enacted by the Legislature of West Virginia:

That §18B-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-14. Bookstores.

1 (a) Each governing board may establish and operate a
2 bookstore at the institutions under its jurisdiction to sell books,
3 stationery and other school and office supplies generally carried
4 in college bookstores.

5 (b) The prices to be charged may not be less than the prices
6 fixed by any fair trade agreements and shall, in all cases,
7 include in addition to the purchase price paid by the bookstore,
8 a sufficient handling charge to cover all expenses incurred for
9 personal and other services, supplies and equipment, storage
10 and other operating expenses.

11 (c) Each governing board shall ensure that bookstores
12 operated at institutions under its jurisdiction minimize the
13 costs to students of purchasing textbooks. The governing
14 board may:

15 (1) Require the repurchase and resale of textbooks on an
16 institutional or a statewide basis; and

17 (2) Provide for the use of certain basic textbooks for a
18 reasonable number of years.

19 (d) The Legislature recognizes that in two thousand four,
20 the Congress of the United States commissioned the United
21 States Government Accountability Office to study the high
22 prices of college textbooks. Upon completion of the study, the
23 Legislative Oversight Commission on Education Accountability

24 shall obtain the results and any related reports produced by the
25 Office.

26 (e) An employee of a governing board:

27 (1) May not:

28 (A) Receive a payment, loan, subscription, advance, deposit
29 of money, service, benefit or thing of value, present or prom-
30 ised, as an inducement for requiring students to purchase a
31 specific textbook for coursework or instruction; or

32 (B) Require for any course a textbook that includes his or
33 her own writing or work if the textbook incorporates either
34 detachable worksheets or workbook-style pages intended to be
35 written on or removed from the textbook. This provision does
36 not prohibit an employee from requiring as a supplement to a
37 textbook any workbook or similar material which is published
38 independently from the textbook; and

39 (2) May receive:

40 (A) Sample copies, instructor's copies and instructional
41 material which are not to be sold; and

42 (B) Royalties or other compensation from sales of text-
43 books that include the employee's own writing or work.

44 (f) A governing board shall provide to students a listing of
45 textbooks required or assigned for any course offered at the
46 institution.

47 (1) The listing shall be prominently posted:

48 (A) In a central location at the institution;

49 (B) In any campus bookstore; and

50 (C) On the institution's website.

51 (2) The list shall include for each textbook the International
52 Standard Book Number (ISBN), the edition number and any
53 other relevant information.

54 (3) An institution shall post a book to the listing when the
55 adoption process is complete and the textbook is designated for
56 order by the bookstore.

57 (g) All moneys derived from the operation of the bookstore
58 shall be paid into a special revenue fund as provided in section
59 two, article two, chapter twelve of this code. Subject to the
60 approval of the Governor, each governing board periodically
61 shall change the amount of the revolving fund necessary for the
62 proper and efficient operation of each bookstore.

63 (h) Moneys derived from the operation of the bookstore
64 shall be used first to replenish the stock of goods and to pay
65 the costs of operating and maintaining the bookstore. Not-
66 withstanding any other provision of this section, any institu-
67 tion that has contracted with a private entity for bookstore
68 operation shall deposit into an appropriate account all revenue
69 generated by the operation and enuring to the benefit of the
70 institution. The institution shall use the funds for nonathletic
71 scholarships.

72 (i) Each governing board shall promulgate a rule in
73 accordance with the provisions of section six, article one of this
74 chapter to implement the provisions of this section.

75 (j) This section applies to textbook sales and bookstores
76 supported by an institution's auxiliary services and those
77 operated by a private contractor.

CHAPTER 100

(H. B. 2777 — By Mr. Speaker, Mr. Kiss, and Delegate Boggs)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §18B-13-1, §18B-13-2, §18B-13-3, §18B-13-4 and §18B-13-5 of the Code of West Virginia, 1931, as amended, relating to higher education and industry partnerships; amending tax incentives for certain businesses located in the geographic area of a High-Tech research zone, park or technology center; defining qualified business; defining qualified state institution of higher education; designation of the particular geographic area comprising the research zone, park or technology center; updating language to be consistent with current higher education governance structure; updating other language; and other technical amendments.

Be it enacted by the Legislature of West Virginia:

That §18B-13-1, §18B-13-2, §18B-13-3, §18B-13-4 and §18B-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. HIGHER EDUCATION — INDUSTRY PARTNERSHIPS.

§18B-13-1. Legislative findings; intent; definition.

§18B-13-2. Higher education-industry collaboration and technical assistance.

§18B-13-3. Powers and duties.

§18B-13-4. High-Tech research zones, parks and technology centers; tax incentives.

§18B-13-5. Use of state property and equipment; faculty.

§18B-13-1. Legislative findings; intent; definition.

1 (a) *Legislative findings* — The Legislature finds that a
2 pressing need exists for collaborative research and development
3 between institutions of higher education and industry. This need
4 also extends to assisting companies to develop and adapt to new
5 technology. A commitment by the state to support cooperative
6 partnerships between higher education and industry preserves
7 existing jobs and creates new jobs; promotes development of
8 business enterprises and helps them become competitive; and
9 enables West Virginia to achieve the goals of economic growth
10 and full employment by revitalizing and diversifying the
11 economy. Focused research and technical assistance efforts
12 related to West Virginia industry advances such development,
13 improves technology transfer, assists companies in becoming
14 growth leaders and links basic research and technological
15 developments to economic advancement.

16 (b) *Legislative intent* — It is the intent of the Legislature to
17 adopt the following as state goals to be reached through applied
18 science and technology and partnership programs:

19 (1) Moving West Virginia into the forefront of science and
20 technology;

21 (2) Attracting business, federal contracts and industry; and

22 (3) Creating jobs for the people of this state.

23 (c) *Definition* — As used in this article, “Qualified busi-
24 ness” means a business registered to do business in this state
25 which is engaged in science and technology related “manufac-
26 turing” (as defined in section three, article thirteen-s, chapter
27 eleven of this code) or science and technology related “research
28 and development” (as defined in section three, article thirteen-
29 q, or section three, article thirteen-r, chapter eleven of this code)
30 within a research zone, park or technology center.

§18B-13-2. Higher education-industry collaboration and technical assistance.

1 Each governing board of a state institution of higher
2 education shall develop a plan to engage in collaborative
3 projects designed to assist business to adapt or develop new
4 technology under this article.

§18B-13-3. Powers and duties.

1 (a) The West Virginia Development Office, in consultation
2 with the Commission, is hereby authorized and directed to
3 develop a strategic comprehensive plan and grant program to
4 attract new science and high technology industries, to retain and
5 expand current state industries through technology and other
6 processes and to increase research grants, contracts, matching
7 funds and procurement arrangements from the federal govern-
8 ment, private industry and other agencies. The initial strategic
9 comprehensive plan and each annual plan update shall be
10 developed and filed with the Governor and Legislature.

11 (b) The West Virginia Development Office, in consultation
12 with the Commission, shall review the work and projects
13 undertaken by the Center of Regional Progress, the Center for
14 Economic Research, the Institute for International Trade
15 Development and the West Virginia Foundation for Science and
16 Technology.

§18B-13-4. High-Tech research zones, parks and technology centers; tax incentives.

1 (a) For the purposes of this subsection, a “qualified state
2 institution of higher education” is a state institution of higher
3 education meeting the qualifications to be established by the
4 West Virginia Development Office. The West Virginia Devel-
5 opment Office shall work with the county commissions,
6 municipalities and local development authorities where

7 qualified state institutions of higher education are located and
8 shall develop a plan and grant program for the establishment
9 and operation of qualifying High-Tech research zones, parks
10 and technology centers on or near the campuses of qualified
11 state institutions of higher education to attract business and
12 industry engaged in science and technology related research and
13 development. The plan and grant program shall include
14 qualifications that are to be met in order to receive approval by
15 the West Virginia Development Office as a research zone, park
16 or technology center or as a qualified business. Those qualifica-
17 tions shall require a minimum partnership commitment from
18 one or more qualified businesses in the private sector in the
19 construction, operation or location of the research zone, park or
20 technology center. The West Virginia Development Office shall
21 designate the particular geographic area comprising the
22 research zone, park or technology center.

23 The West Virginia Economic Development Authority is
24 authorized to enter into agreements with state institutions of
25 higher education, private developers or other interested busi-
26 nesses or persons to acquire, finance, construct, operate, own,
27 lease or otherwise manage any research zone, park or technol-
28 ogy center and to collect rentals or other forms of payment for
29 the operation of research zones, parks or technology centers.
30 The West Virginia Economic Development Authority is
31 authorized either singly or in conjunction with any county
32 commission, municipality or local development authority, to
33 issue special bonds for the purpose of this section, including,
34 but not limited to, special project revenue bonds and special
35 user bonds limited to the actual cost of construction and start-up
36 of any qualifying and approved research zones, parks or
37 technology centers, and improvements necessary thereto,
38 pursuant to article twelve-b, chapter eighteen of this code.

39 (b) For taxable years beginning on and after the first day of
40 January, two thousand five, any qualified business approved by

41 the West Virginia Development Office on or after the first day
42 of January, two thousand four, and located in a geographic area
43 designated as a High-Tech research zone, park or technology
44 center, shall be considered to be:

45 (1) A business eligible for economic opportunity tax credit
46 entitlement pursuant to section nineteen, article thirteen-q,
47 chapter eleven of the code, and entitled to the twenty percent
48 new jobs percentage under section nine of that article, if it
49 creates at least three new jobs in a research zone, park or
50 technology center;

51 (2) An eligible taxpayer for purposes of the strategic
52 research and development credit provided under article thirteen-
53 r, chapter eleven of the code;

54 (3) An industrial taxpayer for purposes of the manufactur-
55 ing investment tax credit provided under article thirteen-s,
56 chapter eleven of the code if it is primarily engaged in manufac-
57 turing related to research and development; and

58 (4) Entitled to priority for approval of refundable credit for
59 the small qualified research and development company credit
60 under section six, article thirteen-r, chapter eleven of the code
61 ahead of eligible taxpayers that are not qualified businesses
62 under section one of this article: *Provided*, That the qualified
63 business otherwise meets the requirements for those credits.

64 (c) Notwithstanding any other provision herein to the
65 contrary, the amount of total credits and deferrals allowable
66 under this section, shall not exceed two and one-half million
67 dollars in any one fiscal year for all eligible businesses:
68 *Provided*, That, except for the credit allowed under subdivision
69 (4), subsection (b) of this section, the credits allowed by this
70 section are nonrefundable so that a taxpayer shall not claim a
71 total credit amount that reduces the taxpayer's tax liability to
72 less than zero.

§18B-13-5. Use of state property and equipment; faculty.

1 (a) The governing boards are authorized to provide for the
2 low cost and economical use and sharing of state property and
3 equipment, including computers, research labs and other
4 scientific and necessary equipment to assist any qualified
5 business within an approved research park or zone or technol-
6 ogy center. The Commission shall approve a schedule of
7 nominal or reduced-cost reimbursements to the state for such
8 use.

9 (b) The governing boards shall develop and provide for a
10 program of release time, sabbaticals or other forms of faculty
11 involvement or participation with any qualifying business.

12 (c) The Legislature finds that cooperation, communication
13 and coordination are integral components of higher education's
14 involvement in economic development. In order to proceed in
15 a manner that is cost effective and time efficient, it is the duty
16 of the Commission to review and coordinate such aspects of the
17 programs administered by the governing boards. The review
18 and coordination may not operate to affect adversely sources of
19 funding or any statutory characterization of any program as an
20 independent entity. The Commission shall report annually to
21 the Legislature and the Governor. The report shall contain the
22 following information:

23 (1) The number of seminars and workshops conducted;

24 (2) The subject matter addressed in each seminar and
25 workshop;

26 (3) The number of feasibility studies conducted and the
27 subject matter contained in each study;

28 (4) An accounting of the cost of all travel expenses,
29 seminars, workshops and feasibility studies; and

30 (5) The extent to which the authority provided for in
31 subsection (b) of this section has been exercised, stating
32 specifically the names of the institutions and faculty members
33 involved in the program.

CHAPTER 101

(S. B. 669 — By Senators Hunter, Oliverio, Foster and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-3-2 and §3-3-11 of said code; to amend and reenact §3-4-10, §3-4-12 and §3-4-12a of said code; to amend and reenact §3-4A-12, §3-4A-13 and §3-4A-13a of said code; to amend and reenact §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code; to amend and reenact §3-6-4 and §3-6-4a of said code; to amend and reenact §3-9-18 of said code; and to amend and reenact §3-10-6 of said code, all relating to the regulation and control of elections; transferring certain election duties from the circuit clerk to the clerk of the county commission; removing unconstitutional provisions regarding nominating petitions; providing that the county clerk shall assist the Secretary of State in determining the validity of nominating petitions; and removing the prohibition on a person signing or joining in any petition or certificate nominating any candidate for office from voting in a primary election.

Be it enacted by the Legislature of West Virginia:

That §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-3-2 and §3-3-11 of said code be amended and reenacted; that §3-4-10, §3-4-12 and §3-4-12a of said code be amended and reenacted; that §3-4A-12, §3-4A-13 and §3-4A-13a of said code be amended and reenacted; that §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code be amended and reenacted; that §3-6-4 and §3-6-4a of said code be amended and reenacted; and §3-9-18 of said code be amended and reenacted; and that §3-10-6 of said code be amended and reenacted, all to read as follows:

Article

1. **General Provisions and Definitions.**
3. **Voting by Absentees.**
4. **Voting Machines.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**
9. **Offenses and Penalties.**
10. **Filling Vacancies.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-19. Ballot commissioners; selection; duties generally; vacancies.
- §3-1-20. Cards of instructions to voters; sample ballots; posting.
- §3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.
- §3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.
- §3-1-24. Obtaining and delivering election supplies.
- §3-1-25. Supplies by special messenger.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

- 1 In each county in the state, the clerk of the county commis-
- 2 sion while holding office, and two persons appointed by him or
- 3 her, one from each of the two political parties which cast the
- 4 largest and second largest number of votes in the state at the
- 5 last preceding general election, shall constitute a board of ballot

6 commissioners. The clerk shall be chairman. It shall be the
7 duty of the clerk to notify the chairman of the respective county
8 executive committees of the two parties, at least five days
9 before making appointments, the time and place of making the
10 appointments. If at any time after notice is given, and before or
11 on the day so fixed for making appointments, the chairman of
12 each of the committees shall designate, in writing, a member of
13 such party as ballot commissioner. Each designee shall be
14 appointed if he or she meets the qualifications of a voter. Ballot
15 commissioners shall be appointed between the fifteenth and
16 thirtieth days of January in each year in which a general
17 election is to be held, for a term of two years beginning on the
18 first day of February next ensuing. They shall perform the
19 duties of ballot commissioners at all general, special and
20 primary elections held in the county or any magisterial district
21 thereof during their term of office. A vacancy shall be filled in
22 the same manner as an original appointment, but immediate
23 notice of a vacancy shall, where necessary, be deemed compli-
24 ance with the five-day notice provision.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

1 (a) The board of ballot commissioners of each county shall
2 provide cards of general information which will provide the
3 date of the election and the hours during which polling places
4 will be open, instruction for mail-in registrants and first-time
5 voters and voters' rights and prohibitions against fraud and
6 misrepresentation and cards of instruction for voters in prepar-
7 ing their ballots and casting a provisional ballot as prescribed
8 by the Secretary of State. They shall furnish a sufficient
9 number of cards to the commissioners of election at the same
10 time they deliver the ballots for the precinct.

11 (b) The commissioners of election shall post one instruction
12 card in each voting booth giving instructions to the voters on
13 how to prepare the ballots for deposit in the ballot boxes and
14 how to obtain a new ballot in place of one accidentally spoiled.

15 (c) The commissioners of election shall post one or more
16 other cards of general information at places inside and outside
17 of the voting place where voters pass or wait to vote. The
18 commissioners shall also post the official write-in candidates in
19 the same locations inside and outside of the voting place.

20 (d) The ballot commissioners shall have printed, on a
21 different color paper than the official ballot, ten or more copies
22 of sample ballots for each voting place for each election.
23 Sample ballots shall be furnished and posted with the cards of
24 general information at each voting place.

25 (e) During the period of early in-person voting, the clerk of
26 the county commission shall post the cards of general informa-
27 tion, a list of official write-in candidates and sample ballots
28 within the area where absentee voting is conducted.

**§3-1-21. Printing of official and sample ballots; number; packag-
ing and delivery, correction of ballots.**

1 (a) The board of ballot commissioners for each county shall
2 provide the ballots and sample ballots necessary for conducting
3 every election for public officers in which the voters of the
4 county participate.

5 (b) The persons required to provide the ballots necessary
6 for conducting all other elections are:

7 (1) The Secretary of State, for any statewide special
8 election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any countywide
10 special election ordered by the county commission;

11 (3) The Board of Education, for any special levy or bond
12 election ordered by the Board of Education; or

13 (4) The municipal board of ballot commissioners, for any
14 election conducted for or within a municipality except an
15 election in which the matter affecting the municipality is placed
16 on the county ballot at a county election. Ballots other than
17 those printed by the proper authorities as specified in this
18 section shall not be cast, received or counted in any election.

19 (c) When paper ballots are used, the total number of regular
20 official ballots printed shall equal one and one-twentieth times
21 the number of registered voters eligible to vote that ballot. The
22 clerk of the county commission shall determine the number of
23 absentee official ballots.

24 (d) The number of regular official ballots packaged for each
25 precinct shall equal the number of registered voters of the
26 precinct. The remaining regular official ballots shall be pack-
27 aged and delivered to the clerk of the county commission who
28 shall retain them unopened until they are required for an
29 emergency. Each package of ballots shall be wrapped and
30 sealed in a manner which will immediately make apparent any
31 attempt to open, alter or tamper with the ballots. Each package
32 of ballots for a precinct shall be clearly labeled in a manner
33 which cannot be altered, with the county name, the precinct
34 number and the number of ballots contained in each package.
35 If the packaging material conceals the face of the ballot, a
36 sample ballot identical to the official ballots contained therein
37 shall be securely attached to the outside of the package or, in
38 the case of ballot cards, the type of ballot shall be included in
39 the label.

40 (e) All absentee ballots necessary for conducting absentee
41 voting in all voting systems shall be delivered to the clerk of the
42 county commission of the appropriate county not later than the
43 forty-second day before the election. All official ballots in
44 paper ballot systems shall be delivered to the clerk of the
45 county commission of the appropriate county not later than
46 twenty-eight days before the election.

47 (f) Upon a finding of the board of ballot commissioners that
48 an official ballot contains an error which, in the opinion of the
49 board, is of sufficient magnitude as to confuse or mislead the
50 voters, the board shall cause the error to be corrected either by
51 the reprinting of the ballots or by the use of stickers printed
52 with the correction and of suitable size to be placed over the
53 error without covering any other portion of the ballot.

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

1 (a) The printing of ballots for any election to be held
2 pursuant to the provisions of this chapter shall be contracted for
3 with a vendor authorized in accordance with the provisions of
4 this section.

5 (b) Any vendor authorized to do business in West Virginia
6 and in good standing may apply for a certificate of authoriza-
7 tion to print ballots for elections in this state: *Provided*, That
8 any individual, partnership, association or corporation who does
9 not qualify as a resident vendor pursuant to the provisions of
10 section thirty-seven-a, article three, chapter five-a of this code
11 or who prints the ballots in a state which prohibits that state or
12 any of its political subdivisions from contracting with West
13 Virginia resident vendors for the printing of ballots or which
14 prohibits the printing of ballots outside of such state, is not
15 eligible to obtain a certificate of authorization.

16 (c) (1) Every vendor desiring to print ballots for elections
17 held pursuant to the provisions of this chapter shall, prior to the
18 execution of any contract for the printing of ballots with any
19 state, county, or municipal government, obtain a certificate of
20 authorization to print ballots.

21 (2) A certificate of authorization may be obtained by
22 application to the Secretary of State, upon a form prescribed by

23 the Secretary of State. The form shall include a statement that
24 all printing, packaging and delivery specifications for ballots set
25 forth in this chapter will be substantially met, and that the
26 vendor applying for certification is eligible in accordance with
27 the provisions of this section.

28 (3) Upon receipt of the completed application, the Secretary
29 of State shall issue a certificate of authorization to print ballots,
30 which shall remain in effect for two years from the date of
31 issuance and may be renewed upon application therefor:
32 *Provided*, That the Secretary of State may deny the application
33 to issue or renew the certificate of authorization, or may
34 suspend or revoke the certificate of authorization upon a
35 determination that the vendor has not substantially complied
36 with the printing, packaging and delivery specifications in the
37 printing of ballots for any state, county or municipal election,
38 or that the vendor is not eligible or is no longer eligible to print
39 ballots pursuant to the provisions of this section. The Secretary
40 of State shall give written notice of any such determination by
41 certified mail, return receipt requested, to the vendor setting
42 forth the reason for the suspension, revocation or the denial of
43 the application or the denial of the renewal thereof. The
44 applicant may, within sixty days of the receipt of such denial,
45 file a written appeal with the State Election Commission. The
46 State Election Commission shall promulgate rules establishing
47 a hearing process for such appeals.

48 (d) On or before the second Monday of January of each
49 year, the Secretary of State shall provide a list of all vendors
50 authorized to print ballots for state, county and municipal
51 elections to the clerk of each county commission of this state.

§3-1-24. Obtaining and delivering election supplies.

1 (a) It shall be the duty of the clerk of the county commis-
2 sion to appoint one or more of the commissioners of election or
3 poll clerks at each precinct of the county to attend at the office

4 of the clerk of the county commission at least one day before
5 each election to receive the ballots, ballot boxes, poll books,
6 registration records and forms and all other supplies and
7 materials for conducting the election at the respective precincts.
8 The clerk shall take a receipt for the respective materials
9 delivered to the commissioners of election or poll clerks and
10 shall file the receipt in his or her office. It shall be the duty of
11 the commissioners or poll clerks to receive the supplies and
12 materials from the clerk and to deliver them with the seal of all
13 sealed packages unbroken at the election precinct in time to
14 open the election.

15 (b) The commissioners or poll clerks, if they perform the
16 messenger services, shall receive the per diem and mileage rate
17 prescribed by law for this service.

18 (c) Ballots shall be delivered in sealed packages with seals
19 unbroken. For general and special elections the delivered
20 ballots shall not be in excess of one and one-twentieth times the
21 number of registered voters in the precinct. For primary
22 elections the ballots for each party shall be in a separately
23 sealed package containing not more than one and one-twentieth
24 times the number of registered voters of each party in the
25 election precinct.

26 (d) For primary elections one copy of the poll books,
27 including the written or printed forms for oaths of commission-
28 ers of election and poll clerks, shall be supplied at each voting
29 precinct for each political party appearing on the primary ballot.

30 (e) There shall be two ballot boxes for each election
31 precinct for which a receiving and a counting board of election
32 commissioners have been appointed.

§3-1-25. Supplies by special messenger.

1 In case any commissioner of election or poll clerk fails to
2 appear at the offices of the clerk of the county commission by

3 the close of the clerk's office on the day prior to any election,
4 the board of ballot commissioners, the chairman or the clerk of
5 the county commission shall forthwith dispatch a special
6 messenger to the commissioners of election of each respective
7 precinct with the ballots, registration records, ballot boxes, poll
8 books and other supplies for the precinct. The messenger, if not
9 a county employee, shall be allowed five dollars for this
10 service. The messenger shall also receive mileage up to the rate
11 of reimbursement authorized by the travel management rule of
12 the Department of Administration for each mile necessarily
13 traveled in the performance of his or her services. The messen-
14 ger shall promptly report to the clerk of county commission and
15 file with the clerk the receipts of the person to whom he or she
16 delivered the ballots and other supplies and his or her affidavit
17 stating when and to whom he or she delivered them.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

§3-3-11. Preparation, number and handling of absent voters' ballots.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

1 (a) Absentee voting is to be supervised and conducted by
2 the proper official for the political division in which the
3 election is held, in conjunction with the ballot commissioners
4 appointed from each political party, as follows:

5 (1) For any election held throughout the county, within a
6 political subdivision or territory other than a municipality, or
7 within a municipality when the municipal election is conducted
8 in conjunction with a county election, the clerk of the county
9 commission; or

10 (2) The municipal recorder or other officer authorized by
11 charter or ordinance provisions to conduct absentee voting, for
12 any election held entirely within the municipality, or in the case

13 of annexation elections, within the area affected. The terms
14 “clerk” or “clerk of the county commission” or “official
15 designated to supervise and conduct absentee voting” used
16 elsewhere in this article means municipal recorder or other
17 officer in the case of municipal elections.

18 (b) A person authorized and desiring to vote a mail-in
19 absentee ballot in any primary, general or special election is to
20 make application in writing in the proper form to the proper
21 official as follows:

22 (1) The completed application is to be on a form prescribed
23 by the Secretary of State and is to contain the name, date of
24 birth and political affiliation of the voter, residence address
25 within the county, the address to which the ballot is to be
26 mailed, the authorized reason, if any, for which the absentee
27 ballot is requested and, if the reason is illness or hospitalization,
28 the name and telephone number of the attending physician, the
29 signature of the voter to a declaration made under the penalties
30 for false swearing as provided in section three, article nine of
31 this chapter that the statements and declarations contained in
32 the application are true, any additional information which the
33 voter is required to supply, any affidavit which may be required
34 and an indication as to whether it is an application for voting in
35 person or by mail; or

36 (2) For any person authorized to vote an absentee ballot
37 under the provisions of 42 U. S. C. §1973, *et seq.*, the Uni-
38 formed and Overseas Citizens Absentee Voting Act of 1986,
39 the completed application may be on the federal postcard
40 application for absentee ballot form issued under authority of
41 that act; or

42 (3) For any person unable to obtain the official form for
43 absentee balloting at a reasonable time before the deadline for
44 an application for an absentee ballot by mail is to be received

45 by the proper official, the completed application may be in a
46 form set out by the voter, provided all information required to
47 meet the provisions of this article is set forth and the application
48 is signed by the voter requesting the ballot.

§3-3-11. Preparation, number and handling of absent voters' ballots.

1 (a) Absent voters' ballots are to be in all respects like other
2 ballots. Not less than seventy days before the date on which
3 any primary, general or special election is to be held, unless a
4 lesser number of days is provided in any specific election law
5 in which case the lesser number of days applies, the clerks of
6 the county commissions of the several counties shall estimate
7 and determine the number of absent voters' ballots of all kinds
8 which will be required in their respective counties for that
9 election. The ballots for the election of all officers, or the
10 ratification, acceptance or rejection of any measure, proposition
11 or other public question to be voted on by the voters, are to be
12 prepared and printed under the direction of the board of ballot
13 commissioners constituted as provided in article one of this
14 chapter. The several county boards of ballot commissioners
15 shall prepare and have printed, in the number they may deter-
16 mine, absent voters' ballots that are to be printed under their
17 directions as provided in this chapter and those ballots are to be
18 delivered to the clerk of the county commission of the county
19 not less than forty-two days before the day of the election at
20 which they are to be used.

21 (b) The official designated to supervise and conduct
22 absentee voting shall be responsible for the mailing, receiving,
23 delivering and otherwise handling of all absent voters' ballots.
24 He or she shall keep a record, as may be prescribed by the
25 Secretary of State, of all ballots delivered for the purpose of
26 absentee voting, as well as all ballots, if any, marked before him
27 or her and shall deliver to the commissioner of election a

28 certificate stating the number of ballots delivered or mailed to
29 absent voters and those marked before him or her, if any, and
30 the names of the voters to whom those ballots have been
31 delivered or mailed or by whom they have been marked, if
32 marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.

§3-4-12a. Supplies by special messenger.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 (a) The ballot commissioners of any county in which voting
2 machines are to be used in any election shall cause to be printed
3 for use in the election the ballot labels for the voting machines
4 and paper ballots for absentee voting, voting by persons unable
5 to use the voting machine and provisional ballots or if an
6 electronic voting system or direct recording election equipment
7 is to be used in an election, the ballot commissioners shall
8 comply with requirements of section eleven, article four-a of
9 this chapter. The labels shall be clearly printed in black ink on
10 clear white material in a size that will fit the ballot frames. The
11 paper ballots shall be printed in compliance with the provisions
12 of this chapter governing paper ballots.

13 (b) The heading, the names and arrangement of offices and
14 the printing and arrangement of names of the candidates for
15 each office indicated must be placed on the ballot for the
16 primary election as nearly as possible according to the provi-
17 sions of sections thirteen and thirteen-a, article five of this
18 chapter and for the general election according to the provisions
19 of section two, article six of this chapter: *Provided*, That the
20 staggering of the names of candidates in multicandidate races

21 and the instructions to straight ticket voters prescribed by
22 section two, article six of this chapter shall appear on paper
23 ballots but shall not appear on ballot labels for voting machines
24 which mechanically control crossover voting.

25 (c) Each question to be voted on must be placed at the end
26 of the ballot and must be printed according to the provisions of
27 the laws and rules governing the question.

28 (d) The ballot labels printed must total in number one and
29 one-half times the total number of corresponding voting
30 machines to be used in the several precincts of the county in the
31 election. All the labels must be delivered to the clerk of the
32 county commission at least twenty-eight days prior to the day
33 of the election. The clerk of the county commission shall
34 determine the number of paper ballots needed for absentee
35 voting and to supply the precincts for provisional ballots and
36 ballots to be cast by persons unable to use the voting machine.
37 All required paper ballots shall be delivered to the clerk of the
38 county commission at least forty-two days prior to the day of
39 the election.

40 (e) When the ballot labels and absentee ballots are deliv-
41 ered, the clerk of the county commission shall examine them
42 for accuracy, assure that the appropriate ballots and ballot
43 labels are designated for each voting precinct and insert one set
44 in each machine prior to the inspection of the machines as
45 prescribed in section twelve of this article. The remainder of
46 the ballot labels for each machine shall be retained by the clerk
47 of the county commission for use in an emergency.

48 (f) In addition to all other equipment and supplies required
49 by the provisions of this article, the ballot commissioners shall
50 cause to be printed a supply of instruction cards, sample ballots
51 and facsimile diagrams of the voting machine ballot adequate
52 for the orderly conduct of the election in each precinct in their

53 county. In addition, they shall provide appropriate facilities for
54 the reception and safekeeping of the ballots of absent voters and
55 of challenged voters and of the "independent" voters who shall,
56 in primary elections, cast their votes on nonpartisan candidates
57 and public questions submitted to the voters.

**§3-4-12. Inspection of machines; duties of county commission,
ballot commissioners and election commissioners;
keys and records relating to machines.**

1 When the clerk of the county commission has completed
2 the preparation of the voting machines, as provided in section
3 eleven of this article, and not later than seven days before the
4 day of the election, he or she shall notify the members of the
5 county commission and the ballot commissioners that the
6 machines are ready for use. Thereupon the members of the
7 county commission and the ballot commissioners shall convene
8 at the office of the clerk, or at such other place wherein the
9 voting machines are stored, not later than five days before the
10 day of the election, and shall examine the machines to deter-
11 mine whether the requirements of this article have been met.
12 Any candidate, and one representative of each political party
13 having candidates to be voted on at the election, may be present
14 during the examination. If the machines are found to be in
15 proper order, the members of the county commission and the
16 ballot commissioners shall endorse their approval in the book
17 in which the clerk entered the numbers of the machines
18 opposite the numbers of the precincts. The clerk shall then
19 deliver the keys to the voting machines to the ballot commis-
20 sioners who shall give a receipt for the keys, which shall
21 contain identification of such keys. Not later than one day
22 before the election the election commissioner of each precinct,
23 who shall have been previously designated by the ballot
24 commissioners, shall attend at the office of the clerk of the
25 county commission to receive the key or keys to the device
26 covering the registering counters and such other keys as may be

27 necessary for the operation of the machine in registering votes,
28 and to receive the other necessary election records, books and
29 supplies required by law. The election commissioners shall
30 receive the per diem mileage rate prescribed by law for this
31 service. The election commissioners shall give the ballot
32 commissioners a receipt for the keys, records, books and
33 supplies. The receipt shall contain identification of the keys.
34 The master key and all other keys shall remain in the possession
35 of the clerk of the county commission.

§3-4-12a. Supplies by special messenger.

1 In case any commissioner of election shall fail to appear at
2 the offices of the clerk of the county commission by the close
3 of the clerk's office on the day prior to any election, the board
4 of ballot commissioners, the chairman thereof shall cause all
5 necessary election records, books and supplies to be delivered
6 by special messenger in the same manner and under the same
7 terms and conditions as is provided for the dispatch of the
8 special messenger under the provisions of section twenty-five,
9 article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices;
record of identifying numbers.

§3-4A-13. Inspection of ballots and vote recording devices; duties of county
commission, ballot commissioners and election commissioners;
records relating to ballots and vote recording devices; receipt of
election materials by ballot commissioners.

§3-4A-13a. Supplies by special messenger.

**§3-4A-12. Ballot label arrangement in vote recording devices;
sealing of devices; record of identifying numbers.**

1 In counties using electronic voting systems utilizing vote
2 recording devices:

3 (1) The number of ballot labels printed, where applicable,
4 are to equal one and one-half times the total number of corre-
5 sponding vote recording devices to be used in the election. All
6 labels are to be delivered to the clerk of the county commission
7 at least thirty-five days prior to the election. The clerk shall
8 immediately examine the ballot labels for accuracy and assure
9 that the appropriate ballot labels are designated for each voting
10 precinct.

11 (2) The total number of ballot cards printed and the number
12 packaged for each precinct and the requirements for ballot
13 colors and packaging are to conform as nearly as possible to the
14 requirements for paper ballots. Official ballot cards printed and
15 packaged for the various precincts are to be delivered to the
16 clerk of the county commission at least twenty-eight days prior
17 to the election.

18 (3) The necessary number of ballot cards, ballot labels,
19 sample ballots, and other supplies necessary for absentee voting
20 are to be delivered to the clerk of the county commission at
21 least forty-two days prior to the election. The clerk shall
22 immediately check the ballot labels to assure their accuracy and
23 shall place them in vote recording devices which are clearly
24 designated for the proper district or party, or both, for the
25 purpose of absentee voting.

26 (4) The clerk of the county commission shall retain the
27 remainder of the ballot labels for each machine for use in an
28 emergency.

29 (5) The clerk of the county commission shall seal the vote
30 recording devices so as to prevent tampering with ballot labels,
31 and enter in an appropriate book, opposite the number of each
32 precinct, the identifying or distinguishing number of the
33 specific vote recording device or devices to be used in that
34 precinct.

§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

1 When the clerk of the county commission has completed
2 the preparation of the ballots and vote recording devices as
3 provided in sections eleven, eleven-a and twelve of this article
4 and as provided in section twenty-one, article one of this
5 chapter, and not later than seven days before the day of the
6 election, he or she shall notify the members of the county
7 commission and the ballot commissioners that the ballots and
8 devices, where applicable, are ready for use. Thereupon the
9 members of the county commission and the ballot commission-
10 ers shall convene at the office of the clerk or at such other place
11 wherein the vote recording devices, where applicable, and
12 ballots are stored, not later than five days before the day of the
13 election, and shall inspect the devices and the ballots to
14 determine whether the requirements of this article have been
15 met. Notice of the place and time of such inspection shall be
16 published, no less than three days prior thereto, as a Class I-0
17 legal advertisement in compliance with the provisions of article
18 three, chapter fifty-nine of this code, and the publication area
19 for the publication shall be the county involved. Any candidate
20 and one representative of each political party on the ballot may
21 be present during such examination. If the devices, where
22 applicable, and ballots are found to be in proper order, the
23 members of the county commission and the ballot commission-
24 ers shall, where applicable, endorse their approval in the book
25 in which the clerk entered the numbers of the devices opposite
26 the numbers of the precincts. The vote recording devices and
27 the ballots shall then be secured in double lock rooms. The
28 clerk and the president or president pro tempore of the county
29 commission shall each have a key. The rooms shall be un-
30 locked only in their presence and only for the removal of the

31 devices, where applicable, and the ballots for transportation to
32 the polls. Upon such removal of the devices and ballots, the
33 clerk and president or president pro tempore of the county
34 commission shall certify in writing signed by them that the
35 devices, where applicable, and packages of ballots were found
36 to be sealed when removed for transportation to the polls.

37 Not later than one day before the election the election
38 commissioner of each precinct who shall have been previously
39 designated by the ballot commissioners, shall attend at the
40 office of the clerk of the county commission to receive the
41 necessary election records, books and supplies required by law.
42 The election commissioners shall receive the per diem mileage
43 rate prescribed by law for this service. The election commis-
44 sioners shall give the ballot commissioners a sequentially
45 numbered written receipt, on a printed form, provided by the
46 clerk of the county commission, for such records, books and
47 supplies. The receipt shall be prepared in duplicate. One copy
48 of the receipt shall remain with the clerk of the county commis-
49 sion and one copy shall be delivered to the president or presi-
50 dent pro tempore of the county commission.

§3-4A-13a. Supplies by special messenger.

1 In case any commissioner of election shall fail to appear at
2 the offices of the clerk of the county commission by the close
3 of the clerk's office on the day prior to any election, the board
4 of ballot commissioners, the chairman thereof or the clerk of
5 the county commission shall cause all necessary election
6 records, books and supplies to be delivered by special messen-
7 ger in the same manner and under the same terms and condi-
8 tions as is provided the dispatch of the special messenger under
9 the provisions of section twenty-five, article one of this chapter.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of
candidates when section applicable.

- §3-5-8. Filing fees and their disposition.
- §3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.
- §3-5-9. Certification and posting of candidacies.
- §3-5-11. Withdrawals; filling vacancies in candidacy; publication.
- §3-5-12. Official and sample ballots; color.
- §3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.
- §3-5-18. Disposition of certificates of results.
- §3-5-19. Vacancies in nominations; how filled; fees.
- §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 Any person who is eligible and seeks to hold an office or
2 political party position to be filled by election in any primary or
3 general election held under the provisions of this chapter shall
4 file a certificate of announcement declaring as a candidate for
5 the nomination or election to the office.

6 (a) The certificate of announcement shall be filed as
7 follows:

8 (1) With the Secretary of State, if it be an office or political
9 position to be filled by the voters of more than one county;

10 (2) With the clerk of the county commission, if it be for an
11 office to be filled by the voters of a single county or of a
12 subdivision less than a county;

13 (3) With the recorder or city clerk if it be for an office to be
14 filled by the voters of a municipality.

15 The certificate of announcement shall be filed with the
16 proper officer not earlier than the second Monday in January
17 next preceding the primary election day, and not later than the
18 last Saturday in January next preceding the primary election
19 day, and must be received before midnight, eastern standard

20 time, of that day or, if mailed, shall be postmarked by the
21 United States Postal Service before that hour.

22 (b) The certificate of announcement shall be in a form
23 prescribed by the Secretary of State on which the candidate
24 shall make a sworn statement before a notary public or other
25 officer authorized to give oaths, containing the following
26 information:

27 (1) The date of the election in which the candidate seeks to
28 appear on the ballot;

29 (2) The name of the office sought; the district, if any; and
30 the division, if any;

31 (3) The legal name of the candidate, and the exact name the
32 candidate desires to appear on the ballot, subject to limitations
33 prescribed in section thirteen, article five of this chapter;

34 (4) The county of residence and a statement that the
35 candidate is a legally qualified voter of that county; and the
36 magisterial district of residence for candidates elected from
37 magisterial districts or under magisterial district limitations;

38 (5) The specific address designating the location at which
39 the candidate resides at the time of filing, including number and
40 street or rural route and box number, and city, state and zip
41 code;

42 (6) For partisan elections, the name of the candidate's
43 political party, and a statement that the candidate is a member
44 of and affiliated with that political party as is evidenced by the
45 candidate's current registration as a voter affiliated with that
46 party, and that the candidate has not been registered as a voter
47 affiliated with any other political party for a period of sixty
48 days before the date of filing the announcement;

49 (7) For candidates for delegate to national convention, the
50 name of the presidential candidate to be listed on the ballot as
51 the preference of the candidate on the first convention ballot;
52 or, a statement that the candidate prefers to remain “uncommit-
53 ted”;

54 (8) A statement that the person filing the certificate of
55 announcement is a candidate for the office in good faith;

56 (9) The words “subscribed and sworn to before me this
57 _____ day of _____, 20____,” and a space for the
58 signature of the officer giving the oath.

59 The Secretary of State or the board of ballot commission-
60 ers, as the case may be, may refuse to certify the candidacy or
61 remove the certification of the candidacy upon receipt of a
62 certified copy of the voter’s registration record of the candidate
63 evidencing that the candidate was registered as a voter in a
64 party other than the one named in the certificate of announce-
65 ment during the sixty days immediately preceding the filing of
66 the certificate: *Provided*, That unless a signed formal com-
67 plaint of violation of this section and the certified copy of the
68 voter’s registration record of the candidate be filed with the
69 officer receiving that candidate’s certificate of announcement
70 no later than ten days following the close of the filing period,
71 the candidate shall not be refused certification for this reason.

72 (c) The certificate of announcement shall be subscribed and
73 sworn to by the candidate before some officer qualified to
74 administer oaths, who shall certify the same. Any person who
75 knowingly provides false information on the certificate is guilty
76 of false swearing and shall be punished as set forth in section
77 three, article nine of this chapter.

78 (d) Any candidate for delegate to a national convention may
79 change his or her statement of presidential preference by
80 notifying the Secretary of State by letter received by the

81 Secretary of State no later than the third Tuesday following the
82 close of candidate filing. When the rules of the political party
83 allow each presidential candidate to approve or reject candi-
84 dates for delegate to convention who may appear on the ballot
85 as committed to that presidential candidate, the presidential
86 candidate or the candidate's committee on his or her behalf may
87 file a list of approved or rejected candidates for delegate, and
88 the Secretary of State shall list as "uncommitted" any candidate
89 for delegate who is disapproved by the presidential candidate.

90 (e) No person shall be a candidate for more than one office
91 or office division at any election: *Provided*, That a candidate
92 for an office may also be a candidate for president of the United
93 States, for membership on a political party executive committee
94 or for delegate to a political party national convention. Not-
95 withstanding the provisions of this section, nothing shall
96 prohibit a candidate from jointly running for or holding the
97 offices of county clerk and circuit clerk in those counties which
98 operate a joint clerkship system.

99 (f) Any candidate who files a certificate of announcement
100 for more than one office or division and does not withdraw, as
101 provided by section eleven, article five of this chapter, from all
102 but one office prior to the close of the filing period shall not be
103 certified by the Secretary of State or placed on the ballot for any
104 office by the board of ballot commissioners.

105 The provisions of this section enacted during the regular
106 session of the Legislature in the year one thousand nine hundred
107 ninety-one shall apply to the primary election held in the year
108 one thousand nine hundred ninety-two and every primary
109 election held thereafter. The provisions of this section enacted
110 during the regular session of the Legislature in the year one
111 thousand nine hundred ninety-eight shall apply to the primary
112 election held in the year two thousand and every primary
113 election held thereafter.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination for
2 or election to office in any primary election shall, at the time of
3 filing the certificate of announcement as required in this article,
4 pay a filing fee as follows:

5 (a) A candidate for president of the United States, for vice
6 president of the United States, for United States Senator, for
7 member of the United States House of Representatives, for
8 Governor and for all other state elective offices shall pay a fee
9 equivalent to one percent of the annual salary of the office for
10 which the candidate announces: *Provided*, That the filing fee
11 for any candidate for president or vice president of the United
12 States shall not exceed two thousand five hundred dollars
13 commencing with the two thousand four filing period;

14 (b) A candidate for the office of judge of a circuit court and
15 judge of a family court shall pay a fee equivalent to one percent
16 of the total annual salary of the office for which the candidate
17 announces;

18 (c) A candidate for member of the House of Delegates shall
19 pay a fee of one-half percent of the total annual salary of the
20 office and a candidate for state Senator shall pay a fee of one
21 percent of the total annual salary of the office;

22 (d) A candidate for sheriff, prosecuting attorney, circuit
23 clerk, county clerk, assessor, member of the county commission
24 and magistrate shall pay a fee equivalent to one percent of the
25 annual salary, excluding any additional compensation or
26 commission of the office for which the candidate announces.
27 A candidate for county board of education shall pay a fee of
28 twenty-five dollars. A candidate for any other county office
29 shall pay a fee of ten dollars;

30 (e) Delegates to the national convention of any political
31 party shall pay the following filing fees:

32 A candidate for delegate-at-large shall pay a fee of twenty
33 dollars; and a candidate for delegate from a congressional
34 district shall pay a fee of ten dollars;

35 (f) Candidates for members of political executive commit-
36 tees and other political committees shall pay the following
37 filing fees:

38 A candidate for member of a state executive committee of
39 any political party shall pay a fee of twenty dollars; a candidate
40 for member of a county executive committee of any political
41 party shall pay a fee of ten dollars; and a candidate for member
42 of a congressional, senatorial or delegate district committee of
43 any political party shall pay a fee of five dollars.

44 Candidates filing for an office to be filled by the voters of
45 one county shall pay the filing fee to the clerk of the county
46 commission and candidates filing for an office to be filled by
47 the voters of more than one county shall pay the filing fee to the
48 Secretary of State at the time of filing their certificates of
49 announcement and no certificate of announcement shall be
50 received until the filing fee is paid.

51 All moneys received by the clerk from the fees shall be
52 credited to the general county fund. Moneys received by the
53 Secretary of State from fees paid by candidates for offices to be
54 filled by all the voters of the state shall be deposited in a special
55 fund for that purpose and shall be apportioned and paid by him
56 or her to the several counties on the basis of population and that
57 received from candidates from a district or judicial circuit of
58 more than one county shall be apportioned to the counties
59 comprising the district or judicial circuit in like manner. When
60 such moneys are received by sheriffs, it shall be credited to the
61 general county fund.

§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

1 A candidate seeking nomination to any office who is unable
2 to pay the filing fee may qualify through the following petition
3 process in lieu of payment of the filing fee.

4 The candidate shall file an oath with the appropriate office
5 required under section eight of this article stating that he or she
6 is unable to pay the filing fee due to a lack of financial re-
7 sources. Such oath shall be filed not earlier than the second
8 Monday in January next preceding the primary election day.

9 Upon receipt of the written oath the receiving officer shall
10 provide the candidate with in-lieu-of-filing-fee petition forms
11 and instructions on gathering the required signatures. The
12 number of required signatures shall be four qualified voters for
13 each whole dollar of the filing fee: *Provided*, That the filing fee
14 shall be waived, in whole and not in part. Only signatures of
15 voters registered in the county, district or other political
16 division represented by the office sought may be solicited.
17 Solicitors of signatures shall also be residents of the county,
18 district or other geographical entity represented by the office
19 sought: *Provided, however*, That for offices to be filled by the
20 voters of more than one county, separate petition forms shall be
21 used for the signatures of qualified voters from each county.

22 No qualified voter forfeits his or her opportunity to vote in
23 the primary election by signing an in-lieu-of-filing-fee petition.

24 The candidate may submit a greater number of signatures
25 to allow for subsequent losses due to invalidity of some
26 signatures. The clerk of the county commission may not be
27 required to determine the validity of a greater number of
28 signatures than that required by this section.

29 Signatures obtained on an in-lieu-of-filing-fee petition shall
30 not be counted toward the number of voters required to sign a
31 nomination certificate in accordance with section twenty-three
32 of this article.

33 The candidate shall file all in-lieu-of-filing-fee petitions
34 with the required number of valid signatures with the clerk of
35 the county commission or Secretary of State, as the case may
36 be, not later than the last date required by law for filing
37 declarations of candidacies and payment of the filing fee.

38 The oath and forms required by this section shall be
39 prescribed by the Secretary of State.

§3-5-9. Certification and posting of candidacies.

1 By the eighty-fourth day next preceding the day fixed for
2 the primary election, the Secretary of State shall arrange the
3 names of all candidates, who have filed announcements with
4 him or her, as provided in this article, and who are entitled to
5 have their names printed on any political party ballot, in
6 accordance with the provisions of this chapter, and shall
7 forthwith certify the same under his or her name and the lesser
8 seal of the state, and file the same in his or her office.

9 The certificate of candidates shall show: (1) The name and
10 residence of each candidate; (2) the office for which he or she
11 is a candidate; (3) the name of the political party of which he or
12 she is a candidate; (4) upon what ballot his or her name is to be
13 printed; and (5) in the case of a candidate for delegate to the
14 national convention of any political party, the name of the
15 person the candidate prefers as the presidential nominee of his
16 or her party, or if he or she has no preference, the word
17 “uncommitted”.

18 The Secretary of State shall post a duplicate of the certifi-
19 cate in a conspicuous place in his or her office and keep same
20 posted until after the primary election.

21 Immediately upon completion of such certification, the
22 Secretary of State shall ascertain therefrom the candidates
23 whose names are to appear on the primary election ballots in
24 the several counties of the state and shall certify to the clerk of
25 the county commission in each county the certificate informa-
26 tion relating to each of the candidates whose names are to
27 appear on the ballot in that county. He or she shall transmit the
28 certificate to the several clerks by registered or certified mail,
29 but, in emergency cases, he may resort to other reliable and
30 speedy means of transmission which may be available so that
31 such certificates shall reach the several clerks by the seventieth
32 day next preceding such primary election day.

33 The provisions of this section shall apply to the primary
34 election held in the year one thousand nine hundred eighty-six
35 and every primary election held thereafter.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

1 (a) A candidate who has filed a certificate of announcement
2 and wishes to withdraw and decline to stand as a candidate for
3 the office shall file a signed and notarized statement of with-
4 drawal with the same officer with whom the certificate of
5 announcement was filed. If the statement of withdrawal is
6 received not later than the third Tuesday following the close of
7 candidate filing, the name of a candidate who files that state-
8 ment of withdrawal may not be printed on the ballot. No
9 candidate who files a statement of withdrawal after that time
10 may have his or her name removed from the ballot.

11 (b) Upon request of the candidate's family, the board of
12 ballot commissioners may remove the name of a candidate who
13 dies before the ballots are printed. If a candidate dies after the

14 ballots are printed but before the election, the clerk of the
15 county commission shall give a written notice which shall be
16 posted with the sample ballot at each precinct with the county
17 to the following effect: "To the voter: (name) of (residence), a
18 candidate for (office) is deceased."

19 (c) If after the time is closed for announcing as a candidate
20 there is a vacancy on the ballot caused by failure of any person
21 of a party to file for each available seat of each available office,
22 the executive committee of the party for the political division
23 within which such candidate was to be voted for, or its chair if
24 the committee fails to act, may fill the vacancy and certify the
25 candidate named to the appropriate filing officer. Certification
26 of the appointment by the executive committee or its chair, the
27 candidate's certificate of announcement and the filing fee must
28 be received by the appropriate filing officer as follows: For an
29 appointment by an executive committee, no later than the
30 second Friday following the close of filing, for an appointment
31 by its chair, no later than the third Tuesday following the close
32 of filing. A candidate appointed to fill a vacancy on the ballot
33 under this subsection shall have his or her name printed on the
34 primary ballot for that party.

§3-5-12. Official and sample ballots; color.

1 There shall be a separate ballot printed on different colored
2 paper for each political party participating in the primary
3 election and the ballot of no two parties may be of the same
4 color or tint. The Secretary of State shall select and determine
5 the color of the paper of the ballot of each of the parties, and
6 shall notify the clerk of the county commission of each county
7 thereof, at the time he or she certifies the names of the candi-
8 dates of the various parties to the clerk, as herein provided.

9 A different color of paper shall be selected and designated
10 by the Secretary of State for each party. The sample ballots of

11 each party shall be of a different color than the official ballot
12 and of a different color from one another. There shall be
13 printed across the face of such sample ballot in large letters the
14 words "sample ballot". No sample ballot shall be voted or
15 counted in any election.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

1 (a) The order of offices for state and county elections on all
2 ballots within the state shall be as prescribed herein. When the
3 office does not appear on the ballot in an election, then it shall
4 be omitted from the sequence. When an unexpired term for an
5 office appears on the ballot along with a full term, the unex-
6 pired term shall appear immediately below the full term.

7 NATIONAL TICKET: President (and Vice President in the
8 general election), United States Senator, member of the United
9 States House of Representatives

10 STATE TICKET: Governor, Secretary of State, Auditor,
11 Treasurer, Commissioner of Agriculture, Attorney General,
12 Justice of the Supreme Court of Appeals, State Senator,
13 member of the House of Delegates, circuit judge in multicounty
14 districts, family court judge in multicounty districts, any other
15 multicounty office, state executive committee

16 COUNTY TICKET: Circuit judge in single-county districts,
17 family court judge in single-county districts, clerk of the circuit
18 court, county commissioner, clerk of the county commission,
19 prosecuting attorney, sheriff, assessor, magistrate, surveyor,
20 congressional district executive committee, senatorial district
21 executive committee in multicounty districts, delegate district
22 executive committee in multicounty districts

23 NATIONAL CONVENTION: Delegate to the national
24 convention — at-large, delegate to the national convention —
25 congressional district

26 DISTRICT TICKET: County executive committee.

27 (b) Except for office divisions in which no more than one
28 person has filed a certificate of announcement, the arrangement
29 of names for all offices shall be determined by lot according to
30 the following provisions:

31 (1) On the fourth Tuesday following the close of the
32 candidate filing, beginning at nine o'clock a. m., a drawing by
33 lot shall be conducted in the office of the clerk of the county
34 commission in each county. Notice of the drawing shall be
35 given on the form for the certificate of announcement and no
36 further notice shall be required. The clerk of the county
37 commission shall superintend and conduct the drawing and the
38 method of conducting the drawing shall be prescribed by the
39 Secretary of State.

40 (2) Except as provided herein, the position of each candi-
41 date within each office division shall be determined by the
42 position drawn for that candidate individually: *Provided*, That
43 if fewer candidates file for an office division than the total
44 number to be nominated or elected, the vacant positions shall
45 appear following the names of all candidates for the office.

46 (3) Candidates for delegate to national convention who
47 have filed a commitment to a candidate for president shall be
48 listed alphabetically within the group of candidates committed
49 to the same candidate for president and uncommitted candidates
50 shall be listed alphabetically in an uncommitted category. The
51 position of each group of committed candidates and uncommi-
52 tted candidates shall be determined by lot by drawing the names
53 of the presidential candidates and for an uncommitted category.

54 (4) A candidate or the candidate's representative may
55 attend the drawings.

§3-5-18. Disposition of certificates of results.

1 The certificates of the board of canvassers made pursuant
2 to the preceding section shall be by them disposed of as
3 follows: One of the certificates showing the votes received by
4 each candidate of each party for each office to be filled by the
5 voters of a political division greater than a county, including
6 members of the State Executive Committee, shall be filed with
7 the Secretary of State, and preserved in his or her office, and a
8 copy thereof filed in the office of the clerk of the county
9 commission of the county of such board, to be preserved by the
10 clerk, and which shall be open to public inspection; one
11 certificate showing the votes received by each candidate of each
12 party for each office to be filled by the voters of the county or
13 magisterial district within such county, including members of
14 the county executive committee, shall be filed with the clerk of
15 the county commission, and preserved in his or her office. If
16 requested, the board of canvassers shall furnish to the county
17 chairman of each political party a certificate showing the
18 number of votes received by each of the candidates of such
19 party in the county or any magisterial district therein.

20 The Secretary of State shall certify, under the seal of the
21 state, to the clerk of the county commission of each county in
22 which a candidate is to be voted for, the name of the candidate
23 of each political party receiving the highest number of votes in
24 the political division in which he or she is a candidate, and who
25 is entitled to have his or her name placed on the official ballot
26 in the general election as the nominee of the party for such
27 office. The Secretary of State shall also certify in the same
28 manner the names of all candidates nominated by political
29 parties or by groups of citizens, not constituting a political
30 party, in any manner provided for making such nominations in
31 this chapter.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy shall occur in the party nomination of
2 candidates for office nominated at the primary election or by
3 appointment under the provisions of section eleven of this
4 article, the vacancies may be filled, subject to the following
5 requirements and limitations:

6 (1) Each appointment made under this section shall be
7 made by the executive committee of the political party for the
8 political division in which the vacancy occurs: *Provided*, That
9 if the executive committee holds a duly called meeting in
10 accordance with section nine, article one of this chapter but
11 fails to make an appointment or fails to certify the appointment
12 of the candidate to the proper filing officer within the time
13 required, the chairperson of the executive committee may make
14 the appointment not later than two days following the deadline
15 for the executive committee.

16 (2) Each appointment made under this section is complete
17 only upon the receipt by the proper filing officer of the certifi-
18 cate of appointment by the executive committee, or its chairper-
19 son, as the case may be, the certificate of announcement of the
20 candidate as prescribed in section seven of this article and,
21 except for appointments made under subdivision (4), (5), (6) or
22 (7) of this subsection, the filing fee or waiver of fee as pre-
23 scribed in section eight or eight-a of this article. The proper
24 filing officer is the officer with whom the original certificate of
25 nomination is regularly filed for that office.

26 (3) If a vacancy in nomination is caused by the failure of a
27 candidate to file for an office, or by withdrawal of a candidate
28 no later than the third Tuesday following the close of candidate
29 filing pursuant to the provisions of section eleven of this article,
30 a nominee may be appointed by the executive committee and
31 certified to the proper filing officer no later than the Thursday
32 preceding the primary election.

33 (4) If a vacancy in nomination is caused by the disqualifica-
34 tion of a candidate and the vacancy occurs not later than eighty-
35 four days before the general election, a nominee may be
36 appointed by the executive committee and certified to the
37 proper filing officer not later than seventy-eight days before the
38 general election. A candidate may be determined ineligible if
39 a written request is made by an individual with information to
40 show a candidate's ineligibility to the State Election Commis-
41 sion no later than ninety-five days before the general election
42 explaining grounds why a candidate is not eligible to be placed
43 on the general election ballot or not eligible to hold the office,
44 if elected. The State Election Commission shall review the
45 reasons for the request. If the Commission finds the circum-
46 stances warrant the disqualification of the candidate, the
47 Commission may authorize appointment by the executive
48 committee to fill the vacancy. Upon receipt of the authorization
49 a nominee may be appointed by the executive committee and
50 certified to the proper filing officer no later than seventy-eight
51 days before the general election.

52 (5) If a vacancy in nomination is caused by the incapacity
53 of the candidate and if the vacancy occurs not later than
54 eighty-four days before the general election, a nominee may be
55 appointed by the executive committee and certified to the
56 proper filing officer no later than seventy-eight days before the
57 general election.

58 (6) If a vacancy in nomination is caused by the withdrawal
59 of the candidate no later than ninety-eight days before the
60 general election due to extenuating personal circumstances
61 which will prevent the candidate from serving in the office if
62 elected and if the candidate or the chairperson of the executive
63 committee for the political division applies in writing to the
64 State Election Commission no later than ninety-five days before
65 the general election for permission to remove the candidate's
66 name from the general election ballot, the State Election

67 Commission shall review the reasons for the request. If the
68 Commission finds the circumstances warrant the withdrawal of
69 the candidate, the Commission shall authorize appointment by
70 the executive committee to fill the vacancy. Upon receipt of the
71 authorization, a nominee may be appointed by the executive
72 committee and certified to the proper filing officer no later than
73 seventy-eight days before the general election.

74 (7) If a vacancy in nomination is caused by the death of the
75 candidate occurring no later than twenty-five days before the
76 general election, a nominee may be appointed by the executive
77 committee and certified to the proper filing officer no later than
78 twenty-one days following the date of death or no later than
79 twenty-two days before the general election, whichever date
80 occurs first.

81 (b) Except as otherwise provided in article ten of this
82 chapter, if any vacancy occurs in a partisan office or position
83 other than political party executive committee, which creates an
84 unexpired term for a position which would not otherwise appear
85 on the ballot in the general election, and the vacancy occurs
86 after the close of candidate filing for the primary election but
87 not later than eighty-four days before the general election, a
88 nominee of each political party may be appointed by the
89 executive committee and certified to the proper filing officer no
90 later than seventy-eight days before the general election.
91 Appointments shall be filed in the same manner as provided in
92 subsection (a) of this section, except that the filing fee shall be
93 paid before the appointment is complete.

94 (c) When a vacancy occurs in the board of education after
95 the close of candidate filing for the primary election but not
96 later than eighty-four days before the general election, a special
97 candidate filing period shall be established. Candidates seeking
98 election to any unexpired term for board of education shall file
99 a certificate of announcement and pay the filing fee to the clerk

100 of the county commission no earlier than the first Monday in
101 August and no later than seventy-seven days before the general
102 election.

**§3-5-23. Certificate nominations; requirements and control;
penalties.**

1 (a) Groups of citizens having no party organization may
2 nominate candidates for public office otherwise than by
3 conventions or primary elections. In the case, the candidate or
4 candidates, jointly or severally, shall file a declaration with the
5 Secretary of State if the office is to be filled by the voters of
6 more than one county, or with the clerk of the county commis-
7 sion of the county if the office is to be filled by the voters of
8 one county or political subdivision thereof; the declaration to be
9 filed at least thirty days prior to the time of filing the certificate
10 provided by section twenty-four of this article: *Provided*, That
11 the deadline for filing the certificate for persons seeking ballot
12 access as a candidate for the office of president or vice presi-
13 dent shall be filed not later than the first day of August preced-
14 ing the general election. At the time of filing of the declaration
15 each candidate shall pay the filing fee required by law, and if
16 the declaration is not so filed or the filing fee so paid, the
17 certificate shall not be received by the Secretary of State, or
18 clerk of the county commission, as the case may be.

19 (b) The person or persons soliciting or canvassing signa-
20 tures of duly qualified voters on the certificate or certificates,
21 may solicit or canvass duly registered voters residing within the
22 county, district or other political division represented by the
23 office sought, but must first obtain from the clerk of the county
24 commission credentials which must be exhibited to each voter
25 canvassed or solicited, which credentials may be in the follow-
26 ing form or effect:

27 State of West Virginia, County of, ss:

28 This certifies that the holder of this credential is hereby
 29 authorized to solicit and canvass duly registered voters residing
 30 in (here place the county, district or other political
 31 division represented by the office sought) to sign a certificate
 32 purporting to nominate (here place name of
 33 candidate heading list on certificate) for the office of
 34 and others, at the general election to be held
 35 on, 20....

36 Given under my hand and the seal of my office this
 37 day of, 20.....

38

39 Clerk, County Commission of County.

40 The clerk of each county commission, upon proper applica-
 41 tion made as herein provided, shall issue such credentials and
 42 shall keep a record thereof.

43 (c) The certificate shall be personally signed by duly
 44 registered voters, in their own proper handwriting or by their
 45 marks duly witnessed, who must be residents within the county,
 46 district or other political division represented by the office
 47 sought wherein the canvass or solicitation is made by the person
 48 or persons duly authorized. The signatures need not all be on
 49 one certificate. The number of signatures shall be equal to not
 50 less than two percent of the entire vote cast at the last preceding
 51 general election for the office in the state, district, county or
 52 other political division for which the nomination is to be made,
 53 but in no event shall the number be less than twenty-five. The
 54 number of signatures shall be equal to not less than two percent
 55 of the entire vote cast at the last preceding general election for
 56 any statewide, congressional or presidential candidate, but in no
 57 event shall the number be less than twenty-five. Where two or
 58 more nominations may be made for the same office, the total of
 59 the votes cast at the last preceding general election for the

60 candidates receiving the highest number of votes on each ticket
61 for the office shall constitute the entire vote. No signature on
62 a certificate shall be counted unless it be that of a duly regis-
63 tered voter of the county, district or other political division
64 represented by the office sought wherein the certificate was
65 presented.

66 (d) The certificates shall state the name and residence of
67 each of the candidates; that he or she is legally qualified to hold
68 the office; that the subscribers are legally qualified and duly
69 registered as voters and desire to vote for the candidates; and
70 may designate, by not more than five words, a brief name of the
71 party which the candidates represent and may adopt a device or
72 emblem to be printed on the official ballot. All candidates
73 nominated by the signing of the certificates shall have their
74 names placed on the official ballot as candidates, as if otherwise
75 nominated under the provisions of this chapter.

76 The Secretary of State shall prescribe the form and content
77 of the nomination certificates to be used for soliciting signa-
78 tures. The content shall include the language to be used in
79 giving written and oral notice to each voter that signing of the
80 nominating certificate forfeits that voter's right to vote in the
81 corresponding primary election.

82 Offices to be filled by the voters of more than one county
83 shall use separate petition forms for the signatures of qualified
84 voters for each county.

85 (e) The Secretary of State, or the clerk of the county
86 commission, as the case may be, may investigate the validity of
87 the certificates and the signatures thereon. If upon investigation
88 there may be doubt as to the legitimacy and the validity of the
89 certificate, he or she may request the Attorney General of the
90 state, or the prosecuting attorney of the county, to institute a
91 quo warranto proceeding against the nominee or nominees by

92 certificate to determine his or their right to the nomination to
93 public office, and upon request being made, the Attorney
94 General or prosecuting attorney shall institute the quo warranto
95 proceeding. The clerk of the county commission shall, at the
96 request of the Secretary of State or the clerk of the circuit court,
97 compare the information from any certificate to the county
98 voter registration records in order to assist in determining the
99 validity of any certificates.

100 (f) Any person violating the provisions of this section, in
101 addition to penalties prescribed elsewhere for violation of this
102 chapter, is guilty of a misdemeanor and, upon conviction, shall
103 be fined not more than one thousand dollars, or confined in jail
104 for not more than one year, or both, in the discretion of the
105 court: *Provided*, That no criminal penalty may be imposed
106 upon anyone who signs a nomination certificate and votes in the
107 primary election held after the date the certificate was signed.

§3-5-24. Filing of nomination certificates; time.

1 All certificates nominating candidates for office under the
2 preceding section, including a candidate for the office of
3 presidential elector, shall be filed, in the case of a candidate to
4 be voted for by the voters of the entire state or by any subdivi-
5 sion thereof other than a single county, with the Secretary of
6 State, and in the case of all candidates for county and magiste-
7 rial district offices, including all offices to be filled by the
8 voters of a single county, with the clerk of the county commis-
9 sion, not later than the day preceding the date on which the
10 primary election is held. After that date no certificate shall be
11 received by such officers.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4. Late nominations; stickers.

§3-6-4a. Filing requirements for write-in candidates.

§3-6-4. Late nominations; stickers.

1 If a nomination to fill a vacancy is made by a political party
2 executive committee or, on its failure to so act within the time
3 prescribed by law, is made by the chairman of the committee,
4 and certified to the clerk of the county commission after the
5 ballots to be used at the ensuing election shall have been
6 printed, the clerk shall forthwith lay such certificates before the
7 ballot commissioners who, without delay, shall prepare, or
8 cause to be prepared, and deliver, or cause to be delivered, to
9 the election commissioners of each precinct in which the
10 candidate is to be voted for, a number of stickers, containing
11 only the name of the candidate, at least equal to the total
12 number of ballots provided for the precinct; but no such stickers
13 shall be furnished to or received by any person except a
14 commissioner of election. It is the duty of the commissioners
15 holding the election to deliver such stickers to the poll clerks,
16 who shall, in the presence of the election commissioners, affix
17 one of the stickers in a careful manner at the proper place for
18 the name of the candidate, upon each ballot to be voted at the
19 election, before the poll clerks sign their names on the ballots.
20 The stickers may be delivered to the election officers, by the
21 clerk of the county commission, with the ballots, poll books and
22 other supplies.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-in
2 votes to an office, except delegate to national convention,
3 which is to be filled in a primary, general or special election
4 held under the provisions of this chapter, shall file a write-in
5 candidate's certificate of announcement as provided in this
6 section. No certificate of announcement may be accepted and
7 no person may be certified as a write-in candidate for a political
8 party nomination for any office or for election as delegate to
9 national convention.

10 (a) The write-in candidate's certificate of announcement
11 shall be in a form prescribed by the Secretary of State on which
12 the candidate shall make a sworn statement before a notary
13 public or other officer authorized to give oaths containing the
14 following information:

15 (1) The name of the office sought and the district and
16 division, if any;

17 (2) The legal name of the candidate and the first and last
18 name by which the candidate may be identified in seeking the
19 office;

20 (3) The specific address designating the location at which
21 the candidate resides at the time of filing, including number and
22 street or rural route and box number and city, state and zip
23 code;

24 (4) A statement that the person filing the certificate of
25 announcement is a candidate for the office in good faith; and

26 (5) The words "subscribed and sworn to before me this
27 _____ day of _____, ____" and a space for the
28 signature of the officer giving the oath.

29 (b) The certificate of announcement shall be filed with the
30 filing officer for the political division of the office as prescribed
31 in section seven, article five of this chapter.

32 (c) The certificate of announcement shall be filed with and
33 received by the proper filing officer as follows:

34 (1) Except as provided in subdivisions (2) and (3) of this
35 subsection, the certificate of announcement for any office shall
36 be received no later than the close of business on the twenty-
37 first day before the election at which the office is to be filled;

38 (2) When a vacancy occurs in the nomination of candidates
39 for an office on the ballot resulting from the death of the
40 nominee or from the disqualification or removal of a nominee
41 from the ballot by a court of competent jurisdiction not earlier
42 than the twenty-first day nor later than the fifth day before the
43 general election, the certificate shall be received no later than
44 the close of business on the fifth day before the election or the
45 close of business on the day following the occurrence of the
46 vacancy, whichever is later;

47 (3) When a vacancy occurs in an elective office which
48 would not otherwise appear on the ballot in the election, but
49 which creates an unexpired term of one or more years which,
50 according to the provisions of this chapter, is to be filled by
51 election in the next ensuing election and the vacancy occurs no
52 earlier than the twenty-first day and no later than the fifth day
53 before the general election, the certificate shall be received no
54 later than the close of business on the fifth day before the
55 election or the close of business on the day following the
56 occurrence of the vacancy, whichever is later.

57 (d) Any eligible person who files a completed write-in
58 candidate's certificate of announcement with the proper filing
59 officer within the required time shall be certified by that filing
60 officer as an official write-in candidate:

61 (1) The Secretary of State shall, immediately following the
62 filing deadline, post the names of all official write-in candidates
63 for offices on the ballot in more than one county and certify the
64 name of each official write-in candidate to the clerks of the
65 county commissions of the appropriate counties.

66 (2) The clerk of the county commission shall, immediately
67 following the filing deadline, post the names of all official
68 write-in candidates for offices on the ballot in one county and
69 certify and deliver to the election officials of the appropriate

70 precincts, the names of all official write-in candidates and the
71 office sought by each for statewide, district and county offices
72 on the ballot in the precinct for which valid write-in votes will
73 be counted and the names shall be posted at the office where
74 absentee voting is conducted and at the precincts in accordance
75 with section twenty, article one of this chapter.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-18. Unlawful voting in primary elections; penalties.

1 Any person voting, in any primary election, any ticket of a
2 party other than that of which he is registered as a member, and
3 any election officer receiving the vote of any such person,
4 knowing, or having reason to believe, that such voter is not a
5 member of the party the ticket of which he is voting, shall, at
6 the primary election to be held to nominate candidates for the
7 same office, vote at such primary election; shall in each
8 instance be guilty of a misdemeanor, and, on conviction thereof,
9 shall be fined not more than one thousand dollars, or be
10 confined in the county jail for not more than one year, or both,
11 in the discretion of the court.

ARTICLE 10. FILLING VACANCIES.

§3-10-6. Vacancy in office of circuit court clerk.

1 When a vacancy occurs in the office of clerk of the circuit
2 court, the circuit court by a majority vote of the judges, or the
3 chief judge thereof in vacation, shall fill the same by appoint-
4 ment of a person of the same political party as the officeholder
5 vacating the office until the next general election, or until the
6 completion of the term if the term ends on the thirty-first day of
7 December following the next general election. The person so
8 appointed shall hold office until his or her successor is elected
9 and qualified. At the general election, a clerk shall be elected
10 for the unexpired term if the unexpired term is greater than one

11 year. The circuit court, or the chief judge thereof in vacation,
12 shall cause a notice of the election to be published prior to the
13 election as a Class II-0 legal advertisement in compliance with
14 the provisions of article three, chapter fifty-nine of this code.
15 The publication area for the publication shall be the county. If
16 the vacancy occurs no later than the eighty-fourth day before
17 the primary election held to nominate candidates to be voted for
18 at the general election, at which any vacancy is to be filled,
19 candidates to fill the vacancy shall be nominated at the primary
20 election in accordance with the time requirements and the
21 provisions and procedures prescribed in section eleven, article
22 five of this chapter. If the vacancy occurs after the eighty-fourth
23 day before the primary but not later than the eighty-fourth day
24 before the general election, they shall be nominated by the
25 county executive committee in the manner provided in section
26 nineteen, article five of this chapter, as in the case of filling
27 vacancies in nominations, and the names of the persons, so
28 nominated and certified to the clerk of the county commission
29 of the county, shall be placed upon the ballot to be voted at the
30 next general election.

CHAPTER 102

(H. B. 3002 — By Delegates Amores and Trump)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §3-2-6 and §3-2-31 of the Code of West Virginia, 1931, as amended, all relating to registration of voters generally; providing that a voter may register up to the twenty-first day before an election; and conforming the require-

ment that a voter designate a political party before the primary no later than the close of voter registration before the primary.

Be it enacted by the Legislature of West Virginia:

That §3-2-6 and §3-2-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

§3-2-31. Rules pertaining to voting after registration or change of address within the county.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election shall close on the
2 twenty-first day before the election, or on the first day thereaf-
3 ter which is not a Saturday, Sunday or legal holiday.

4 (b) An application for voter registration, transfer of
5 registration, change of name or change of political party
6 affiliation submitted by an eligible voter by the close of voter
7 registration shall be effective for any subsequent primary,
8 general or special election if the following conditions are met:

9 (1) The application contains the required information as set
10 forth in subsection (c), section five of this article: *Provided*,
11 That incomplete applications for registration containing
12 information which are submitted within the required time may
13 be corrected within four days after the close of registration if
14 the applicant provides the required information; and

15 (2) The application is received by the appropriate clerk of
16 the county commission no later than the hour of the close of
17 registration or is otherwise submitted by the following dead-
18 lines:

19 (A) If mailed, the application shall be addressed to the
20 appropriate clerk of the county commission and postmarked by
21 the postal service no later than the date of the close of registra-
22 tion: *Provided*, That if the postmark is missing or illegible, the
23 application shall be presumed to have been mailed no later than
24 the close of registration if it is received by the appropriate clerk
25 of the county commission no later than the third day following
26 the close of registration;

27 (B) If accepted by a designated agency or motor vehicle
28 licensing office, the application shall be received by that agency
29 or office no later than the close of registration;

30 (C) If accepted through a registration outreach program, the
31 application shall be received by the clerk, deputy clerk or
32 registrar no later than the close of registration; and

33 (3) The verification notice required by the provisions of
34 section sixteen of this article mailed to the voter at the residence
35 indicated on the application is not returned as undeliverable.

**§3-2-31. Rules pertaining to voting after registration or change of
address within the county.**

1 (a) A voter who designates a political affiliation with a
2 major party on a registration application filed no later than the
3 close of voter registration before the primary may vote the
4 ballot of that political party in the primary election. Political
5 parties, through the official action of their state executive
6 committees, shall be permitted to determine whether unaffili-
7 ated voters or voters of other parties shall be allowed to vote
8 that party's primary election ballot upon request.

9 (b) A voter whose registration record lists one residence
10 address but the voter has since moved to another residence
11 address within the precinct shall be permitted to update the
12 registration at the polling place and vote without challenge for
13 that reason.

14 (c) A voter whose registration record lists one residence
15 address but the voter has since moved to another residence
16 address in a different precinct in the same county shall be
17 permitted to update the registration at the polling place serving
18 the new precinct and shall be permitted to vote a challenged or
19 provisional ballot at the new polling place. If the voter's
20 registration is found on the registration records within the
21 county during the canvass and no other challenge of eligibility
22 was entered on election day, the challenge shall be removed and
23 the ballot shall be counted.

24 (d) A voter whose registration record has been placed on an
25 inactive status or transferred to an inactive file and who has not
26 responded to a confirmation notice sent pursuant to the provi-
27 sions of section twenty-four, twenty-five or twenty-six of this
28 article and who offers to vote at the polling place where he or
29 she is registered to vote shall be required to affirm his or her
30 present residence address under penalty of perjury, as provided
31 in section thirty-six of this article.

CHAPTER 103

**(Com. Sub. for H. B. 2950 — By Mr. Speaker, Mr. Kiss,
and Delegates Longstreth, Manchin, Caputo,
Perdue, Martin, Amores and Beane)**

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all relating to electronic voting systems; requiring a paper

copy of a voter's votes when using an electronic voting system to vote; providing that the paper copy can only be used for a random count of precincts or if an election is contested, challenged or disputed; providing that the Secretary of State may promulgate rules; authorizing use of ballot-marking accessible voting systems; setting forth minimum requirements for ballot-marking accessible voting systems; providing for use of ballot-scanning device; establishing standards for ballot-scanning devices; and making certain technical changes that clarify access to maintenance and examination of sealed post-election materials and equipment during the canvass and requiring the immediate resealing.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9 and §3-4A-28 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 §3-4A-9a and §3-4A-9b, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 may not be approved by the State Election Commission or be
3 purchased, leased or used by any county commission unless it
4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;

7 (2) It is constructed to ensure that no person, except in
8 instances of open voting as provided in this section, can see or
9 know for whom any voter has voted or is voting;

10 (3) It permits each voter to vote at any election for all
11 persons and offices for whom and which he or she is lawfully
12 entitled to vote, whether or not the name of any person appears
13 on a ballot or ballot label as a candidate; and it permits each
14 voter to vote for as many persons for an office as he or she is
15 lawfully entitled to vote for; and to vote for or against any
16 question upon which he or she is lawfully entitled to vote. The
17 automatic tabulating equipment used in electronic voting
18 systems is to reject choices recorded on any ballot if the number
19 of choices exceeds the number to which a voter is entitled;

20 (4) It permits each voter to deposit, write in, affix upon a
21 ballot, card, envelope or other medium to be provided for that
22 purpose, ballots containing the names of persons for whom he
23 or she desires to vote whose names do not appear upon the
24 ballots or ballot labels;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains a program deck consisting of cards that are
30 sequentially numbered or consisting of a computer program
31 disk, diskette, tape or other programming media containing
32 sequentially numbered program instructions and coded or
33 otherwise protected from tampering or substitution of the media
34 or program instructions by unauthorized persons and capable of
35 tabulating all votes cast in each election;

36 (7) It contains two standard validation test decks approved
37 as to form and testing capabilities by the State Election Com-
38 mission;

39 (8) It correctly records and counts accurately all votes cast
40 for each candidate and for and against each question appearing
41 upon the ballots or ballot labels;

42 (9) It permits each voter at any election other than primary
43 elections by one mark or punch to vote a straight party ticket,
44 as provided in section five, article six of this chapter;

45 (10) It permits each voter in primary elections to vote only
46 for the candidates of the party for which he or she is legally
47 permitted to vote and precludes him or her from voting for any
48 candidate seeking nomination by any other political party,
49 permits him or her to vote for the candidates, if any, for
50 nonpartisan nomination or election and permits him or her to
51 vote on public questions;

52 (11) It, where applicable, is provided with means for
53 sealing or electronically securing the vote recording device to
54 prevent its use and to prevent tampering with ballot labels, both
55 before the polls are open or before the operation of the vote
56 recording device for an election is begun and immediately after
57 the polls are closed or after the operation of the vote recording
58 device for an election is completed;

59 (12) It has the capacity to contain the names of candidates
60 constituting the tickets of at least nine political parties and
61 accommodates the wording of at least fifteen questions;

62 (13) (A) Direct recording electronic voting machines must
63 generate a paper copy of each voter's votes that will be auto-
64 matically kept within a storage container, that is locked, closely
65 attached to the direct recording electronic voting machine, and
66 inaccessible to all but authorized voting officials, who will
67 handle such storage containers and such paper copies contained
68 therein in accordance with section nineteen of this article.

69 (B) The paper copy of the voter's vote shall be generated at
70 the time the voter is at the voting station using the direct
71 recording electronic voting machine.

72 (C) The voter may examine the paper copy visually or
73 through headphone readout, and may accept or reject the
74 printed copy.

75 (D) The voter may not touch, handle or manipulate the
76 printed copy manually in any way.

77 (E) Once the printed copy of the voter's votes is accepted
78 by the voter as correctly reflecting the voter's intent, but not
79 before, it will automatically be stored for recounts or random
80 checks and the electronic vote will be cast within the computer
81 mechanism of the direct recording electronic voting machine.

82 (F) Direct recording electronic voting machines with a
83 mandatory paper copy shall be approved by the Secretary of
84 State. The Secretary of State may promulgate rules and emer-
85 gency rules to implement or enforce this subsection pursuant to
86 the provisions of section five, article three, chapter twenty-nine-
87 a of this code.

88 (14) Where vote recording devices are used, they shall:

89 (A) Be durably constructed of material of good quality and
90 in a workmanlike manner and in a form which makes it safely
91 transportable;

92 (B) Be constructed with frames for the placing of ballot
93 labels that the labels upon which are printed the names of
94 candidates and their respective parties, titles of offices and
95 wording of questions are reasonably protected from mutilation,
96 disfigurement or disarrangement or are constructed to ensure
97 that the screens upon which appear the names of the candidates

98 and their respective parties, titles of offices and wording of
99 questions are reasonably protected from any modification;

100 (C) Bear a number that will identify it or distinguish it from
101 any other machine;

102 (D) Be constructed to ensure that a voter may easily learn
103 the method of operating it and may expeditiously cast his or her
104 vote for all candidates of his or her choice and upon any public
105 question;

106 (E) Be accompanied by a mechanically or electronically
107 operated instruction model which shows the arrangement of
108 ballot labels, party columns or rows, and questions;

109 (F) For electronic voting systems that utilize a screen upon
110 which votes may be recorded by means of a stylus or by means
111 of touch, be constructed to provide for the direct electronic
112 recording and tabulating of votes cast in a system specifically
113 designed and engineered for the election application;

114 (G) For electronic voting systems that utilize a screen upon
115 which votes may be recorded by means of a stylus or by means
116 of touch, be constructed to prevent any voter from voting for
117 more than the allowable number of candidates for any office, to
118 include an audible or visual signal, or both, warning any voter
119 who attempts to vote for more than the allowable number of
120 candidates for any office or who attempts to cast his or her
121 ballot prior to its completion and are constructed to include a
122 visual or audible confirmation, or both, to the voter upon
123 completion and casting of the ballot;

124 (H) For electronic voting systems that utilize a screen upon
125 which votes may be recorded by means of a stylus or by means
126 of touch, be constructed to present the entire ballot to the voter,
127 in a series of sequential pages, and to ensure that the voter sees
128 all of the ballot options on all pages before completing his or

129 her vote and to allow the voter to review and change all ballot
130 choices prior to completing and casting his or her ballot;

131 (I) For electronic voting systems that utilize a screen upon
132 which votes may be recorded by means of a stylus or by means
133 of touch, be constructed to allow election commissioners to
134 spoil a ballot where a voter fails to properly cast his or her
135 ballot, has departed the polling place and cannot be recalled by
136 a poll clerk to complete his or her ballot;

137 (J) For electronic voting systems that utilize a screen upon
138 which votes may be recorded by means of a stylus or by means
139 of touch, be constructed to allow election commissioners, poll
140 clerks, or both, to designate, mark or otherwise record provi-
141 sional ballots;

142 (K) For electronic voting systems that utilize a screen upon
143 which votes may be recorded by means of a stylus or by means
144 of touch, consist of devices which are independent,
145 nonnetworked voting systems in which each vote is recorded
146 and retained within each device's internal nonvolatile electronic
147 memory and contain an internal security, the absence of which
148 prevents substitution of any other device;

149 (L) For electronic voting systems that utilize a screen upon
150 which votes may be recorded by means of a stylus or by means
151 of touch, store each vote in no fewer than three separate,
152 independent, nonvolatile electronic memory components and
153 that each device contains comprehensive diagnostics to ensure
154 that failures do not go undetected;

155 (M) For electronic voting systems that utilize a screen upon
156 which votes may be recorded by means of a stylus or by means
157 of touch, contain a unique, embedded internal serial number for
158 auditing purposes for each device used to activate, retain and
159 record votes;

160 (N) For electronic voting systems that utilize a screen upon
161 which votes may be recorded by means of a stylus or by means
162 of touch, be constructed to record all preelection, election and
163 post-election activities, including all ballot images and system
164 anomalies, in each device's internal electronic memory and are
165 to be accessible in electronic or printed form;

166 (O) For electronic voting systems that utilize a screen upon
167 which votes may be recorded by means of a stylus or by means
168 of touch, be constructed with a battery backup system in each
169 device to, at a minimum, prevent the loss of any votes, as well
170 as all preelection, election and post-election activities, including
171 all ballot images and system anomalies, stored in the device's
172 internal electronic memory and to allow voting to continue for
173 two hours of uninterrupted operation in case of an electrical
174 power failure; and

175 (P) For electronic voting systems that utilize a screen upon
176 which votes may be recorded by means of a stylus or by means
177 of touch, be constructed to prevent the loss of any votes, as well
178 as all preelection, election and post-election activities, including
179 all ballot images and system anomalies, stored in each device's
180 internal electronic memory even in case of an electrical and
181 battery power failure.

**§3-4A-9a. Authorization for ballot-marking voting systems;
minimum requirements.**

1 (a) For purposes of this section, "ballot-marking accessible
2 voting system" means a device which allows voters, including
3 voters with disabilities, to mark an optical scanning or mark-
4 sensing voting system ballot, privately and independently. The
5 ballot-marking device is capable of marking voter selections on
6 an optically readable or mark-sensing ballot which shall be
7 subsequently read and tallied on state certified optically
8 readable or mark-sensing ballot tabulating and reporting

9 systems. Counties are hereby permitted to obtain and employ
10 ballot-marking accessible voting systems that are approved by
11 the State Election Commission.

12 (b) The ballot-marking accessible voting device shall be a
13 completely integrated ballot-marking device that is designed to
14 allow voters to either view ballot choices through a high
15 resolution visual display or listen to ballot choices with
16 headphones and then enter ballot selections directly through
17 specially designed, integrated accessibility keys.

18 (c) Ballot-marking accessible voting systems may be used
19 for the purpose of marking or scanning optically readable or
20 mark-sensing ballots cast in all general, special and primary
21 elections and shall meet the following specific requirements:

22 (1) The ballot-marking accessible voting system, system
23 firmware and programming software must be certified by an
24 independent testing authority, according to current federal
25 voting system standards and be approved by the State Elections
26 Commission prior to entering into any contract.

27 (2) The ballot-marking accessible voting system shall,
28 additionally:

29 (A) Alert the voter if the voter has made more ballot
30 selections than the law allows for an individual office or ballot
31 issue;

32 (B) Alert the voter if the voter has made fewer ballot
33 selections than the law allows for an individual office or ballot
34 issue;

35 (C) Allow the voter to independently review all ballot
36 choices and make any corrections, before the ballot is marked;

37 (D) Provide the voter with the opportunity to make a
38 write-in ballot choice, where allowed by state law;

39 (E) Allow voters with disabilities to mark their ballots, in
40 complete independence, and in conformity with both federal
41 and state law concerning mandatory accessibility for disabled
42 persons;

43 (F) Allow blind or visually impaired voters to vote in
44 complete privacy;

45 (G) Provide voters with an opportunity to change ballot
46 selections, or correct errors, before the ballot is marked for
47 voting, including the opportunity to correct the error through
48 the issuance of a replacement ballot if the voter was otherwise
49 unable to change the ballot or correct the error;

50 (H) Provide voters with the ability to view all ballot
51 selections through a high resolution visual display or to have all
52 ballot selections read to the voter through headphones;

53 (I) Ensure complete ballot privacy, while employing the
54 ballot-marking audio system and providing the voter with the
55 option to turn off the visual ballot display;

56 (J) Include a completely integrated voter input keypad,
57 using commonly accepted voter accessibility keys with Braille
58 markings;

59 (K) Include the ability for a voter to employ a sip/puff
60 device to enter ballot choices;

61 (L) Allow the voter to magnify all ballot choices and to
62 adjust both the volume of the audio feature and the speed of
63 ballot presentation;

64 (M) Allow the voter to employ his or her own headset as
65 well as the headset provided with the ballot-marking device
66 while being equipped with multiple output connections to
67 accommodate different headsets;

- 68 (N) Have multiple-language capability; and
- 69 (O) Allow the voter to verify that:
- 70 (i) An optical scan ballot inserted into the device at the start
71 of voting is blank; and
- 72 (ii) The voted optical scan ballot that is produced by the
73 device is voted as the voter intended.
- 74 (d) The Secretary of State is hereby directed to propose
75 rules and emergency rules for legislative approval in accor-
76 dance with the provisions of article three, chapter twenty-nine-a
77 of this code designed to ensure that any system employed by a
78 county under the provisions of this section is publicly tested
79 prior to use in election.

**§3-4A-9b. Authorization for precinct ballot-scanning device;
minimum requirements.**

- 1 (a) For purposes of this section, “precinct ballot-scanning
2 device” means a device used by the voter at the precinct on
3 election day or during early voting for the purpose of scanning
4 the voter’s ballot after the ballot has been voted but prior to
5 depositing the ballot into the ballot box.
- 6 (b) The precinct ballot-scanning device may be used for the
7 purpose of scanning optically readable ballots cast in all
8 primary, general and special elections.
- 9 (c) The precinct ballot-scanning device, firmware and
10 programming software must be certified by an independent
11 testing authority, according to current federal standards and be
12 approved by the State Election Commission. No election
13 official may enter into any contract to purchase, rent, lease or
14 otherwise acquire any precinct ballot-scanning device, firmware
15 or software not approved by the State Election Commission.

16 (d) The precinct ballot-scanning device shall additionally:

17 (1) Alert the voter if the voter has made more ballot
18 selections than the law allows for an individual office or ballot
19 issue;

20 (2) Alert the voter if the voter has made fewer ballot
21 selections than the law allows for an individual office or ballot
22 issue; and

23 (3) Allow voters an opportunity to change ballot selections,
24 or correct errors, including the opportunity to correct the error
25 through the issuance of a replacement ballot if the voter was
26 otherwise unable to change the ballot or correct the error.

27 (e) The precinct ballot-scanning device shall not be used for
28 tabulating election results.

29 (f) The Secretary of State is hereby directed to propose
30 rules and emergency rules for legislative approval in accor-
31 dance with the provisions of article three, chapter twenty-nine-a
32 of this code in accordance with the provisions of this section.

**§3-4A-28. Post-election custody and inspection of vote recording
devices; canvass and recounts.**

1 (a) The vote recording devices, the ballot labels, ballot
2 cards, program decks and standard validation test decks are to
3 remain sealed during the canvass of the returns of the election
4 except that the equipment may be opened for the canvass and
5 must be resealed immediately thereafter. During a seven day
6 period after the completion of the canvass, any candidate or the
7 local chair of a political party may be permitted to examine any
8 of the materials sealed: *Provided*, That a notice of the time and
9 place of the examination is to be posted at the central counting
10 center before and on the hour of nine o'clock in the morning on
11 the day the examination is to occur, and all persons entitled to

12 be present at the central counting center may, at their option, be
13 present. Upon completion of the canvass and after a seven-day
14 period has expired, the vote recording devices, the ballot labels,
15 ballot cards, program decks and standard validation test decks
16 are to be sealed for one year: *Provided, however,* That the vote
17 recording devices and all tabulating equipment may be released
18 for use in any other lawful election to be held more than ten
19 days after the canvass is completed, and any of the electronic
20 voting equipment herein discussed may be released for inspec-
21 tion or review by a request of a circuit court or the Supreme
22 Court of Appeals.

23 (b) In canvassing the returns of the election, the board of
24 canvassers shall examine all of the vote recording devices, the
25 ballot labels, ballot cards, the automatic tabulating equipment
26 used in the election and those voter verified paper ballots
27 generated by direct recording electronic vote machines as
28 required by subsection (d) of this section, and shall determine
29 the number of votes cast for each candidate and for and against
30 each question and by this examination shall procure the correct
31 returns and ascertain the true results of the election. Any
32 candidate or his or her party representative may be present at
33 the examination.

34 (c) If any candidate demands a recount of the votes cast at
35 an election, the voter verified paper ballot shall be used for
36 requested recounts, according to the same rules as are utilized
37 in the original vote count pursuant to section twenty-seven of
38 this article.

39 (d) During the canvass and any requested recount, at least
40 five percent of the precincts are to be chosen at random and the
41 voter verified paper ballots are to be counted manually.
42 Whenever the vote total obtained from the manual count of the
43 voter verified paper ballots for all votes cast in a randomly
44 selected precinct:

45 (1) Differs by more than one percent from the automated
46 vote tabulation equipment; or

47 (2) Results in a different prevailing candidate or outcome,
48 either passage or defeat, of one or more ballot issues such
49 precincts for any contest or ballot issue; then the discrepancies
50 shall immediately be disclosed to the public and all of the
51 voter-verified paper ballots shall be manually counted. In every
52 case that there is a difference between the vote totals obtained
53 from the automated vote tabulation equipment and the corre-
54 sponding vote totals obtained from the manual count of the
55 voter-verified paper ballots, the manual count of the
56 voter-verified paper ballots shall be the vote of record.

CHAPTER 104

(H. B. 3281 — By Delegates Amores and Craig)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §3-9-1 of the Code of West Virginia, 1931, as amended, relating to the crime of altering, destroying, or tampering with computer equipment containing voter registration information; accessing or attempting to access confidential voter registration information; and penalties.

Be it enacted by the Legislature of West Virginia:

That §3-9-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. OFFENSES AND PENALTIES.**§3-9-1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties.**

1 Every person named and identified in this section, who
2 shall violate any of the provisions of the election laws as herein
3 specified, shall be deemed guilty of a felony and, upon conviction
4 thereof, shall be punished by imprisonment in a state
5 correctional facility for not less than one nor more than ten
6 years:

7 (a) Any commissioner of election or poll clerk who shall
8 knowingly make or cause to be made, or conspire with others
9 to make, a false return of the result of the votes cast for any
10 candidate at any precinct in an election held pursuant to law; or

11 (b) Any commissioner of election receiving the ballot of a
12 voter to be deposited in the ballot box at any election precinct,
13 who shall put another ballot in the box instead of the one
14 received by him; or

15 (c) Any commissioner of election or poll clerk, who
16 knowingly shall count and string a ballot not taken from the
17 ballot box, in lieu of one taken, or which should have been
18 taken from such ballot box; or

19 (d) Any commissioner of a county court, whether acting as
20 such or ex officio as a member of a board of canvassers or
21 otherwise, clerk of a county court, or other person, who shall,
22 except as authorized by law, abstract any ballot from any
23 package of ballots voted, sealed or returned from any election
24 precinct, either before or after they are filed with the clerk of
25 the county court, or who shall in any manner change any such
26 ballot from what it was when voted by the voter, or who shall
27 put another ballot in such package in the place of the one so
28 abstracted therefrom; or

29 (e) Any commissioner of a county court, whether acting as
30 such commissioner or ex officio as a member of a board of
31 canvassers, or otherwise, who shall knowingly make and enter
32 of record, or in any way aid, counsel, or advise the same to be
33 done, or permit the same to be done without objection on his
34 part, any false or fraudulent statement of the result of any
35 election held within the county; or

36 (f) Any person who shall falsely make, or fraudulently
37 deface, or fraudulently destroy, any certificate of nomination,
38 or any part thereof, or file any certificate of nomination,
39 knowing the same, or any part thereof, to be falsely made, or
40 suppress any certificate of nomination which has been duly
41 filed, or any part thereof; or erase, deface, or change in any
42 manner, any election record, or any ballot, poll book, tally sheet
43 or certificate of election, deposited with either of the clerks of
44 the county or circuit courts; or conspire with another to do any
45 of said acts; or induce or attempt to induce any other persons to
46 do any of said acts; or

47 (g) Any person who shall aid, assist, counsel or advise in
48 the commission of any of the offenses above specified, whether
49 or not said acts, or any of them be committed or attempted to be
50 committed; or

51 (h) Any person, who, without the assent of another, shall
52 sign the name of such other person to any certificate, affidavit,
53 ballot, report, statement or writing, required under any provi-
54 sion of this chapter, with intent to mislead and deceive; or who
55 shall use or employ any certificate, affidavit, ballot, report,
56 statement or writing to which the name of a person has been
57 signed without the authority of such person, knowing that such
58 name has been so signed with intent to mislead or deceive; or

59 (i) Any clerk of a court, poll clerk, member of the board of
60 ballot commissioners, commissioner of election, or messenger
61 intrusted with the custody of the ballots, who shall open

62 unlawfully any of the packages in which the ballots are con-
63 tained, or permit any of them to be opened, or destroy any of
64 such ballots, or permit them to be destroyed, or give, or deliver
65 any such packages or ballots to any person not lawfully entitled
66 to receive them, as in this chapter provided, or conspire to
67 procure, or in any way aid, abet, or connive at any robbery, loss
68 or unlawful destruction of any such ballots or packages; or

69 (j) Any person not duly authorized by law who shall, during
70 the progress of any election in this state, or after the closing of
71 the polls and before the ballots are counted and the results
72 ascertained, or within twelve months thereafter, open without
73 breaking, or break open or violate, the seals or locks of any
74 ballot box, paper, envelope or bag, in which ballots have been
75 deposited at or after such election, or who shall obtain posses-
76 sion of such ballot box, paper, envelope or bag containing such
77 ballots, and cancel, withhold, or destroy such ballots, or who
78 shall fraudulently or forcibly add to or diminish the number of
79 ballots legally deposited therein, or who shall fraudulently
80 make any erasure or alteration of any kind, upon any tally sheet,
81 poll book, list of voters, or election returns, deposited therein;
82 or

83 (k) Any person who knowingly, willfully and without
84 authorization from the Secretary of State, a county clerk or
85 municipal clerk directly or indirectly, tampers with, deletes,
86 alters, damages or destroys or attempts to tamper with, delete,
87 alter, damage or destroy any computer or computer network
88 that contains voter registration files, records or data or who
89 knowingly introduces, directly or indirectly, a computer
90 contaminant into any computer, computer program or computer
91 network that contains voter registration files, records or data; or

92 (l) Any person who knowingly, directly or indirectly,
93 accesses, attempts to access, or causes to be accessed any voter
94 registration files, records or data stored on or in a computer

95 owned by the Secretary of State, a county commission or
96 municipality, without authorization; or

97 (m) Any person employed by the Secretary of State, a
98 county commission or a municipality who knowingly, directly
99 or indirectly accesses, attempts to access or causes to be
100 accessed any voter registration files, records or data stored on
101 or in a computer in an unauthorized manner, in excess of his or
102 her authorization or for unauthorized use or purpose.

CHAPTER 105

**(Com. Sub. for H. B. 3068 — By Mr. Speaker, Mr. Kiss, and Delegates
Amores, DeLong, Varner, Pethtel, Cann and Pino)**

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §21-3C-5 and §21-3C-11 of the Code of West Virginia, 1931, as amended, all relating to elevator inspections; authorizing private inspectors to conduct annual inspections of elevators; authorizing the Division of Labor to perform compliance inspections; and increasing fees for elevator permits.

Be it enacted by the Legislature of West Virginia:

That §21-3C-5 and §21-3C-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

§21-3C-11. Disposition of fees; legislative rules.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

1 (a) A county or municipality may hire a private inspector or
2 contract with any person who possesses a West Virginia
3 elevator inspector's certificate of competency issued by the
4 Division.

5 (b) The county or municipality shall ensure that every
6 elevator which has been in use for five years or more is
7 inspected annually. A private inspector may inspect any
8 elevator in the state. A division inspector may inspect any
9 elevator in the state for the purpose of monitoring whether
10 private inspectors are in compliance with the provisions of this
11 article.

12 (c)(1) The county or municipality shall ensure that each
13 newly installed elevator within its jurisdiction is inspected and
14 issued a certificate of acceptance by the Division prior to being
15 placed in service.

16 (2) A certificate of acceptance shall only be issued if the
17 elevator was installed in compliance with the safety standards
18 set forth in the American Society of Mechanical Engineers
19 Safety Code for Elevators and Escalators (ASME) A17.1-3,
20 "Safety Code for Elevators" and ASME A18.1, "Safety Code
21 for Platform Lifts and Stairway Chairlifts".

22 (3) The acceptance inspection shall be subject to the same
23 procedures and requirements as any other elevator inspection.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The Division shall propose for promulgation legislative
2 rules pursuant to article three, chapter twenty-nine-a of this
3 code in order to implement the provisions of this article.

4 (b) The rules proposed for promulgation pursuant to
5 subsection (a) of this section shall establish the amount of any
6 fee authorized pursuant to the provisions of this article:
7 *Provided*, That in no event may the fees established for the
8 issuance of permits exceed fifty dollars.

9 (c) All fees collected pursuant to the provisions of this
10 article shall be deposited in an appropriated special revenue
11 account hereby created in the State Treasury known as the
12 “Elevator Safety Fund” and expended for the implementation
13 and enforcement of this article: *Provided*, That amounts
14 collected which are found from time to time to exceed funds
15 needed for the purposes set forth in this article may be trans-
16 ferred to other accounts or funds and redesignated for other
17 purposes by appropriation of the Legislature.

18 (d) The Division may enter into agreements with counties
19 and municipalities whereby such counties and municipalities be
20 permitted to retain the inspection fees collected to support the
21 enforcement activities at the local level.

CHAPTER 106

**(Com. Sub. for S. B. 455 — By Senators Helmick, Hunter, Bowman,
Facemyer, Sharpe, Sprouse, Kessler, McCabe, Edgell, Plymale,
Love, Prezioso, Dempsey, Barnes and Jenkins)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §24-2-4e; and to amend
and reenact §46-9-109 of said code, all relating generally to the

financing of environmental control activities by certain qualified electric utilities through the issuance of environmental control bonds.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-4e; and that §46-9-109 of said code be amended and reenacted, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Chapter

24. Public Service Commission.

46. Uniform Commercial Code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4e. Environmental control bonds.

1 (a) *Legislative findings.* — The Legislature hereby finds
2 and declares: (i) That electric utilities in the state face the need
3 to install and construct emission control equipment at existing
4 generating facilities in the state in order to meet the require-
5 ments of existing and anticipated environmental laws and
6 regulations and otherwise to reduce emissions from those
7 electric generating facilities; (ii) that the capital costs associ-
8 ated with the installation and construction of emission control
9 equipment are considerable; (iii) that the financial condition of
10 some electric utilities may make the use of traditional utility
11 financing mechanisms to finance the construction and installa-
12 tion of emission control equipment difficult or impossible and
13 that this situation may cause such utilities to defer the installa-
14 tion of emission control equipment, to incur higher financing
15 costs, to minimize or eliminate their use of high-sulfur coal
16 mined in the State or to use other financing alternatives that are
17 less favorable to the state and its citizens; (iv) that the construc-

18 tion and installation of emission control equipment by utilities
19 will create public health and economic benefits to the state and
20 its citizens, including, without limitation, emissions reductions,
21 economic development, job growth and retention and the
22 increased use of high-sulfur coal mined in the State; (v) that
23 customers of electric utilities in the state have an interest in the
24 construction and installation of emission control equipment at
25 electric-generating facilities in the state at a lower cost than
26 would be afforded by traditional utility financing mechanisms;
27 (vi) that alternative financing mechanisms exist which can
28 result in lower costs to customers and the use of these mecha-
29 nisms can ensure that only those costs associated with the
30 construction and installation of emission control equipment at
31 electric-generating facilities located in the state that generate
32 electric energy for their ultimate use will be included in
33 customer rates; and (vii) that in order to use such alternative
34 financing mechanisms, the Commission must be empowered to
35 adopt a financing order that advances these goals. The
36 Legislature, therefore, finds that it is in the interest of the state
37 and its citizens to encourage and facilitate the use of alternative
38 financing mechanisms that will enable certain utilities to
39 finance the construction and installation of emission control
40 equipment at electric-generating facilities in the state under
41 certain conditions and to empower the Commission to review
42 and approve alternative financing mechanisms as being
43 consistent with the public interest, as set forth in this section.

44 (b) *Definitions.* —

45 As used in this section:

46 (1) “Adjustment mechanism” means a formula-based
47 mechanism for making any adjustments to the amount of the
48 environmental control charges that are necessary to correct for
49 any over-collection or under-collection of the environmental
50 control charges or otherwise to ensure the timely and complete

51 payment and recovery of environmental control costs and
52 financing costs. The adjustment mechanism is not to be used
53 as a means to authorize the issuance of environmental control
54 bonds in a principal amount greater, or the payment or recov-
55 ery of environmental control costs in an amount greater, than
56 that which was authorized in the financing order which
57 established the adjustment mechanism.

58 (2) "Ancillary agreement" means any bond insurance
59 policy, letter of credit, reserve account, surety bond, swap
60 arrangement, hedging arrangement, liquidity or credit support
61 arrangement or other similar agreement or arrangement entered
62 into in connection with the issuance of environmental control
63 bonds that is designed to promote the credit quality and
64 marketability of the bonds or to mitigate the risk of an increase
65 in interest rates.

66 (3) "Assignee" means any person or legal entity to which
67 an interest in environmental control property is sold, assigned,
68 transferred or conveyed (other than as security) and any
69 successor to or subsequent assignee of such a person or legal
70 entity.

71 (4) "Bondholder" means any holder or owner of an
72 environmental control bond.

73 (5) "Environmental control activity" means any of the
74 following:

75 (A) The construction, installation and placing in operation
76 of environmental control equipment at a qualifying generating
77 facility.

78 (B) The shutdown or retirement of any existing plant,
79 facility, unit or other property at a qualifying generating
80 facility to reduce, control or eliminate environmental emis-
81 sions.

82 (6) “Environmental control bonds” means bonds, debentures,
83 notes, certificates of participation, certificates of beneficial
84 interest, certificates of ownership or other evidences of
85 indebtedness or ownership that are issued by a qualifying
86 utility or an assignee, the proceeds of which are used directly
87 or indirectly to recover, finance, or refinance environmental
88 control costs and financing costs, and that are secured by or
89 payable from environmental control revenues.

90 (7) “Environmental control charge” means a nonbypassable
91 charge paid by a customer of a qualifying utility for the
92 recovery of environmental control costs and financing costs.

93 (8) “Environmental control cost” means any cost, including
94 capitalized cost relating to regulatory assets and capitalized
95 cost associated with design and engineering work, incurred or
96 expected to be incurred by a qualifying utility in undertaking
97 an environmental control activity and, with respect to an
98 environmental control activity, includes the unrecovered value
99 of property that is retired, together with any demolition or
100 similar cost that exceeds the salvage value of the property.
101 “Environmental control cost” includes preliminary expenses
102 and investments associated with environmental control activity
103 that are incurred prior to the issuance of a financing order and
104 that are to be reimbursed from the proceeds of environmental
105 control bonds. “Environmental control cost” does not include
106 any monetary penalty, fine or forfeiture assessed against a
107 qualifying utility by a government agency or court under a
108 federal or state environmental statute, rule or regulation.

109 (9) “Environmental control equipment” means any device,
110 equipment, structure, process, facility or technology that is
111 designed for the primary purpose of preventing, reducing or
112 remediating environmental emissions and that has been or is to
113 be constructed or installed at a qualifying generating facility.

114 (10) "Environmental control property" means all of the
115 following:

116 (A) The rights and interests of a qualifying utility or an
117 assignee under a financing order, including the right to impose,
118 charge, collect and receive environmental control charges in
119 the amount necessary to provide for the full payment and
120 recovery of all environmental control costs and financing costs
121 determined to be recoverable in the financing order and to
122 obtain adjustments to the charges as provided in this section
123 and any interest in the rights and interests.

124 (B) All revenues, receipts, collections, rights to payment,
125 payments, moneys, claims or other proceeds arising from the
126 rights and interests specified in paragraph (A) of this subdivi-
127 sion.

128 (11) "Environmental control revenues" means all revenues,
129 receipts, collections, payments, moneys, claims or other
130 proceeds arising from environmental control property.

131 (12) "Environmental emissions" means the discharge or
132 release of emissions from electric generating facilities into the
133 air, land or waters of the state.

134 (13) "Equity ratio" means, as of any given time of determi-
135 nation, the common equity of a qualifying utility as calculated
136 pursuant to the uniform system of accounts required to be used
137 in the filings of the qualifying utility with the federal Energy
138 Regulatory Commission. "Equity ratio" shall be calculated
139 excluding the effect of the issuance of environmental control
140 bonds or the write down of discontinued operations.

141 (14) "Financing cost" means the costs to issue, service,
142 repay, or refinance environmental control bonds, whether
143 incurred or paid upon issuance of the bonds or over the life of

144 the bonds, and approved for recovery by the Commission in a
145 financing order. “Financing cost” may include any of the
146 following:

147 (A) Principal, interest and redemption premiums that are
148 payable on environmental control bonds.

149 (B) Any payment required under an ancillary agreement
150 and any amount required to fund or replenish a reserve account
151 or other account established under any indenture, ancillary
152 agreement or other financing document relating to the environ-
153 mental control bonds.

154 (C) The cost of retiring or refunding any existing debt and
155 equity securities of a qualifying utility in connection with the
156 issuance of environmental control bonds, but only to the extent
157 the securities were issued for the purpose of financing environ-
158 mental control costs.

159 (D) Any costs incurred by or on behalf of or allocated to a
160 qualifying utility to obtain modifications of or amendments to
161 any indenture, financing agreement, security agreement or
162 similar agreement or instrument relating to any existing
163 secured or unsecured obligation of a qualifying utility or an
164 affiliate of a qualifying utility, or any costs incurred by or
165 allocated to a qualifying utility to obtain any consent, release,
166 waiver or approval from any holder of such an obligation, that
167 are necessary to be incurred to permit a qualifying utility to
168 issue or cause the issuance of environmental control bonds.

169 (E) Any taxes, franchise fees or license fees imposed on
170 environmental control revenues.

171 (F) Any cost related to issuing and servicing environmental
172 control bonds or the application for a financing order, includ-
173 ing, without limitation, servicing fees and expenses, trustee

174 fees and expenses, legal fees and expenses, administrative fees,
175 placement fees, capitalized interest, rating agency fees and any
176 other related cost that is approved for recovery in the financing
177 order.

178 (15) "Financing order" means an order of the Commission
179 pursuant to subsection (d) of this section that grants, in whole
180 or in part, an application filed pursuant to subsection (c) of this
181 section and that authorizes the construction and installation of
182 environmental control equipment, the issuance of environmen-
183 tal control bonds in one or more series, the imposition, charg-
184 ing and collection of environmental control charges, and the
185 creation of environmental control property. A financing order
186 may set forth conditions or contingencies on the effectiveness
187 of the relief authorized therein and may grant relief that is
188 different from that which was requested in the application.

189 (16) "Financing parties" means:

190 (A) Any trustee, collateral agent or other person acting for
191 the benefit of any bondholder.

192 (B) Any party to an ancillary agreement the rights and
193 obligations of which relate to or depend upon the existence of
194 environmental control property, the enforcement and priority
195 of a security interest in environmental control property, the
196 timely collection and payment of environmental control
197 revenues or a combination of these factors.

198 (17) "Financing statement" means a financing statement as
199 defined in subdivision (39), subsection (a), section one hundred
200 two, article nine, chapter forty-six of this code.

201 (18) "Investment grade" means, with respect to the
202 unsecured debt obligations of a qualifying utility at any given
203 time of determination, a rating that is within the top four

204 investment rating categories as published by at least one
205 nationally recognized statistical rating organization as recog-
206 nized by the United States Securities and Exchange Commis-
207 sion.

208 (19) “Nonbypassable” means that the payment of an
209 environmental control charge may not be avoided by any
210 electric service customer located within a utility service area,
211 and must be paid by any such customer that receives electric
212 delivery service from the qualifying utility for as long as the
213 environmental control bonds are outstanding.

214 (20) “Nonutility affiliate” means, with respect to any
215 qualifying utility, a person that: (i) Is an affiliate of the
216 qualifying utility as defined in 15 U. S. C. §79b(a)(11); and (ii)
217 is not a public utility that provides retail utility service to
218 customers in the state within the meaning of section two, article
219 one of this chapter.

220 (21) “Parent” means, with respect to any qualifying utility,
221 any registered holding company or other person that holds a
222 majority ownership or membership interest in the qualifying
223 utility.

224 (22) “Qualifying generating facility” means any electric
225 generating facility that: (i) Has generated electric energy for
226 ultimate sale to customers in the state before the effective date
227 of this section; and (ii) is owned by a qualifying utility or, on
228 the expected date of issuance of the environmental control
229 bonds authorized in a financing order, will be owned by a
230 qualifying utility.

231 (23) “Qualifying utility” means:

232 (A) Any public utility that is: (i) Engaged in the delivery of
233 electric energy to customers in this state; and (ii) at any time

234 between the date which is two years immediately preceding the
235 effective date of this section and the date on which an applica-
236 tion for a financing order is made, has or had a credit rating on
237 its unsecured debt obligations that is below investment grade.

238 (B) For so long as environmental control bonds issued
239 pursuant to a financing order are outstanding and the related
240 environmental control costs and financing costs have not been
241 paid in full, the public utility to which the financing order was
242 issued and its successors.

243 (24) “Registered holding company” means, with respect to
244 a qualifying utility, a person that is: (i) A registered holding
245 company as defined in 15 U. S. C. §79b(a)(12); and (ii) an
246 affiliate of the qualifying utility as defined in 15 U. S. C.
247 §79b(a)(11).

248 (25) “Regulatory sanctions” means, under the circum-
249 stances presented, any regulatory or ratemaking sanction or
250 penalty that the Commission is authorized to impose pursuant
251 to this chapter or any proceeding for the enforcement of any
252 provision of this chapter or any order of the Commission that
253 the Commission is authorized to pursue or conduct pursuant to
254 this chapter, including without limitation: (i) The initiation of
255 any proceeding in which the qualifying utility is required to
256 show cause why it should not be required to comply with the
257 terms and conditions of a financing order or the requirements
258 of this section; (ii) the imposition of civil penalties pursuant to
259 section three, article four of this chapter and the imposition of
260 criminal penalties pursuant to section four of said article, in
261 either case with reference to the provisions of section eight of
262 said article; and (iii) a proceeding by mandamus or injunction
263 as provided in section two of this article.

264 (26) “Successor” means, with respect to any legal entity,
265 another legal entity that succeeds by operation of law to the

266 rights and obligations of the first legal entity pursuant to any
267 bankruptcy, reorganization, restructuring or other insolvency
268 proceeding, any merger, acquisition, or consolidation, or any
269 sale or transfer of assets, whether any of these occur as a result
270 of a restructuring of the electric power industry or otherwise.

271 (27) “Utility service area” means: (i) The geographic area
272 of the state in which a qualifying utility provides electric
273 delivery service to customers at the time of issuance of a
274 financing order; and (ii) for as long as environmental control
275 bonds issued pursuant to a financing order are outstanding, any
276 additions to or enlargements of said geographic area, whether
277 or not approved by the Commission in a formal proceeding.

278 (c) *Application for financing order.* —

279 (1) A qualifying utility, or two or more affiliated qualifying
280 utilities, may apply to the Commission for a financing order
281 under this section.

282 (2) An application for a financing order under this section
283 shall be filed only as provided in this subdivision.

284 (A) An application for a financing order under this section
285 shall be filed as part of the application of the qualifying utility
286 or qualifying utilities under section eleven of this article for a
287 certificate of public convenience and necessity to engage in
288 environmental control activities.

289 (B) If a qualifying utility or qualifying utilities have an
290 application for a certificate of public convenience and necessity
291 to engage in environmental control activities pending before
292 the Commission on the effective date of this section, the
293 qualifying utility or qualifying utilities may file a separate
294 application for a financing order and the Commission shall join
295 or consolidate the application for a financing order with the

296 pending application for a certificate of public convenience and
297 necessity. Notwithstanding any provision of section eleven of
298 this article to the contrary or the total project cost of the
299 proposed environmental control activities, the Commission
300 shall render its final decision on any joined or consolidated
301 proceeding for a certificate of public convenience and necessity
302 and a financing order as described in this paragraph within two
303 hundred seventy days of the filing of the application for the
304 financing order and within ninety days after final submission
305 of the joined or consolidated application for decision following
306 a hearing.

307 (3) In addition to any other information required by the
308 Commission, an application for a financing order shall include
309 the following information:

310 (A) Evidence that the applicant is a qualifying utility;

311 (B) A description of the environmental control activities
312 that the qualifying utility proposes to undertake, including a
313 detailed description of the environmental control equipment to
314 be constructed or installed at one or more qualifying generation
315 facilities;

316 (C) An explanation why the environmental control
317 activities described in the application are necessary in the
318 context of the qualifying utility's operations, current and
319 anticipated environmental regulations, the prospect of enforce-
320 ment proceedings or litigation against the qualifying utility if
321 the environmental control activities are not undertaken and the
322 utility's long-range environmental compliance plans;

323 (D) A description of any alternatives to the environmental
324 control activities described in the application that the qualify-
325 ing utility considered and an explanation of why each alterna-
326 tive either is not feasible or was not selected;

327 (E) An estimate of the environmental control costs associ-
328 ated with the environmental control activities described in the
329 application, including the estimated cost of the environmental
330 control equipment proposed to be installed;

331 (F) An estimated schedule for the construction or installa-
332 tion of the environmental control equipment;

333 (G) An estimate of the date on which the environmental
334 control bonds are expected to be issued and the expected term
335 over which the financing costs associated with the issuance are
336 expected to be recovered, or if the bonds are expected to be
337 issued in more than one series, the estimated issuance date and
338 expected term for each bond issuance;

339 (H) The portion of the environmental control costs the
340 qualifying utility proposes to finance through the issuance of
341 one or more series of environmental control bonds;

342 (I) An estimate of the financing costs associated with each
343 series of environmental control bonds proposed to be issued;

344 (J) An estimate of the amount of the environmental control
345 charges necessary to recover the environmental control costs
346 and financing costs estimated in the application and the
347 proposed calculation thereof, which estimate and calculation
348 should take into account the estimated date of issuance and
349 estimated principal amount of each series of environmental
350 control bonds proposed to be issued;

351 (K) A proposed methodology for allocating financing costs
352 among customer classes;

353 (L) A description of the proposed adjustment mechanism;
354 and

355 (M) A description of the benefits to the customers of the
356 qualifying utility and the state that are expected to result from
357 the financing of the environmental control costs with environ-
358 mental control bonds as opposed to the use of traditional utility
359 financing mechanisms.

360 (4) An application for a financing order may restate or
361 incorporate by reference any information required pursuant to
362 subdivision (3) of this subsection that the qualifying utility
363 previously filed with the Commission in connection with an
364 application for a certificate of public convenience and necessity
365 under section eleven of this article as described in paragraph
366 (B), subdivision (2) of this subsection.

367 (d) *Issuance of financing order.* —

368 (1) Notice of an application for a financing order shall be
369 given as a Class I legal advertisement in compliance with the
370 provisions of article three, chapter fifty-nine of this code, with
371 the publication area being each county in which the environ-
372 mental control activities are to be undertaken and each county
373 in the state in which the qualifying utility provides service to
374 customers. If no substantial protest is received within thirty
375 days after the publication of notice, the Commission may
376 waive formal hearing on the application.

377 (2) The Commission shall issue a financing order, or an
378 order rejecting the application for a financing order, as part of
379 its final order on the application of the qualifying utility or
380 qualifying utilities for a certificate of public convenience and
381 necessity to engage in environmental control activities as
382 described in subdivision (2), subsection (c) of this section.

383 (3) The Commission shall issue a financing order if the
384 Commission finds all of the following:

385 (A) That the applicant is a qualifying utility;

386 (B) That the environmental control activities, including the
387 environmental control equipment to be constructed or installed
388 at one or more qualifying generation facilities, are necessary
389 and prudent under the circumstances and are preferable to any
390 alternatives available to the qualifying utility;

391 (C) That the cost of the environmental control activities,
392 including the environmental control equipment to be con-
393 structed or installed at one or more qualifying generation
394 facilities, is reasonable;

395 (D) That the proposed issuance of environmental control
396 bonds will result in overall costs to customers of the qualifying
397 utility that: (1) Are lower than would result from the use of
398 traditional utility financing mechanisms; and (2) are just and
399 reasonable;

400 (E) That the financing of the environmental control costs
401 with environmental control bonds will result in benefits to the
402 customers of the qualifying utility and the state; and

403 (F) That the proposed issuance of environmental control
404 bonds, together with the imposition and collection of the
405 environmental control charges on customers of the qualifying
406 utility, are just and reasonable and are otherwise consistent
407 with the public interest and constitute a prudent, reasonable and
408 appropriate mechanism for the financing of the environmental
409 control activities described in the application.

410 (4) The Commission shall include the following findings
411 and requirements in a financing order:

412 (A) A determination of the maximum amount of environ-
413 mental control costs that may be financed from proceeds of

414 environmental control bonds authorized to be issued in the
415 financing order;

416 (B) A description of the financing costs that may be
417 recovered through environmental control charges and the
418 period over which the costs may be recovered, subject to the
419 application of the adjustment mechanism as provided in
420 subsection (e) of this section. As part of this description, the
421 Commission may include qualitative or quantitative limitations
422 on the financing costs authorized in the financing order;

423 (C) A description of the adjustment mechanism and a
424 finding that it is just and reasonable; and

425 (D) A description of the environmental control property
426 that is created and that may be used to pay, and secure the
427 payment of, the environmental control bonds and financing
428 costs authorized to be issued in the financing order.

429 (5) A financing order may provide that the creation of
430 environmental control property shall be simultaneous with the
431 sale of the environmental control property to an assignee as
432 provided in the application and the pledge of the environmental
433 control property to secure environmental control bonds.

434 (6) A financing order may authorize the qualifying utility
435 to conduct environmental control activities, including the
436 construction or installation of environmental control equip-
437 ment, on an estimated schedule approved in the financing order
438 and through the issuance of more than one series of environ-
439 mental control bonds. In this case, the qualifying utility will
440 not subsequently be required to secure a separate financing
441 order for each issuance of environmental control bonds or for
442 each scheduled phase of the construction or installation of
443 environmental control equipment approved in the financing
444 order.

445 (7) The Commission may require, as a condition to the
446 effectiveness of the financing order but in every circumstance
447 subject to the limitations set forth in subdivision (1), subsection
448 (f) of this section, that the qualifying utility give appropriate
449 assurances to the Commission that the qualifying utility and its
450 parent will abide by the following conditions during any period
451 in which any environmental control bonds issued pursuant to
452 the financing order are outstanding, in addition to any other
453 obligation either may have under this code or federal law:

454 (A) Without first obtaining the prior consent and approval
455 of the Commission, the qualifying utility will not:

456 (1) Lend money, directly or indirectly, to a registered
457 holding company or a nonutility affiliate; or

458 (2) Guarantee the obligations of a registered holding
459 company or a nonutility affiliate.

460 (B) If: (i) For a period of twelve consecutive months
461 immediately preceding the date of determination, the qualify-
462 ing utility has had an equity ratio of below thirty percent and
463 neither the qualifying utility nor its parent has had a credit
464 rating on its unsecured debt obligations that is investment
465 grade; and (ii) the Commission determines that the present
466 ability of the qualifying utility to meet its public service
467 obligations would be impaired by the payment of dividends,
468 the Commission may order the qualifying utility to limit or
469 cease the payment of dividends for a period not exceeding one
470 hundred eighty days from the date of determination, which
471 order may be extended for one or more additional periods not
472 to exceed one hundred eighty days each if the Commission
473 determines that the conditions set forth in this paragraph
474 continue to exist as of the date of each such determination.

475 (C) Neither the parent nor a nonutility affiliate will direct
476 or require the qualifying utility to file a voluntary petition in

477 bankruptcy: *Provided*, That nothing in this paragraph shall
478 preclude the qualifying utility from filing a voluntary petition
479 in bankruptcy if in the determination of the board of directors
480 of the qualifying utility in the exercise of its fiduciary duty, the
481 filing of its own voluntary petition in bankruptcy would be
482 proper under applicable federal statutory and common law.

483 (8) A financing order may require the qualifying utility to
484 file with the Commission a periodic report showing the receipt
485 and disbursement of proceeds of environmental control bonds.
486 A financing order may authorize the staff of the Commission
487 to review and audit the books and records of the qualifying
488 utility relating to the receipt and disbursement of proceeds of
489 environmental control bonds. The provisions of this subdivi-
490 sion shall not be construed to limit the authority of the Com-
491 mission under this chapter to investigate the practices of the
492 qualifying utility or to audit the books and records of the
493 qualifying utility.

494 (9) In the case of two or more affiliated qualifying utilities
495 that have jointly applied for a financing order as provided in
496 subdivision (1), subsection (c) of this section, a financing order
497 may authorize each affiliated qualifying utility:

498 (A) To impose environmental control charges on its
499 customers, notwithstanding the fact that the qualifying generat-
500 ing facility at which the environmental control activities are to
501 be conducted is owned, or on the expected date of issuance of
502 the environmental control bonds authorized in the financing
503 order will be owned, by fewer than all of the affiliated qualify-
504 ing utilities; and

505 (B) To issue environmental control bonds and to receive
506 and use the proceeds thereof as provided in subdivision (1),
507 subsection (j) of this section, notwithstanding the fact that all
508 or a portion of the proceeds are expected to be used for

509 environmental control activities to be conducted at a qualifying
510 generating facility the ownership of which is as specified in
511 paragraph (A) of this subdivision.

512 (e) *Application of adjustment mechanism.* —

513 (1) If the Commission issues a financing order, the Com-
514 mission shall periodically approve the application of the
515 adjustment mechanism specified in the financing order to
516 correct for any over-collection or under-collection of the
517 environmental control charges and to provide for timely
518 payment of scheduled principal of and interest on the environ-
519 mental control bonds and the payment and recovery of other
520 financing costs in accordance with the financing order.
521 Application of the adjustment mechanism shall occur at least
522 annually or more frequently as provided in the financing order.

523 (2) On the same day the qualifying utility files with the
524 Commission its calculation of the adjustment, it shall cause
525 notice of the filing to be given, in the form specified in the
526 financing order, as a Class I legal advertisement in compliance
527 with the provisions of article three, chapter fifty-nine of this
528 code in a newspaper of statewide circulation published each
529 weekday in Kanawha County: *Provided*, That this publication
530 shall be made only if the calculation of the adjustment filed by
531 the qualifying utility with the Commission would result in an
532 increase in the amount of the environmental control charge.

533 (3) The Commission shall allow interested parties thirty
534 days from the date the qualifying utility filed the calculation of
535 the adjustment within which to make comments, which shall be
536 limited to the mathematical accuracy of the calculation and of
537 the amount of the adjustment. If the Commission determines
538 that a hearing is necessary, the Commission shall hold a
539 hearing on the comments within forty days of the date the
540 qualifying utility filed the calculation of the adjustment.

541 (4) Each adjustment to the environmental control charge,
542 in an amount as calculated by the qualifying utility but incor-
543 porating any correction for mathematical inaccuracy as
544 determined by the Commission at or after the hearing, shall
545 automatically become effective: (i) Sixty days following the
546 date on which the qualifying utility files with the Commission
547 its calculation of the adjustment; or (ii) on any earlier date
548 specified in an order of the Commission approving the applica-
549 tion of the adjustment.

550 (5) No adjustment pursuant to this subsection, and no
551 proceeding held pursuant to this subsection, shall in any way
552 affect the irrevocability of the financing order as specified in
553 subsection (f) of this section.

554 (f) *Irrevocability of financing order.* —

555 (1) A financing order is irrevocable and the Commission
556 may not reduce, impair, postpone or terminate the environmen-
557 tal control charges approved in the financing order or impair
558 the environmental control property or the collection or recov-
559 ery of environmental control revenues.

560 (2) A financing order may be subsequently amended on or
561 after the date of issuance of environmental control bonds
562 authorized thereunder only: (A) At the request of the qualifying
563 utility; (B) in accordance with any restrictions and limitations
564 on amendment set forth in the financing order; and (C) subject
565 to the limitations set forth in subdivision (1) of this subsection.

566 (3) No change in the credit rating on the unsecured
567 obligations of a qualifying utility from the credit rating that
568 supported the determination by the Commission required in
569 paragraph (A), subdivision (3), subsection (d) of this section
570 shall impair the irrevocability of the financing order specified
571 in subdivision (1) of this subsection.

572 (g) *Judicial review.* — An order of the Commission issued
573 pursuant to subdivision (2), subsection (d) of this section is a
574 final order of the Commission. Any party aggrieved by the
575 issuance of any such order may petition for suspension and
576 review thereof by the Supreme Court of Appeals pursuant to
577 section one, article five of this chapter. In the case of any
578 petition for suspension and review, the Supreme Court of
579 Appeals shall proceed to hear and determine the action as
580 expeditiously as practicable and give the action precedence
581 over other matters not accorded similar precedence by law.

582 (h) *Effect of financing order.* —

583 (1) A financing order shall remain in effect until the
584 environmental control bonds issued pursuant to the financing
585 order have been paid in full and all financing costs relating to
586 the environmental control bonds have been paid in full.

587 (2) A financing order shall remain in effect and unabated
588 notwithstanding the bankruptcy, reorganization or insolvency
589 of the qualifying utility or any affiliate thereof or the com-
590 mencement of any judicial or nonjudicial proceeding therefor.

591 (3) For so long as environmental control bonds issued
592 pursuant to a financing order are outstanding and the related
593 environmental control costs and financing costs have not been
594 paid in full, the environmental control charges authorized to be
595 imposed in the financing order shall be nonbypassable and
596 shall apply to:

597 (A) All customers of the qualifying utility located within
598 the utility service area, whether or not the customers may
599 become entitled by law to purchase electric generation services
600 from a provider of electric generation services other than a
601 qualifying utility; and

602 (B) Any person or legal entity located within the utility
603 service area that may subsequently receive electric delivery
604 service from another public utility operating in the same
605 service area.

606 (i) *Limitations on jurisdiction of Commission.* —

607 (1) If the Commission issues a financing order, the Com-
608 mission may not, in exercising its powers and carrying out its
609 duties regarding regulation and ratemaking, consider environ-
610 mental control bonds issued pursuant to the financing order to
611 be the debt of the qualifying utility, the environmental control
612 charges paid under the financing order to be revenue of the
613 qualifying utility, or the environmental control costs or
614 financing costs specified in the financing order to be the costs
615 of the qualifying utility, nor may the Commission determine
616 that any action taken by a qualifying utility that is consistent
617 with the financing order is unjust or unreasonable from a
618 regulatory or ratemaking perspective: *Provided*, That subject
619 to the limitations set forth in subsection (f) of this section,
620 nothing in this subdivision shall: (i) Affect the authority of the
621 Commission to apply the adjustment mechanism as provided
622 in subsection (e) of this section; (ii) prevent or preclude the
623 Commission from investigating the compliance of a qualifying
624 utility with the terms and conditions of a financing order and
625 requiring compliance therewith; or (iii) prevent or preclude the
626 Commission from imposing regulatory sanctions against a
627 qualifying utility for failure to comply with the terms and
628 conditions of a financing order or the requirements of this
629 section.

630 (2) The Commission may not order or otherwise require,
631 directly or indirectly, any public utility to use environmental
632 control bonds to finance any project, addition, plant, facility,
633 extension, capital improvement, environmental control
634 equipment or any other expenditure.

635 (3) The Commission may not refuse to allow the recovery
636 of any costs associated with the performance of environmental
637 control activities by a public utility solely because the public
638 utility has elected or may elect to finance the performance of
639 those activities through a financing mechanism other than the
640 issuance of environmental control bonds.

641 (j) *Duties of qualifying utility.* —

642 (1) A qualifying utility for which a financing order has
643 been issued shall cause the proceeds of any environmental
644 control bonds issued pursuant to a financing order to be placed
645 in a separate account. A qualifying utility may use the proceeds
646 of the issuance of environmental control bonds for paying
647 environmental control costs and financing costs and for no
648 other purpose.

649 (2) A qualifying utility for which a financing order has
650 been issued shall annually provide to its customers a concise
651 explanation of the environmental control charges approved in
652 a financing order, as modified by subsequent issuances of
653 environmental control bonds authorized under a financing
654 order, if any, and by application of the adjustment mechanism
655 as provided in subsection (e) of this section. These explana-
656 tions may be made by bill inserts, website information or other
657 appropriate means.

658 (3) Environmental control revenues shall be applied solely
659 to the repayment of environmental control bonds and other
660 financing costs.

661 (4) The failure of a qualifying utility to apply the proceeds
662 of an issuance of environmental control bonds in a reasonable,
663 prudent and appropriate manner or otherwise comply with any
664 provision of this section shall not invalidate, impair or affect
665 any financing order, environmental control property, environ-

666 mental control charge or environmental control bonds:
667 *Provided*, That subject to the limitations set forth in subsection
668 (f) of this section, nothing in this subdivision shall prevent or
669 preclude the Commission from imposing regulatory sanctions
670 against a qualifying utility for failure to comply with the terms
671 and conditions of a financing order or the requirements of this
672 section.

673 (k) *Environmental control property.* —

674 (1) Environmental control property that is specified in a
675 financing order shall constitute an existing, present property
676 right, notwithstanding the fact that the imposition and collec-
677 tion of environmental control charges depend on the qualifying
678 utility continuing to provide electric energy or continuing to
679 perform its servicing functions relating to the collection of
680 environmental control charges or on the level of future energy
681 consumption. Environmental control property shall exist
682 whether or not the environmental control revenues have been
683 billed, have accrued or have been collected and notwithstand-
684 ing the fact that the value or amount of the environmental
685 control property is dependent on the future provision of service
686 to customers by the qualifying utility.

687 (2) All environmental control property specified in a
688 financing order shall continue to exist until the environmental
689 control bonds issued pursuant to a financing order are paid in
690 full and all financing costs relating to the bonds have been paid
691 in full.

692 (3) All or any portion of environmental control property
693 may be transferred, sold, conveyed or assigned to any person
694 or entity not affiliated with the qualifying utility or to any
695 affiliate of the qualifying utility created for the limited pur-
696 poses of acquiring, owning or administering environmental
697 control property or issuing environmental control bonds under

698 the financing order or a combination of these purposes. All or
699 any portion of environmental control property may be pledged
700 to secure the payment of environmental control bonds, amounts
701 payable to financing parties and bondholders, amounts payable
702 under any ancillary agreement and other financing costs. Any
703 transfer, sale, conveyance, assignment, grant of a security
704 interest in or pledge of environmental control property by a
705 qualifying utility or affiliate of a qualifying utility to an
706 affiliate of the qualifying utility, to the extent previously
707 authorized in a financing order, does not require the prior
708 consent and approval of the Commission under section twelve
709 of this article.

710 (4) If a qualifying utility defaults on any required payment
711 of environmental control revenues, a court, upon application by
712 an interested party and without limiting any other remedies
713 available to the applying party, shall order the sequestration
714 and payment of the environmental control revenues for the
715 benefit of bondholders, any assignee and any financing parties.
716 The order shall remain in full force and effect notwithstanding
717 any bankruptcy, reorganization, or other insolvency proceed-
718 ings with respect to the qualifying utility or any affiliate
719 thereof.

720 (5) Environmental control property and environmental
721 control revenues, and the interests of an assignee, bondholder
722 or financing party in environmental control property and
723 environmental control revenues, are not subject to setoff,
724 counterclaim, surcharge or defense by the qualifying utility or
725 any other person or in connection with the bankruptcy,
726 reorganization or other insolvency proceeding of the qualifying
727 utility, any affiliate thereof or any other entity.

728 (6) Any successor to a qualifying utility shall be bound by
729 the requirements of this section and shall perform and satisfy

730 all obligations of, and have the same rights under a financing
731 order as, the qualifying utility under the financing order in the
732 same manner and to the same extent as the qualifying utility,
733 including, without limitation, the obligation to collect and pay
734 to the person entitled to receive them environmental control
735 revenues.

736 (1) *Security interests.* — Except as otherwise provided in
737 this subsection, the creation, perfection and enforcement of any
738 security interest in environmental control property to secure the
739 repayment of the principal of and interest on environmental
740 control bonds, amounts payable under any ancillary agreement
741 and other financing costs are governed by this subsection and
742 not the provisions of chapter forty-six of this code. All of the
743 following shall apply:

744 (1) The description or indication of environmental control
745 property in a transfer or security agreement and a financing
746 statement is sufficient only if the description or indication
747 refers to this section and the financing order creating the
748 environmental control property. This subdivision applies to all
749 purported transfers of, and all purported grants of liens on or
750 security interests in, environmental control property, regardless
751 of whether the related transfer or security agreement was
752 entered into, or the related financing statement was filed,
753 before or after the effective date of this section.

754 (2) A security interest in environmental control property is
755 created, valid, and binding at the later of the time: (i) The
756 financing order is issued; (ii) a security agreement is executed
757 and delivered; and (iii) value is received for the environmental
758 control bonds. The security interest attaches without any
759 physical delivery of collateral or other act and the lien of the
760 security interest shall be valid, binding and perfected against all
761 parties having claims of any kind in tort, contract or otherwise
762 against the person granting the security interest, regardless of

763 whether such parties have notice of the lien, upon the filing of
764 a financing statement with the office of the Secretary of State.
765 The office of the Secretary of State shall maintain any such
766 financing statement in the same manner and in the same record-
767 keeping system it maintains for financing statements filed
768 pursuant to article nine, chapter forty-six of this code. The
769 filing of any financing statement under this subdivision shall
770 be governed by the provisions regarding the filing of financing
771 statements in said article.

772 (3) A security interest in environmental control property is
773 a continuously perfected security interest and has priority over
774 any other lien, created by operation of law or otherwise, which
775 may subsequently attach to the environmental control property
776 unless the holder of any such lien has agreed in writing
777 otherwise.

778 (4) The priority of a security interest in environmental
779 control property is not affected by the commingling of environ-
780 mental control revenues with other amounts. Any pledgee or
781 secured party shall have a perfected security interest in the
782 amount of all environmental control revenues that are depos-
783 ited in any cash or deposit account of the qualifying utility in
784 which environmental control revenues have been commingled
785 with other funds and any other security interest that may apply
786 to those funds shall be terminated when they are transferred to
787 a segregated account for the assignee or a financing party.

788 (5) No subsequent order of the Commission amending a
789 financing order pursuant to subdivision (2), subsection (f) of
790 this section, and no application of the adjustment mechanism
791 as provided in subsection (e) of this section, will affect the
792 validity, perfection or priority of a security interest in or
793 transfer of environmental control property.

794 (m) *Sales of environmental control property.* —

795 (1) Any sale, assignment or transfer of environmental
796 control property shall be an absolute transfer and true sale of,
797 and not a pledge of or secured transaction relating to, the
798 seller's right, title and interest in, to and under the environmen-
799 tal control property if the documents governing the transaction
800 expressly state that the transaction is a sale or other absolute
801 transfer. A transfer of an interest in environmental control
802 property may be created only when all of the following have
803 occurred: (i) The financing order creating the environmental
804 control property has become effective; (ii) the documents
805 evidencing the transfer of environmental control property have
806 been executed and delivered to the assignee; and (iii) value is
807 received. Upon the filing of a financing statement with the
808 office of the Secretary of State, a transfer of an interest in
809 environmental control property shall be perfected against all
810 third persons, including any judicial lien or other lien creditors
811 or any claims of the seller or creditors of the seller, other than
812 creditors holding a prior security interest, ownership interest or
813 assignment in the environmental control property previously
814 perfected in accordance with this subdivision or subdivision
815 (2), subsection (1) of this section. The office of the Secretary
816 of State shall maintain any such financing statement in the
817 same manner and in the same record-keeping system it main-
818 tains for financing statements filed pursuant to article nine,
819 chapter forty-six of this code.

820 (2) The characterization of the sale, assignment or transfer
821 as an absolute transfer and true sale and the corresponding
822 characterization of the property interest of the purchaser, shall
823 not be affected or impaired by, among other things, the
824 occurrence of any of the following factors:

825 (A) Commingling of environmental control revenues with
826 other amounts;

827 (B) The retention by the seller of: (i) A partial or residual
828 interest, including an equity interest, in the environmental
829 control property, whether direct or indirect, or whether
830 subordinate or otherwise; or (ii) the right to recover costs
831 associated with taxes, franchise fees or license fees imposed on
832 the collection of environmental control revenues;

833 (C) Any recourse that the purchaser may have against the
834 seller;

835 (D) Any indemnification rights, obligations or repurchase
836 rights made or provided by the seller;

837 (E) The obligation of the seller to collect environmental
838 control revenues on behalf of an assignee;

839 (F) The treatment of the sale, assignment or transfer for tax,
840 financial reporting or other purposes;

841 (G) Any subsequent order of the Commission amending a
842 financing order pursuant to subdivision (2), subsection (f) of
843 this section; or

844 (H) Any application of the adjustment mechanism as
845 provided in subsection (e) of this section.

846 (n) *Exemption from municipal taxation.* — The imposition,
847 collection and receipt of environmental control revenues are
848 not subject to taxation by any municipality of the state under
849 the authority granted to municipalities in sections five and
850 five-a, article thirteen, chapter eight of this code.

851 (o) *Environmental control bonds not public debt.* —
852 Environmental control bonds issued pursuant to a financing
853 order and the provisions of this section shall not constitute a
854 debt or a pledge of the faith and credit or taxing power of this
855 state or of any county, municipality or any other political

856 subdivision of this state. Bondholders shall have no right to
857 have taxes levied by the Legislature or the taxing authority of
858 any county, municipality or any other political subdivision of
859 this state for the payment of the principal thereof or interest
860 thereon. The issuance of environmental control bonds does
861 not, directly or indirectly or contingently, obligate the state or
862 a political subdivision of the state to levy any tax or make any
863 appropriation for payment of the principal of or interest on the
864 bonds.

865 (p) *Environmental control bonds as legal investments.* —
866 Any of the following may legally invest any sinking funds,
867 moneys or other funds belonging to them or under their control
868 in environmental control bonds:

869 (1) The state, the West Virginia Investment Management
870 Board, the West Virginia Housing Development Fund, munici-
871 pal corporations, political subdivisions, public bodies and
872 public officers except for members of the Public Service
873 Commission.

874 (2) Banks and bankers, savings and loan associations,
875 credit unions, trust companies, building and loan associations,
876 savings banks and institutions, deposit guarantee associations,
877 investment companies, insurance companies and associations
878 and other persons carrying on a banking or insurance business,
879 including domestic for life and domestic not for life insurance
880 companies; and

881 (3) Personal representatives, guardians, trustees and other
882 fiduciaries.

883 (q) *State pledge.* —

884 (1) The state pledges to and agrees with the bondholders,
885 any assignee and any financing parties that the state will not

886 take or permit any action that impairs the value of environmen-
887 tal control property or, except as allowed under subsection (e)
888 of this section, reduce, alter or impair environmental control
889 charges that are imposed, collected and remitted for the benefit
890 of the bondholders, any assignee, and any financing parties,
891 until any principal, interest and redemption premium in respect
892 of environmental control bonds, all financing costs and all
893 amounts to be paid to an assignee or financing party under an
894 ancillary agreement are paid or performed in full.

895 (2) Any person who issues environmental control bonds is
896 permitted to include the pledge specified in subdivision (1) of
897 this subsection in the environmental control bonds, ancillary
898 agreements and documentation related to the issuance and
899 marketing of the environmental control bonds.

900 (r) *Choice of law.* — The law governing the validity,
901 enforceability, attachment, perfection, priority and exercise of
902 remedies with respect to the transfer of an interest or right or
903 creation of a security interest in any environmental control
904 property, environmental control charge or financing order shall
905 be the laws of the State of West Virginia as set forth in this
906 section and article nine, chapter forty-six of this code.

907 (s) *Conflicts.* — In the event of conflict between this
908 section and any other law regarding the attachment, assignment
909 or perfection, or the effect of perfection, or priority of any
910 security interest in or transfer of environmental control
911 property, this section shall govern to the extent of the conflict.

912 (t) *Effect of invalidity on actions.* — Effective on the date
913 that environmental control bonds are first issued under this
914 section, if any provision of this section is held to be invalid or
915 is invalidated, superseded, replaced, repealed or expires for any
916 reason, that occurrence shall not affect any action allowed
917 under this section that is taken by the Commission, a qualifying

918 utility, an assignee, a collection agent, a financing party, a
919 bondholder, or a party to an ancillary agreement and any such
920 action shall remain in full force and effect.

921 (u) *Effectiveness of section.* — No qualifying utility may
922 make initial application for a financing order after the date
923 which is five years after the effective date of this section. This
924 subsection shall not be construed to preclude any qualifying
925 utility for which the Commission has initially issued a financ-
926 ing order from applying to the Commission: (i) For a subse-
927 quent order amending the financing order pursuant to subdivi-
928 sion (2), subsection (f) of this section; or (ii) for approval of the
929 issuance of environmental control bonds to refund all or a
930 portion of an outstanding series of environmental control
931 bonds.

932 (v) *Severability.* — If any subsection, subdivision, para-
933 graph or subparagraph of this section or the application thereof
934 to any person, circumstance or transaction is held by a court of
935 competent jurisdiction to be unconstitutional or invalid, the
936 unconstitutionality or invalidity shall not affect the constitu-
937 tionality or validity of any other subsection, subdivision,
938 paragraph or subparagraph of this section or its application or
939 validity to any person, circumstance or transaction, including,
940 without limitation, the irrevocability of a financing order issued
941 pursuant to this section, the validity of the issuance of environ-
942 mental control bonds, the imposition of environmental control
943 charges, the transfer or assignment of environmental control
944 property or the collection and recovery of environmental
945 control revenues. To these ends, the Legislature hereby
946 declares that the provisions of this section are intended to be
947 severable and that the Legislature would have enacted this
948 section even if any subsection, subdivision, paragraph or
949 subparagraph of this section held to be unconstitutional or
950 invalid had not been included in this section.

CHAPTER 46. UNIFORM COMMERCIAL CODE.**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.****SUBPART 2. APPLICABILITY OF ARTICLE.****§46-9-109. Scope.**

1 (a) *General scope of article.* — Except as otherwise
2 provided in subsections (c) and (d) of this section, this article
3 applies to:

4 (1) A transaction, regardless of its form, that creates a
5 security interest in personal property or fixtures by contract;

6 (2) An agricultural lien;

7 (3) A sale of accounts, chattel paper, payment intangibles
8 or promissory notes;

9 (4) A consignment;

10 (5) A security interest arising under section 2-401, 2-505,
11 2-711(3) or 2A-508(5) as provided in section 9-110; and

12 (6) A security interest arising under section 4-210 or 5-118.

13 (b) *Security interest in secured obligation.* — The applica-
14 tion of this article to a security interest in a secured obligation
15 is not affected by the fact that the obligation is itself secured by
16 a transaction or interest to which this article does not apply.

17 (c) *Extent to which article does not apply.* — This article
18 does not apply to the extent that:

19 (1) A statute, regulation or treaty of the United States
20 preempts this article; or

21 (2) The rights of a transferee beneficiary or nominated
22 person under a letter of credit are independent and superior
23 under section 5-114.

24 (d) *Inapplicability of article.* — This article does not apply
25 to:

26 (1) A landlord's lien, other than an agricultural lien;

27 (2) A lien, other than an agricultural lien, given by statute
28 or other rule of law for services or materials, but section 9-333
29 applies with respect to priority of the lien;

30 (3) An assignment of a claim for wages, salary or other
31 compensation of an employee;

32 (4) A sale of accounts, chattel paper, payment intangibles
33 or promissory notes as part of a sale of the business out of
34 which they arose;

35 (5) An assignment of accounts, chattel paper, payment
36 intangibles or promissory notes which is for the purpose of
37 collection only;

38 (6) An assignment of a right to payment under a contract
39 to an assignee that is also obligated to perform under the
40 contract;

41 (7) An assignment of a single account, payment intangible
42 or promissory note to an assignee in full or partial satisfaction
43 of a preexisting indebtedness;

44 (8) A transfer of an interest in or an assignment of a claim
45 under a policy of insurance, other than an assignment by or to
46 a health care provider of a health care-insurance receivable and
47 any subsequent assignment of the right to payment, but
48 sections 9-315 and 9-322 apply with respect to proceeds and
49 priorities in proceeds;

50 (9) An assignment of a right represented by a judgment,
51 other than a judgment taken on a right to payment that was
52 collateral;

53 (10) A right of recoupment or set-off, but:

54 (A) Section 9-340 applies with respect to the effectiveness
55 of rights of recoupment or set-off against deposit accounts; and

56 (B) Section 9-404 applies with respect to defenses or
57 claims of an account debtor;

58 (11) The creation or transfer of an interest in or lien on real
59 property, including a lease or rents thereunder, except to the
60 extent that provision is made for:

61 (A) Liens on real property in sections 9-203 and 9-308;

62 (B) Fixtures in section 9-334;

63 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,
64 and 9-519; and

65 (D) Security agreements covering personal and real
66 property in section 9-604;

67 (12) An assignment of a claim arising in tort, other than a
68 commercial tort claim, but sections 9-315 and 9-322 apply with
69 respect to proceeds and priorities in proceeds;

70 (13) An assignment of a deposit account in a consumer
71 transaction, but sections 9-315 and 9-322 apply with respect to
72 proceeds and priorities in proceeds;

73 (14) A transfer by a government or a governmental unit; or

74 (15) A transfer of security interest in any interest or right,
75 or any portion or any interest or right in any environmental

- 76 control property, environmental control charge or financing
77 order as each term is defined in section four-e, article two,
78 chapter twenty-four of this code.

CHAPTER 107

(Com. Sub. for H. B. 3033 — By Mr. Speaker, Mr. Kiss,
and Delegates Staton, Michael and Mahan)

[Passed March 31, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; extending the imposition of a temporary tax on clean coal mined for deposit into the special reclamation fund for an additional period; and providing duties for the Secretary of the Department of Environmental Protection in managing the special reclamation program.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

- 1 (a) After a surface mining permit application has been
2 approved pursuant to this article but before a permit has been
3 issued, each operator shall furnish a penal bond, on a form to be

4 prescribed and furnished by the Secretary, payable to the State
5 of West Virginia and conditioned upon the operator faithfully
6 performing all of the requirements of this article and of the
7 permit. The penal amount of the bond shall be not less than one
8 thousand dollars nor more than five thousand dollars for each
9 acre or fraction thereof: *Provided*, That the minimum amount
10 of bond furnished for any type of reclamation bonding shall be
11 ten thousand dollars. The bond shall cover: (1) The entire
12 permit area; or (2) that increment of land within the permit area
13 upon which the operator will initiate and conduct surface
14 mining and reclamation operations within the initial term of the
15 permit. If the operator chooses to use incremental bonding, as
16 succeeding increments of surface mining and reclamation
17 operations are to be initiated and conducted within the permit
18 area, the operator shall file with the Secretary an additional
19 bond or bonds to cover the increments in accordance with this
20 section: *Provided, however*, That once the operator has chosen
21 to proceed with bonding either the entire permit area or with
22 incremental bonding, the operator shall continue bonding in that
23 manner for the term of the permit.

24 (b) The period of liability for bond coverage begins with
25 issuance of a permit and continues for the full term of the
26 permit plus any additional period necessary to achieve compli-
27 ance with the requirements in the reclamation plan of the
28 permit.

29 (c) (1) The form of the bond shall be approved by the
30 Secretary and may include, at the option of the operator, surety
31 bonding, collateral bonding (including cash and securities),
32 establishment of an escrow account, self-bonding or a combina-
33 tion of these methods. If collateral bonding is used, the operator
34 may elect to deposit cash or collateral securities or certificates
35 as follows: Bonds of the United States or its possessions, of the
36 federal land bank or of the homeowners' loan corporation; full
37 faith and credit general obligation bonds of the State of West

38 Virginia or other states, and of any county, district or municipi-
39 pality of the State of West Virginia or other states; or certifi-
40 cates of deposit in a bank in this state, which certificates shall
41 be in favor of the department. The cash deposit or market value
42 of such securities or certificates shall be equal to or greater than
43 the penal sum of the bond. The Secretary shall, upon receipt of
44 any deposit of cash, securities or certificates, promptly place the
45 same with the Treasurer of the State of West Virginia whose
46 duty it is to receive and hold the same in the name of the state
47 in trust for the purpose for which the deposit is made when the
48 permit is issued. The operator making the deposit is entitled,
49 from time to time, to receive from the State Treasurer, upon the
50 written approval of the Secretary, the whole or any portion of
51 any cash, securities or certificates so deposited, upon depositing
52 with him or her in lieu thereof cash or other securities or
53 certificates of the classes herein specified having value equal to
54 or greater than the sum of the bond.

55 (2) The Secretary may approve an alternative bonding
56 system if it will: (A) Reasonably assure that sufficient funds
57 will be available to complete the reclamation, restoration and
58 abatement provisions for all permit areas which may be in
59 default at any time; and (B) provide a substantial economic
60 incentive for the permittee to comply with all reclamation
61 provisions.

62 (d) The Secretary may accept the bond of the applicant
63 itself without separate surety when the applicant demonstrates
64 to the satisfaction of the Secretary the existence of a suitable
65 agent to receive service of process and a history of financial
66 solvency and continuous operation sufficient for authorization
67 to self-insure.

68 (e) It is unlawful for the owner of surface or mineral rights
69 to interfere with the present operator in the discharge of the
70 operator's obligations to the State for the reclamation of lands
71 disturbed by the operator.

72 (f) All bond releases shall be accomplished in accordance
73 with the provisions of section twenty-three of this article.

74 (g) The Special Reclamation Fund previously created is
75 continued. The moneys accrued in the fund, including interest,
76 are reserved solely and exclusively for the purposes set forth in
77 this section and section seventeen, article one of this chapter.
78 The fund shall be administered by the Secretary who is autho-
79 rized to expend the moneys in the fund for the reclamation and
80 rehabilitation of lands which were subjected to permitted
81 surface mining operations and abandoned after the third day of
82 August, one thousand nine hundred seventy-seven, where the
83 amount of the bond posted and forfeited on the land is less than
84 the actual cost of reclamation, and where the land is not eligible
85 for abandoned mine land reclamation funds under article two of
86 this chapter. The Secretary shall develop a long-range planning
87 process for selection and prioritization of sites to be reclaimed
88 so as to avoid inordinate short-term obligations of the assets in
89 the fund of such magnitude that the solvency of the fund is
90 jeopardized. The Secretary may use the Special Reclamation
91 Fund for the purpose of designing, constructing and maintain-
92 ing water treatment systems when they are required for a
93 complete reclamation of the affected lands described in this
94 subsection. The Secretary may also expend an amount not to
95 exceed ten percent of the total annual assets in the fund to
96 implement and administer the provisions of this article and, as
97 they apply to the Surface Mine Board, articles one and four,
98 chapter twenty-two-b of this code.

99 (h) (1) Prior to the first day of January, two thousand two,
100 every person conducting coal surface mining operations shall
101 contribute into the fund a sum equal to three cents per ton of
102 clean coal mined. For tax periods commencing on and after the
103 first day of January, two thousand two, every person conducting
104 coal surface mining shall contribute into the fund as follows:

105 (A) For a period not to exceed fifty-seven months, seven
106 cents per ton of clean coal mined; and (B) an additional seven
107 cents per ton of clean coal mined. The tax shall be levied upon
108 each ton of clean coal severed or clean coal obtained from
109 refuse pile and slurry pond recovery or clean coal from other
110 mining methods extracting a combination of coal and waste
111 material as part of a fuel supply on or after the first day of
112 January, two thousand two. The additional seven-cent tax shall
113 be reviewed and, if necessary, adjusted annually by the Legisla-
114 ture upon recommendation of the Council pursuant to the
115 provisions of section seventeen, article one of this chapter:
116 *Provided*, That the tax may not be reduced until the Special
117 Reclamation Fund has sufficient moneys to meet the reclama-
118 tion responsibilities of the State established in this section.

119 (2) In managing the Special Reclamation Program, the
120 Secretary shall:

121 (A) Pursue cost effective alternative water treatment
122 strategies; and

123 (B) Conduct formal actuarial studies every two years and
124 conduct informal reviews annually on the Special Reclamation
125 Fund.

126 (3) Prior to the thirty-first day of December, two thousand
127 five, the Secretary shall:

128 (A) Determine the feasibility of allowing full cost bonding
129 in lieu of a portion of the per ton coal tax. In making this
130 determination, the Secretary shall consider the availability and
131 affordability of full cost bonding to operators and the overall
132 fiscal stability of the Special Reclamation Program;

133 (B) Determine the feasibility of creating a water quality
134 trust fund to provide long-term funding for water treatment
135 from forfeited sites and to reduce a portion of the per ton coal

136 tax. In making this determination, the Secretary shall consider
137 the availability and fiscal stability of any funding for a water
138 quality trust fund and any impact it may have on the overall
139 fiscal stability of the Special Reclamation Program; and

140 (C) Determine the feasibility of establishing a bonding
141 requirement for water treatment activities in lieu of a portion of
142 the per ton coal tax. In making this determination, the Secretary
143 shall consider the availability and affordability of bonding to
144 operators and the overall fiscal stability of the Special Reclama-
145 tion Program.

146 (4) If the Secretary determines that full cost bonding, water
147 treatment bonding, the establishment of a water quality trust
148 fund, or the use of other funding mechanisms, or a combination
149 of any or all of these financial assurance mechanisms, reason-
150 ably assure that sufficient funds will be available to complete
151 the reclamation of a forfeited site and that the Special Reclama-
152 tion Fund will remain fiscally stable, the Secretary is authorized
153 to propose legislative rules in accordance with article three,
154 chapter twenty-nine-a of this code to implement a full cost
155 bonding program, a water reclamation bonding program, a
156 water quality trust fund program, or other funding mechanisms,
157 or a combination thereof, in lieu of the per ton coal tax or a
158 portion thereof.

159 (i) This special reclamation tax shall be collected by the
160 State Tax Commissioner in the same manner, at the same time
161 and upon the same tonnage as the minimum severance tax
162 imposed by article twelve-b, chapter eleven of this code is
163 collected: *Provided*, That under no circumstance shall the
164 special reclamation tax be construed to be an increase in either
165 the minimum severance tax imposed by said article or the
166 severance tax imposed by article thirteen of said chapter.

167 (j) Every person liable for payment of the special reclama-
168 tion tax shall pay the amount due without notice or demand for
169 payment.

170 (k) The Tax Commissioner shall provide to the Secretary a
171 quarterly listing of all persons known to be delinquent in
172 payment of the special reclamation tax. The Secretary may take
173 the delinquencies into account in making determinations on the
174 issuance, renewal or revision of any permit.

175 (l) The Tax Commissioner shall deposit the fees collected
176 with the Treasurer of the State of West Virginia to the credit of
177 the Special Reclamation Fund. The moneys in the fund shall be
178 placed by the Treasurer in an interest-bearing account with the
179 interest being returned to the fund on an annual basis.

180 (m) At the beginning of each quarter, the Secretary shall
181 advise the State Tax Commissioner and the Governor of the
182 assets, excluding payments, expenditures and liabilities, in the
183 fund.

184 (n) To the extent that this section modifies any powers,
185 duties, functions and responsibilities of the Department that
186 may require approval of one or more federal agencies or
187 officials in order to avoid disruption of the federal-state
188 relationship involved in the implementation of the federal
189 Surface Mining Control and Reclamation Act, 30 U. S. C.
190 §1270 by the State, the modifications will become effective
191 upon the approval of the modifications by the appropriate
192 federal agency or official.

CHAPTER 108

(H. B. 3236 — By Delegates Michael and Kominar)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §22-3-11a and §22-3-32a, all relating generally to the special reclamation tax and special tax on coal production; clarifying that both of these taxes apply to production of thin seam coal and providing for payment thereof; and providing that the special reclamation is subject to the West Virginia Tax Crimes and Penalties Act and the West Virginia Tax Procedure and Administration Act.

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 §22-3-11a and §22-3-32a, all to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

§22-3-32a. Special tax on coal; clarification of imposition of tax; procedures for collection and administration of tax.

§22-3-11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

1 (a) It is the intent of the Legislature to clarify that from the
 2 date of its enactment, the special reclamation tax imposed
 3 pursuant to the provisions of section eleven of this article is
 4 intended to be in addition to any other taxes imposed on
 5 persons conducting coal surface mining operations including,
 6 but not limited to the tax imposed by section thirty-two of this
 7 article, the tax imposed by article twelve-b, chapter eleven of
 8 this code, the taxes imposed by article thirteen-a of said chapter
 9 eleven, and the tax imposed by article thirteen-v of said chapter.

10 (b) Notwithstanding any other provisions of section eleven of
11 this article to the contrary, under no circumstance shall an
12 exemption from the taxes imposed by article twelve-b, thirteen-a
13 or thirteen-v, chapter eleven of this code be construed to be an
14 exemption from the tax imposed by section eleven of this article.

15 (c) When coal included in the measure of the tax imposed
16 by section eleven of this article is exempt from the tax imposed
17 by article twelve-b, chapter eleven of this code, the tax imposed
18 by section eleven of this article shall be paid to the tax commis-
19 sioner in accordance with the provisions of sections four
20 through fourteen, inclusive, article twelve-b, chapter eleven of
21 this code, which provisions are hereby incorporated by refer-
22 ence in this article.

23 (d) *General procedure and administration.* — Each and
24 every provision of the “West Virginia Tax Procedure and
25 Administration Act” set forth in article ten, chapter eleven of
26 the code applies to the special tax imposed by section eleven of
27 this article with like effect as if such act were applicable only
28 to the special tax imposed by said section eleven and were set
29 forth in extenso in this article, notwithstanding the provisions
30 of section three of said article ten.

31 (e) *Tax crimes and penalties.* — Each and every provision
32 of the “West Virginia Tax Crimes and Penalties Act” set forth
33 in article nine of said chapter eleven applies to the special tax
34 imposed by section eleven of this article with like effect as if
35 such act were applicable only to the special tax imposed by said
36 section eleven and set forth in extenso in this article, notwith-
37 standing the provisions of section two of said article nine.

**§22-3-32a. Special tax on coal; clarification of imposition of tax;
procedures for collection and administration of
tax.**

1 (a) It is the intent of the Legislature to clarify that from the
2 date of its enactment, the special tax on coal imposed pursuant

3 to the provisions of section thirty-two of this article is intended
4 to be in addition to any other taxes imposed on every person in
5 this state engaging in the privilege of severing, extracting,
6 reducing to possession or producing coal for sale profit or
7 commercial use including, but not limited to the tax imposed by
8 section eleven of this article, the tax imposed by article twelve-
9 b, chapter eleven of this code, the taxes imposed by article
10 thirteen-a of said chapter eleven and the tax imposed by article
11 thirteen-v of said chapter.

12 (b) Notwithstanding any other provisions of section thirty-
13 two of this article to the contrary, under no circumstance shall
14 an exemption from the taxes imposed by article twelve-b,
15 thirteen-a or thirteen-v, chapter eleven of this code be construed
16 to be an exemption from the tax imposed by section thirty-two
17 of this article.

18 (c) When coal included in the measure of the tax imposed
19 by section thirty-two of this article is exempt from the tax
20 imposed by article twelve-b, chapter eleven of this code, the tax
21 imposed by section thirty-two of this article shall be paid to the
22 tax commissioner in accordance with the provisions of sections
23 four through fourteen, inclusive, article twelve-b, chapter
24 eleven of this code, which provisions are hereby incorporated
25 by reference in this article.

CHAPTER 109

(H. B. 3354 — By Delegates Michael and Cann)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said code, all relating to the secretary's authority to assess a permit fee for well work permits, deep wells, coalbed methane wells, and reclamation fund fees; plat information; definitions; damage compensation; consent and agreement of coal owner and operator; and spacing of coalbed methane wells.

Be it enacted by the Legislature of West Virginia:

That §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said code be amended and reenacted, all to read as follows:

Article

- 6. Office of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.**
21. Coalbed Methane Wells and Units.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-2. Secretary — Powers and duties generally; department records open to public; inspectors.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

§22-6-2. Secretary — Powers and duties generally; department records open to public; inspectors.

- 1 (a) The Secretary shall have as his or her duty the supervi-
2 sion of the execution and enforcement of matters related to oil
3 and gas set out in this article and in articles eight and nine of
4 this chapter.

5 (b) The Secretary is authorized to propose rules for legisla-
6 tive approval in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code necessary to effectuate the
8 above stated purposes.

9 (c) The Secretary shall have full charge of the oil and gas
10 matters set out in this article and in articles eight and nine of
11 this chapter. In addition to all other powers and duties conferred
12 upon him or her, the secretary shall have the power and duty to:

13 (1) Supervise and direct the activities of the office of oil
14 and gas and see that the purposes set forth in subsections (a)
15 and (b) of this section are carried out;

16 (2) Employ a supervising oil and gas inspector and oil and
17 gas inspectors;

18 (3) Supervise and direct such oil and gas inspectors and
19 supervising inspector in the performance of their duties;

20 (4) Suspend for good cause any oil and gas inspector or
21 supervising inspector without compensation for a period not
22 exceeding thirty days in any calendar year;

23 (5) Prepare report forms to be used by oil and gas inspec-
24 tors or the supervising inspector in making their findings,
25 orders and notices, upon inspections made in accordance with
26 this article and articles seven, eight, nine and ten of this chapter;

27 (6) Employ a hearing officer and such clerks, stenographers
28 and other employees, as may be necessary to carry out his or
29 her duties and the purposes of the office of oil and gas and fix
30 their compensation;

31 (7) Hear and determine applications made by owners, well
32 operators and coal operators for the annulment or revision of
33 orders made by oil and gas inspectors or the supervising

34 inspector, and to make inspections, in accordance with the
35 provisions of this article and articles eight and nine of this
36 chapter;

37 (8) Cause a properly indexed permanent and public record
38 to be kept of all inspections made by the secretary or by oil and
39 gas inspectors or the supervising inspector;

40 (9) Conduct such research and studies as the secretary shall
41 deem necessary to aid in protecting the health and safety of
42 persons employed within or at potential or existing oil or gas
43 production fields within this state, to improve drilling and
44 production methods and to provide for the more efficient
45 protection and preservation of oil and gas-bearing rock strata
46 and property used in connection therewith;

47 (10) Collect a permit fee of four hundred dollars for each
48 permit application filed other than an application for a deep
49 well or a coalbed methane well; and collect a permit fee of six
50 hundred fifty dollars for each permit application filed for a deep
51 well: *Provided*, That no permit application fee shall be required
52 when an application is submitted solely for the plugging or
53 replugging of a well, or to modify an existing application for
54 which the operator previously has submitted a permit fee under
55 this section. All application fees required hereunder shall be in
56 lieu of and not in addition to any fees imposed under article
57 eleven of this chapter relating to discharges of stormwater but
58 shall be in addition to any other fees required by the provisions
59 of this article: *Provided, however*, That upon a final determina-
60 tion by the United States Environmental Protection Agency
61 regarding the scope of the exemption under section 402(1)(2) of
62 the federal Clean Water Act (33 U.S.C.1342(1)(2)), which
63 determination requires a “national pollutant discharge elimina-
64 tion system” permit for stormwater discharges from the oil and
65 gas operations described therein, any permit fees for stormwater
66 permits required under article eleven of this chapter for such
67 operations shall not exceed one hundred dollars.

68 (11) Perform all other duties which are expressly imposed
69 upon the secretary by the provisions of this chapter;

70 (12) Perform all duties as the permit issuing authority for
71 the state in all matters pertaining to the exploration, develop-
72 ment, production, storage and recovery of this state's oil and
73 gas;

74 (13) Adopt rules with respect to the issuance, denial,
75 retention, suspension or revocation of permits, authorizations
76 and requirements of this chapter, which rules shall assure that
77 the rules, permits and authorizations issued by the secretary are
78 adequate to satisfy the purposes of this article and articles
79 seven, eight, nine and ten of this chapter particularly with
80 respect to the consolidation of the various state and federal
81 programs which place permitting requirements on the explora-
82 tion, development, production, storage and recovery of this
83 state's oil and gas: *Provided*, That notwithstanding any provi-
84 sions of this article and articles seven, eight, nine and ten of this
85 chapter to the contrary, the environmental quality board shall
86 have the sole authority pursuant to section three, article three,
87 chapter twenty-two-b to promulgate rules setting standards of
88 water quality applicable to waters of the state; and

89 (14) Perform such acts as may be necessary or appropriate
90 to secure to this state the benefits of federal legislation estab-
91 lishing programs relating to the exploration, development,
92 production, storage and recovery of this state's oil and gas,
93 which programs are assumable by the state.

94 (d) The Secretary shall have authority to visit and inspect
95 any well or well site and any other oil or gas facility in this state
96 and may call for the assistance of any oil and gas inspector or
97 inspectors or supervising inspector whenever such assistance is
98 necessary in the inspection of any such well or well site or any
99 other oil or gas facility. Similarly, all oil and gas inspectors and
100 the supervising inspector shall have authority to visit and

101 inspect any well or well site and any other oil or gas facility in
102 this state. Any well operator, coal operator operating coal seams
103 beneath the tract of land, or the coal seam owner or lessee, if
104 any, if said owner or lessee is not yet operating said coal seams
105 beneath said tract of land may request the secretary to have an
106 immediate inspection made. The operator or owner of every
107 well or well site or any other oil or gas facility shall cooperate
108 with the secretary, all oil and gas inspectors and the supervising
109 inspector in making inspections or obtaining information.

110 (e) Oil and gas inspectors shall devote their full time and
111 undivided attention to the performance of their duties, and they
112 shall be responsible for the inspection of all wells or well sites
113 or other oil or gas facilities in their respective districts as often
114 as may be required in the performance of their duties.

115 (f) All records of the office shall be open to the public.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

1 (a) Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator shall
3 have a plat prepared by a licensed land surveyor or registered
4 engineer showing the district and county in which the tract of
5 land is located, the name and acreage of the same, the names of
6 the owners of adjacent tracts, the proposed or actual location of
7 the well determined by survey, the courses and distances of
8 such location from two permanent points or landmarks on said
9 tract and the number to be given the well. In the event the tract
10 of land on which the said well proposed to be drilled or
11 fractured is located is known to be underlain by one or more
12 coal seams, copies of the plat shall be forwarded by registered
13 or certified mail to each and every coal operator operating said

14 coal seams beneath said tract of land, who has mapped the same
15 and filed such maps with the office of miners' health, safety and
16 training in accordance with chapter twenty-two-a of this code
17 and the coal seam owner of record and lessee of record, if any,
18 if said owner or lessee has recorded the declaration provided in
19 section thirty-six of this article, and if said owner or lessee is
20 not yet operating said coal seams beneath said tract of land.
21 With each of such plats there shall be enclosed a notice (form
22 for which shall be furnished on request by the Secretary)
23 addressed to the Secretary and to each such coal operator,
24 owner and lessee, if any, at their respective addresses, inform-
25 ing them that such plat and notice are being mailed to them
26 respectively by registered or certified mail, pursuant to the
27 requirements of this article.

28 (b) If no objections are made, or are found by the Secretary,
29 to such proposed location or proposed fracturing within fifteen
30 days from receipt of such plat and notice by the Secretary, the
31 same shall be filed and become a permanent record of such
32 location or fracturing subject to inspection at any time by any
33 interested person, and the Secretary may forthwith issue to the
34 well operator a permit reciting the filing of such plat, that no
35 objections have been made by the coal operators, owners and
36 lessees, if any, or found thereto by the Secretary, and authoriz-
37 ing the well operator to drill at such location, or to fracture the
38 well. Unless the Secretary has objections to such proposed
39 location or proposed fracturing or stimulating, such permit may
40 be issued prior to the expiration of such fifteen-day period upon
41 the obtaining by the well operator of the consent in writing of
42 the coal operator or operators, owners and lessees, if any, to
43 whom copies of the plat and notice shall have been mailed as
44 herein required, and upon presentation of such written consent
45 to the Secretary. The notice above provided for may be given to
46 the coal operator by delivering or mailing it by registered or
47 certified mail as above to any agent or superintendent in actual
48 charge of mines.

49 (c) A permit to drill, or to fracture or stimulate an oil or gas
50 well, shall not be issued unless the application therefor is
51 accompanied by a bond as provided in section twenty-six of this
52 article.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

1 (a) There is hereby continued within the Treasury of the
2 State of West Virginia the special fund known as the oil and gas
3 operating permit and processing fund, and the secretary shall
4 deposit with the State Treasurer to the credit of such special
5 fund all fees collected under the provisions of subdivision ten,
6 subsection (c), section two of this article.

7 The oil and gas operating permit and processing fund shall
8 be administered by the secretary for the purposes of carrying
9 out the provisions of this chapter.

10 The Secretary shall make an annual report to the Governor
11 and to the Legislature on the use of the fund, and shall make a
12 detailed accounting of all expenditures from the oil and gas
13 operating permit and processing fund.

14 (b) In addition to any other fees required by the provisions
15 of this article, every applicant for a permit to drill a well shall,
16 before the permit is issued, pay to the Secretary a special
17 reclamation fee of one hundred and fifty dollars for each
18 activity for which a well work application is required to be
19 filed: *Provided*, That a special reclamation fee shall not be
20 assessed for plugging activities. Such special reclamation fee
21 shall be paid at the time the application for a drilling permit is
22 filed with the Secretary and the payment of such reclamation
23 fee shall be a condition precedent to the issuance of said permit.

24 There is hereby continued within the Treasury of the State
25 of West Virginia the special fund known as the oil and gas

26 reclamation fund, and the secretary shall deposit with the State
27 Treasurer to the credit of such special fund all special reclama-
28 tion fees collected. The proceeds of any bond forfeited under
29 the provisions of this article shall inure to the benefit of and
30 shall be deposited in such oil and gas reclamation fund.

31 The oil and gas reclamation fund shall be administered by
32 the secretary. The Secretary shall cause to be prepared plans for
33 the reclaiming and plugging of abandoned wells which have not
34 been reclaimed or plugged or which have been improperly
35 reclaimed or plugged. The Secretary, as funds become available
36 in the oil and gas reclamation fund, shall reclaim and properly
37 plug wells in accordance with said plans and specifications and
38 in accordance with the provisions of this article relating to the
39 reclaiming and plugging of wells and all rules promulgated
40 thereunder. Such funds may also be utilized for the purchase of
41 abandoned wells, where such purchase is necessary, and for the
42 reclamation of such abandoned wells, and for any engineering,
43 administrative and research costs as may be necessary to
44 properly effectuate the reclaiming and plugging of all wells,
45 abandoned or otherwise.

46 The Secretary may avail the division of any federal funds
47 provided on a matching basis that may be made available for
48 the purpose of reclaiming or plugging any wells.

49 The Secretary shall make an annual report to the Governor
50 and to the Legislature setting forth the number of wells re-
51 claimed or plugged through the use of the oil and gas reclama-
52 tion fund provided for herein. Such report shall identify each
53 such reclamation and plugging project, state the number of
54 wells reclaimed or plugged thereby, show the county wherein
55 such wells are located and shall make a detailed accounting of
56 all expenditures from the oil and gas reclamation fund.

57 All wells shall be reclaimed or plugged by contract entered
58 into by the secretary on a competitive bid basis as provided for

59 under the provisions of article three, chapter five-a of this code
60 and the rules promulgated thereunder.

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-2. Definitions.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

§22-21-7. Consent and agreement of coal owner or operator.

§22-21-20. Spacing.

§22-21-2. Definitions.

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

3 (a) "Review board" means the West Virginia coalbed
4 methane review board which shall be comprised of the mem-
5 bers of the West Virginia shallow gas well review board
6 provided for in article eight, chapter twenty-two-c of this code,
7 the state geologist, a representative of the United Mine Workers
8 of America, an employee of the gas industry, and the director
9 of the office of miners' health, safety and training, and the
10 chairman of the review board shall be the chairman of the West
11 Virginia shallow gas review board;

12 (b) "Coalbed" or "coal seam" means a seam of coal,
13 whether workable or unworkable, and the noncoal roof and
14 floor of said seam of coal;

15 (c) "Coalbed methane" means gas which can be produced
16 from a coal seam, the rock or other strata in communication
17 with a coal seam, a mined-out area or a gob well;

18 (d) "Coalbed methane owner" means any owner of coalbed
19 methane;

20 (e) "Coalbed methane well" means any hole or well sunk,
21 drilled, bored or dug into the earth for the production of coalbed
22 methane for consumption or sale, including a gob well. The
23 term "well" shall mean a coalbed methane well unless the
24 context indicates otherwise. The term "coalbed methane well"
25 does not include any shaft, hole or well sunk, drilled, bored or
26 dug into the earth for core drilling, production of coal or water,
27 venting gas from a mine area, or degasification of a coal seam,
28 or any coalbed methane well extending from the surface into,
29 but not below, a coal seam being mined after such well or its
30 horizontal extension has been plugged in accordance with
31 section twenty-three of this article;

32 (f) "Coalbed methane well operator" or "well operator"
33 means any person who has the right to operate or does operate
34 a coalbed methane well;

35 (g) "Coal operator" means any person who proposes to or
36 does operate a coal mine;

37 (h) "Coal owner" means any person who owns or leases a
38 coal seam;

39 (i) "Chief" means the chief of the office of oil and gas of
40 the division of environmental protection provided for in section
41 eight, article one of this chapter;

42 (j) "Director" means the director of the division of environ-
43 mental protection;

44 (k) "Division" means the division of environmental
45 protection;

46 (l) "Gob well" means a well drilled or vent hole converted
47 to a well pursuant to this article which produces or is capable of
48 producing coalbed methane or other natural gas from a dis-
49 tressed zone created above and below a mined-out coal seam by
50 any prior full seam extraction of the coal;

51 (m) "Mine" or "mine areas," including the sub-definitions
52 under "mine areas," shall have the same definitions as are
53 provided in section two, article one, chapter twenty-two-a of
54 this code;

55 (n) "Office" means office of oil and gas provided for in
56 section seven, article one of this chapter;

57 (o) "Person" means any natural person, corporation, firm,
58 partnership, partnership association, venture, receiver, trustee,
59 executor, administrator, guardian, fiduciary, other representa-
60 tive of any kind, any recognized legal entity, or political
61 subdivision or agency thereof;

62 (p) "Stimulate" means any action taken to increase the
63 natural flow of coalbed methane or the inherent productivity of
64 a coalbed methane well, including, but not limited to, fractur-
65 ing, shooting, acidizing or water flooding, but excluding
66 cleaning out, bailing or workover operations;

67 (q) "Waste" means: (i) Physical waste as the term is
68 generally understood in the gas industry and as provided for in
69 article six of this chapter, but giving special consideration to
70 coal mining operations and the safe recovery of coal; (ii) the
71 locating, drilling, equipping, operating, producing or transport-
72 ing coalbed methane in a manner that causes or tends to cause
73 a substantial reduction in the quantity of coalbed methane
74 recoverable from a pool under prudent and proper operations,
75 or that causes or tends to cause a substantial or unnecessary or
76 excessive surface loss of coalbed methane; (iii) the drilling of
77 more wells than are reasonably required to recover efficiently
78 and economically the maximum amount of coalbed methane
79 from a pool; or (iv) substantially inefficient, excessive or
80 improper use, or the substantially unnecessary dissipation of
81 reservoir pressure. Waste does not include coalbed methane
82 vented or released from any mine area, the degasification of a

83 coal seam for the purpose of mining coal, the plugging of
84 coalbed methane wells for the purpose of mining coal, coalbed
85 methane vented or flared from a coalbed methane well, after
86 completion, for the purpose of evaluating its economic viabil-
87 ity, or the conversion of coalbed methane wells to vent holes for
88 the purpose of mining coal;

89 (r) “Workable coalbed” or “workable coal seam” means any
90 seam of coal twenty inches or more in thickness, or any seam
91 of less thickness which is being commercially mined or can be
92 shown to be capable of being commercially mined;

93 (s) “Secretary” means the Secretary of the Department of
94 Environmental Protection.

**§22-21-3. Application of article; exclusions; application of chap-
ter twenty-two-b to coalbed methane wells.**

1 (a) The provisions of this article apply to: (1) All lands in
2 this state under which a coalbed is located, including any lands
3 owned or administered by the state or any agency or subdivi-
4 sion thereof; and (2) any coalbed methane well.

5 (b) This article does not apply to or affect: (1) Any well
6 otherwise permitted, approved or regulated under articles six,
7 seven, eight, nine or ten of this chapter or article eight, chapter
8 twenty-two-c of this code; (2) any ventilation fan, vent hole,
9 mining apparatus, or other facility utilized solely for the
10 purpose of venting any mine or mine area; or (3) the ventilation
11 of any mine or mine area or degasification of any coal seam for
12 the mining of coal.

13 (c) This article does not apply to or affect subsurface
14 boreholes drilled from the mine face of an underground mine,
15 except that the provisions of sections fifteen, sixteen, seventeen,
16 eighteen and nineteen shall apply.

17 (d) To the extent that coalbed methane wells are similar to
18 wells, as defined in section one, article six of this chapter, and
19 the production of coalbed methane is similar to the production
20 of natural gas, coalbed methane wells shall be treated as wells
21 and coalbed methane treated as natural gas and subject to the
22 following sections of article six of this chapter:

23 (1) The provisions of section three pertaining to the
24 findings and orders of inspectors concerning violations,
25 determination of reasonable time for abatement, extensions of
26 time for abatement, special inspections, notice of findings and
27 orders;

28 (2) The provisions of section four providing for the review
29 of findings and orders by the chief, special inspection, annul-
30 ment, revision of order and notice;

31 (3) The provisions of section five providing for the require-
32 ments of findings, orders and notices; posting of findings and
33 orders; and judicial review of final orders of the chief;

34 (4) The provisions of section twenty-one providing for
35 protective devices—installation of freshwater casings;

36 (5) The provisions of section twenty-two providing for a
37 well log to be filed, contents, and authority to promulgate
38 regulations. In addition to the requirements of such section, the
39 operator shall certify that the well was drilled and completed as
40 shown on the well plat required for a coalbed methane well, or
41 in the alternative, file a revised well plat showing the actual
42 location of the well and the coal seams in which the well is
43 completed for production. Such log and certificate shall be
44 served on all coal owners and operators who must be named in
45 the permit application under section six of this article;

46 (6) The provisions of section twenty-eight providing for
47 supervision by the chief over drilling and reclamation opera-
48 tions, complaints, hearings and appeals;

49 (7) The provisions of section twenty-nine providing for
50 special reclamation funds and fees;

51 (8) The provisions of section thirty providing for reclama-
52 tion requirements;

53 (9) The provisions of section thirty-one providing for
54 preventing waste of gas, plan of operation required for wasting
55 gas in process of producing oil and rejection thereof;

56 (10) The provisions of section thirty-two providing for the
57 right of adjacent owner or operator to prevent waste of gas and
58 recovery of costs;

59 (11) The provisions of section thirty-three providing for
60 restraining waste;

61 (12) The provisions of section thirty-four providing for
62 offenses and penalties;

63 (13) The provisions of section thirty-five providing for civil
64 action for contamination or deprivation of freshwater source or
65 supply and presumption;

66 (14) The provisions of section thirty-six providing for
67 declaration of notice by owners and lessees of coal seams and
68 setting out the form of such declaration; and

69 (15) The provisions of section thirty-nine providing for
70 injunctive relief.

71 In addition to the foregoing and subject to the same
72 qualifications, the provisions of article ten of this chapter shall
73 apply to coalbed methane wells. Any well which is abandoned

74 or presumed to be abandoned under the provisions of this article
75 shall be treated as an abandoned well under said article ten. In
76 addition, the provisions of article seven of this chapter shall
77 apply to permits issued pursuant to this article.

**§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 any
3 horizontal drilling of a well commenced from the surface for
4 the purpose of commercial production of coalbed methane, or
5 to convert any existing well, vent hole or other hole to a
6 coalbed methane well, including in any case site preparation
7 work which involves any disturbance of land, without first
8 securing from the chief a permit pursuant to this article.

9 (b) Every permit application filed under this section shall
10 be verified and shall contain the following:

11 (1) The names and addresses of (i) the well operator, (ii) the
12 agent required to be designated under subsection (e) of this
13 section, and (iii) every person or entity whom the applicant
14 must notify under any section of this article;

15 (2) The name and address of each coal operator and each
16 coal owner of record or providing a record declaration of notice
17 pursuant to section thirty-six, article six of this chapter of any
18 coal seam which is (i) to be penetrated by a proposed well, (ii)
19 within seven hundred fifty horizontal feet of any portion of the
20 proposed well bore; or (iii) within one hundred vertical feet of
21 the designated completion coal seams of the proposed well,
22 except that in the case of an application to convert a ventilation
23 hole to a gob well, the name and address only of such owner or
24 operator of the seams to be penetrated by a proposed well shall
25 be necessary;

26 (3) The well name or such other identification as the chief
27 may require;

28 (4) The approximate depth to which the well is to be
29 drilled, deepened or converted, the coal seams (stating the depth
30 and thickness of each seam) in which the well will be com-
31 pleted for production, and any other coal seams (including the
32 depth and thickness of each seam) which will be penetrated by
33 the well;

34 (5) A description of any means to be used to stimulate the
35 well;

36 (6) If the proposed well will require casing or tubing to be
37 set, the entire casing program for the well, including the size of
38 each string of pipe, the starting point and depth to which each
39 string is to be set, and the extent to which each such string is to
40 be cemented;

41 (7) If the proposed operation is to convert an existing well,
42 as defined in section one, article six of this chapter, or to
43 convert a vertical ventilation hole to a coalbed methane well, all
44 information required by this section, all formations from which
45 production is anticipated, and any plans to plug any portion of
46 the well;

47 (8) Except for a gob well or vent hole proposed to be
48 converted to a well, if the proposed coalbed methane well will
49 be completed in some but not all coal seams for production, a
50 plan and design for the well which will protect all workable
51 coal seams which will be penetrated by the well;

52 (9) If the proposed operations will include horizontal
53 drilling of a well commenced on the surface, a description of
54 such operations, including both the vertical and horizontal
55 alignment and extent of the well from the surface to total depth;
56 and

57 (10) Any other relevant information which the chief may
58 require by rule.

59 (c) Each application for a coalbed methane well permit
60 shall be accompanied by the following:

61 (1) The applicable bond prescribed by section eight of this
62 article;

63 (2) A permit application fee of two hundred fifty dollars:
64 *Provided*, That no permit application fee shall be required to
65 modify an existing permit application for which the operator
66 previously has submitted a permit fee under this section. All
67 application fees required under this section shall be in lieu of
68 and not in addition to any fees relating to discharges of storm
69 water imposed under article eleven of this chapter: *Provided*,
70 *however*, That upon a final determination by the United States
71 Environmental Protection Agency regarding the scope of the
72 exemption under section 402(1)(2) of the federal Clean Water
73 Act (33 U.S.C.1342(1)(2)), which determination requires a
74 "national pollutant discharge elimination system" permit for
75 stormwater discharges from the oil and gas operations described
76 therein, any permit fees for stormwater permits required under
77 article eleven of this chapter for such operations shall not
78 exceed one hundred dollars.

79 (3) The erosion and sediment control plan required under
80 subsection (d) of this section;

81 (4) The consent and agreement of the coal owner as
82 required by section seven and, if applicable, section twenty of
83 this article;

84 (5) A plat prepared by a licensed land surveyor or regis-
85 tered engineer showing the district and county in which the drill
86 site is located, the name of the surface owner of the drill site
87 tract, the acreage of the same, the names of the surface owners

88 of adjacent tracts, the names of all coal owners underlying the
89 drill site tract, the proposed or actual location of the well
90 determined by a survey, the courses and distances of such
91 location from two permanent points or landmarks on said tract,
92 the location of any other existing or permitted coalbed methane
93 well or any oil or gas well located within two thousand five
94 hundred feet of the drill site, the number to be given the coalbed
95 methane well, and if horizontal drilling of a well commenced
96 on the surface is proposed, the vertical and horizontal alignment
97 and extent of the well; and

98 (6) A certificate by the applicant that the notice require-
99 ments of section nine of this article have been satisfied by the
100 applicant. Such certification may be by affidavit of personal
101 service, or the return receipt card, or other postal receipt, for
102 certified mailing.

103 (d) An erosion and sediment control plan shall accompany
104 each application for a permit. Such plan shall contain methods
105 of stabilization and drainage, including a map of the project
106 area indicating the amount of acreage disturbed. The erosion
107 and sediment control plan shall meet the minimum require-
108 ments of the West Virginia erosion and sediment control
109 manual as adopted and from time to time amended by the office
110 of oil and gas in consultation with the several soil conservation
111 districts pursuant to the control program established in this state
112 through Section 208 of the federal Clean Water Act. The
113 erosion and sediment control plan shall become part of the
114 terms and conditions of a permit and the provisions of the plan
115 shall be carried out where applicable in operations under the
116 permit. The erosion and sediment control plan shall set out the
117 proposed method of reclamation which shall comply with the
118 requirements of section thirty, article six of this chapter.

119 (e) The well operator named in such application shall
120 designate the name and address of an agent for such operator

121 who shall be the attorney-in-fact for the operator and who shall
122 be a resident of the State of West Virginia, upon whom notices,
123 orders or other communications issued pursuant to this article
124 may be served, and upon whom process may be served. Every
125 well operator required to designate an agent under this section
126 shall within five days after the termination of such designation
127 notify the office of such termination and designate a new agent.

128 (f) The well owner or operator shall install the permit
129 number as issued by the chief in a legible and permanent
130 manner to the well upon completion of any permitted work. The
131 dimensions, specifications and manner of installation shall be
132 in accordance with the rules of the chief.

133 (g) The chief shall deny the issuance of a permit if he or she
134 determines that the applicant has committed a substantial
135 violation of a previously issued permit, including the erosion
136 and sediment control plan, or a substantial violation of one or
137 more of the rules promulgated hereunder, and has failed to
138 abate or seek review of the violation. In the event that the chief
139 finds that a substantial violation has occurred with respect to
140 existing operations and that the operator has failed to abate or
141 seek review of the violation in the time prescribed, he or she
142 may suspend the permit on which said violation exists, after
143 which suspension the operator shall forthwith cease all work
144 being conducted under the permit until the chief reinstates the
145 permit, at which time the work may be continued. The chief
146 shall make written findings of any such determination made by
147 him or her and may enforce the same in the circuit courts of this
148 state and the operator may appeal such suspension pursuant to
149 the provisions of section twenty-five of this article. The chief
150 shall make a written finding of any such determination.

151 (h) Any person who violates any provision of this section
152 shall be guilty of a misdemeanor and, upon conviction thereof,
153 shall be fined not more than five thousand dollars, or be

154 imprisoned in the county jail not more than twelve months, or
155 both fined and imprisoned.

§22-21-7. Consent and agreement of coal owner or operator.

1 (a) No permit shall be issued for a coalbed methane well
2 unless and until the applicant has obtained and filed with the
3 chief a consent and agreement from each owner and each
4 operator of any workable coal seam in West Virginia twenty-
5 eight inches or more in thickness which is within seven hundred
6 fifty horizontal feet of the proposed well bore and (i) which
7 coal seam the applicant proposes to stimulate or (ii) which coal
8 seam is within one hundred vertical feet above or below a coal
9 seam which the applicant proposes to stimulate. The require-
10 ment for consent and agreement contained in this section shall
11 not be considered to impair, abridge or affect any contractual
12 rights or objections arising out of a contract or lease which
13 provides for the development of coalbed methane and stimula-
14 tion of wells between the applicant and any coal owner or
15 operator and the existence of any such contract or lease shall
16 constitute a waiver of the requirement to file an additional
17 signed consent and agreement. Such consent and agreement
18 must provide: (i) That such coal owner or operator has been
19 provided with a copy of the application for permit as required
20 by section six of this article and with a copy of all plats and
21 documents which must accompany the application; and (ii) that
22 such coal owner or operator consents and agrees to the stimula-
23 tion of the coal seam as described in such application.

24 (b) In the absence of the applicant submitting the consent
25 described in subsection (a) above, the applicant may submit a
26 request for hearing before the board accompanied by an
27 affidavit which shall include the following:

28 (1) A statement that a coal owner or operator as described
29 in subsection (a) of this section has refused to provide written
30 authorization to stimulate the well;

31 (2) A statement detailing the efforts undertaken to obtain
32 such authorization;

33 (3) A statement setting out any known reasons for the
34 authorization not being provided; and

35 (4) A statement or other information in addition to that
36 provided pursuant to subdivision (5), subsection (b), section six
37 of this article necessary to provide prima facie evidence that the
38 proposed method of stimulation will not render the coal seam
39 unworkable, or considering all factors, impair mine safety.

40 (c) Upon receipt of a request and affidavit as set forth in
41 subsection (b) of this section, the chief shall forward the
42 application to the board to consider the proposed stimulation,
43 or if other objections or notices are filed requiring a hearing
44 before the board, the request hereunder may be included for
45 consideration by the board along with other matters related to
46 the application.

47 (d) If the authorization of a coal owner or operator has been
48 withheld based upon reasons related to safety, the chief shall,
49 concurrent with submission of the request and affidavit to the
50 board, submit a copy of the application to the director of the
51 office of miners' health, safety and training who shall review
52 the application as to issues of mine safety and within thirty days
53 submit recommendations to the board.

§22-21-20. Spacing.

1 No coalbed methane well may be drilled closer than one
2 hundred feet of the outermost boundary of the coalbed methane
3 tract, leased premises, or unit from which coalbed methane is
4 or will be produced or within one thousand six hundred linear
5 feet of the location of an existing well or a proposed well for
6 which a permit application is on file, unless all owners and
7 operators of any affected workable coal seams agree in writing.

8 Affected workable coal seams for purposes of this section shall
9 be those which will be penetrated or those seams more than
10 twenty-eight inches in thickness from which production is
11 targeted. Spacing shall otherwise be as provided in a pooling
12 order issued by the chief, an order establishing special field
13 rules or an order issued by the review board.

CHAPTER 110

(S. B. 748 — By Senators Kessler, Fanning, Jenkins,
Minard, Caruth, Lanham, McKenzie and Weeks)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 21, 2005.]

AN ACT to amend and reenact §22-11-7a of the Code of West Virginia, 1931, as amended, relating to mitigation; deleting the mitigation requirement for isolated waters; and requiring the Director to provide credit for mitigation required as a component of the permit issuable by the U. S. Army Corps of Engineers pursuant to 33 U. S. C. §1344 to the extent that it satisfies state requirements.

Be it enacted by the Legislature of West Virginia:

That §22-11-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

1 (a) Any applicant for the water quality certification that
2 seeks certification of activities covered by the United States
3 army corps of engineers permits issued in accordance with 33
4 U. S. C. §1344 and 33 C. F. R. Parts 323 or 330 for use at or
5 in conjunction with a surface coal mining operation as defined
6 in section three, article three of this chapter, certification may
7 be issued subject to the following conditions:

8 (1) If the applicant's surface coal mining operation will not
9 impact waters of the state designated as national resource
10 waters and streams where trout naturally reproduce and will not
11 impact wetlands of the state in a manner inconsistent with all
12 applicable state or federal standards as the case may be, as
13 required by the federal Clean Water Act, and if the watershed
14 above the toe of the farthest downstream permanent structure
15 authorized pursuant to the United States army corps of engi-
16 neers permits issued in accordance with 33 U. S. C. §1344
17 and 33 C. F. R. Parts 323 or 330 is less than two hundred fifty
18 acres, then the director may issue a water quality certification
19 pursuant to the requirements of this section. If the watershed
20 above the toe of the farthest downstream permanent structure
21 impacted is equal to or greater than two hundred fifty acres, the
22 director shall require that mitigation be undertaken. Addition-
23 ally, the director may require mitigation for temporary impacts
24 to waters of the state as specified in subdivision (2) of this
25 subsection.

26 (2) If the watershed above the toe of the farthest down-
27 stream permanent structure authorized pursuant to the United
28 States army corps of engineers permits issued in accordance
29 with 33 U. S. C. §1344 and 33 C. F. R. Parts 323 or 330 is
30 greater than or equal to two hundred fifty acres and all other
31 necessary requirements are met consistent with this section, the
32 director shall further condition a water quality certification on
33 a requirement that the applicant mitigate the expected water
34 quality impacts under the following conditions:

35 (A) The water quality certification may require mitigation
36 at a ratio appropriate to the type of waters impacted, consistent
37 with state or federal standards as required by the federal Clean
38 Water Act, for the types and locations of waters impacted;

39 (B) The Director may accept mitigation on the permitted
40 area, mitigation off the permitted area, mitigation banking of
41 waters of the state, or any combination thereof, or any other
42 mitigation measure acceptable to the Director; and

43 (C) The Director shall provide credit for any mitigation that
44 is a required component of the permit issued by the United
45 States Army Corps of Engineers pursuant to 33 U. S. C.
46 §1344 to the extent that it satisfies required mitigation pursuant
47 to this section.

48 (D) Upon completion of the work required by an agreement
49 to conduct operations authorized by this subsection the surface
50 coal mining operation shall obtain a certification from a
51 registered professional engineer that all mitigation work
52 specified in the agreement has been completed in accordance
53 with the conditions of the water quality certification. The
54 director shall promptly review the certification and provide to
55 the surface coal mining operation with notice that all mitigation
56 work has been successfully completed, or that further mitiga-
57 tion work is necessary to meet the conditions imposed by the
58 water quality certification. The mitigation amount may not
59 exceed two hundred thousand dollars per acre of stream
60 disturbed above the toe of the farthest downstream permanent
61 structure. Those moneys shall be deposited in the stream
62 restoration fund under the jurisdiction of the Division of
63 Environmental Protection and any expenditures from this fund
64 after the thirtieth day of June, one thousand nine hundred
65 ninety-eight, shall not be authorized from collections but shall
66 only be authorized by appropriation by the Legislature.
67 Additionally, the expenditures are only authorized in those

68 counties where the activity leading to the mitigation occurred
69 or in those counties adjacent to the counties where the activity
70 leading to the mitigation occurred. The Director shall by the
71 thirty-first day of December of each year provide a report to the
72 Joint Committee on Government and Finance on receipts and
73 expenditures from the stream restoration fund, the number of
74 acreage reclaimed by the Division through the use of these
75 funds and the effectiveness of achieving stream restoration
76 through the payment of the mitigation amounts into the fund in
77 lieu of reclamation by the certificate holder.

78 (3) The Director shall confer with representatives of the
79 surface coal mining industry and representatives of environ-
80 mental organizations with an interest in water quality in
81 developing a manual of approval options for mitigation on
82 permitted areas, mitigation off permitted areas and mitigation
83 involving banking of waters of the state.

84 (4) The proposed surface coal mining operation shall
85 comply with all applicable state and federal laws, rules and
86 regulations.

87 (5) The Director shall propose rules for legislative approval
88 in accordance with article three, chapter twenty-nine-a of this
89 code, for the purpose of implementing the provisions of this
90 section which rules shall include, but not be limited to, the
91 following:

92 (A) Establishing all necessary operational and performance
93 requirements for an operator undertaking activities covered by
94 this section;

95 (B) Modifying the provisions of this section, when neces-
96 sary and appropriate to bring the provisions of this section into
97 compliance with state or federal law or regulation; and

98 (C) Establishing the specific operational requirements for
99 mining operations consistent with this section appropriate to
100 protect the waters of this state during and following mining
101 operations.

102 (b) The Joint Committee on Government and Finance may
103 undertake or facilitate a study of the impact of mountaintop
104 mining and valley fills upon the state of West Virginia.

105 (1) To facilitate the study, the Joint Committee on Govern-
106 ment and Finance is further authorized to coordinate with and
107 seek funding from appropriate federal agencies to facilitate the
108 study including, but not limited to: The Environmental Protec-
109 tion Agency, Army Corps of Engineers, Office of Surface
110 Mining and the Fish and Wildlife Service.

111 (2) In order to facilitate the research, the Joint Committee
112 on Government and Finance shall appoint a council to coordi-
113 nate and direct the research. The composition of the council
114 shall be determined by the Joint Committee, but shall include
115 representatives from the various interested parties as deter-
116 mined solely by the Joint Committee.

CHAPTER 111

(S. B. 406 — By Senators Dempsey and Unger)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend of the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §22-22B-1, §22-22B-
2, §22-22B-3, §22-22B-4, §22-22B-5, §22-22B-6, §22-22B-7,

§22-22B-8, §22-22B-9, §22-22B-10, §22-22B-11, §22-22B-12, §22-22B-13 and §22-22B-14, all relating to the Uniform Environmental Covenants Act generally; defining certain terms; explaining rights and responsibilities of persons who sign environmental covenant; providing for subordination of interests; establishing requirements of environmental covenant; providing that environmental covenant runs with the land and is valid if meets requirements of act; setting forth effect of environmental covenant on other instruments; establishing relationship between environmental covenants and other land-use law; requiring environmental covenants be provided to certain persons; requiring environmental covenant amendments and terminations be recorded; providing environmental covenant is perpetual unless certain conditions met; authorizing amendment or termination by court or by consent; providing for enforcement of environmental covenant; providing for uniformity of application and construction of act; authorizing modification or application of certain parts of federal Electronic Signatures in Global and National Commerce Act; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-22B-1, §22-22B-2, §22-22B-3, §22-22B-4, §22-22B-5, §22-22B-6, §22-22B-7, §22-22B-8, §22-22B-9, §22-22B-10, §22-22B-11, §22-22B-12, §22-22B-13 and §22-22B-14, all to read as follows:

ARTICLE 22B. UNIFORM ENVIRONMENTAL COVENANTS ACT.

- §22-22B-1. Short title.
- §22-22B-2. Definitions.
- §22-22B-3. Nature of rights; subordination of interests.
- §22-22B-4. Contents of environmental covenant.
- §22-22B-5. Validity; effect on other instruments.
- §22-22B-6. Relationship to other land-use law.
- §22-22B-7. Notice.
- §22-22B-8. Recording.

§22-22B-9. Duration; amendment by court action.

§22-22B-10. Amendment or termination by consent.

§22-22B-11. Enforcement of environmental covenant.

§22-22B-12. Uniformity of application and construction.

§22-22B-13. Relation to Electronic Signatures in Global and National Commerce Act.

§22-22B-14. Severability.

§22-22B-1. Short title.

1 This article may be cited as the Uniform Environmental
2 Covenants Act.

§22-22B-2. Definitions.

1 As used in this article and insofar as they are not in conflict
2 with article twenty-two of this chapter, the following terms
3 shall mean:

4 (1) “Activity and use limitations” means restrictions or
5 obligations created under this article with respect to real
6 property.

7 (2) “Agency” means the Department of Environmental
8 Protection or any federal agency that determines or approves
9 the environmental response project pursuant to which the
10 environmental covenant is created.

11 (3) “Common interest community” means a condominium,
12 cooperative, or other real property with respect to which a
13 person, by virtue of the person’s ownership of a parcel of real
14 property, is obligated to pay property taxes or insurance
15 premiums, or for maintenance or improvement of other real
16 property described in a recorded covenant that creates the
17 common interest community.

18 (4) “Environmental covenant” means a servitude arising
19 under an environmental response project that imposes activity
20 and use limitations.

21 (5) “Environmental response project” means a plan or work
22 performed for environmental remediation of real property and
23 conducted:

24 (A) Under a federal or state program governing environ-
25 mental remediation of real property, including article twenty-
26 two of this chapter;

27 (B) Incident to closure of a solid or hazardous waste
28 management unit, if the closure is conducted with approval of
29 an agency; or

30 (C) Under a state voluntary clean-up program authorized in
31 article twenty-two of this chapter.

32 (6) “Holder” means the grantee of an environmental
33 covenant as specified in subsection (a), section three of this
34 article.

35 (7) “Person” means an individual, corporation, business
36 trust, estate, trust, partnership, limited liability company,
37 association, joint venture, public corporation, government,
38 governmental subdivision, agency or instrumentality or any
39 other legal or commercial entity.

40 (8) “Record” means information that is inscribed on a
41 tangible medium or that is stored in an electronic or other
42 medium and is retrievable in perceivable form.

43 (9) “State” means a state of the United States, the District
44 of Columbia, Puerto Rico, the United States Virgin Islands or
45 any territory or insular possession subject to the jurisdiction of
46 the United States.

§22-22B-3. Nature of rights; subordination of interests.

1 (a) Any person, including a person that owns an interest in
2 the real property, the agency, or a municipality or other unit of

3 local government, may be a holder. An environmental covenant
4 may identify more than one holder. The interest of a holder is
5 an interest in real property.

6 (b) A right of an agency under this article or under an
7 environmental covenant, other than a right as a holder, is not an
8 interest in real property.

9 (c) An agency is bound by any obligation it assumes in an
10 environmental covenant, but an agency does not assume
11 obligations merely by signing an environmental covenant. Any
12 other person that signs an environmental covenant is bound by
13 the obligations the person assumes in the covenant, but signing
14 the covenant does not change obligations, rights or protections
15 granted or imposed under law other than this article except as
16 provided in the covenant.

17 (d) The following rules apply to interests in real property in
18 existence at the time an environmental covenant is created or
19 amended:

20 (1) An interest that has priority under other law is not
21 affected by an environmental covenant unless the person that
22 owns the interest subordinates that interest to the covenant.

23 (2) This article does not require a person that owns a prior
24 interest to subordinate that interest to an environmental
25 covenant or to agree to be bound by the covenant.

26 (3) A subordination agreement may be contained in an
27 environmental covenant covering real property or in a separate
28 record. If the environmental covenant covers commonly owned
29 property in a common interest community, the record may be
30 signed by any person authorized by the governing board of the
31 owners' association.

32 (4) An agreement by a person to subordinate a prior interest
33 to an environmental covenant affects the priority of that

34 person's interest but does not by itself impose any affirmative
35 obligation on the person with respect to the environmental
36 covenant.

§22-22B-4. Contents of environmental covenant.

1 (a) An environmental covenant must:

2 (1) State that the instrument is an environmental covenant
3 executed pursuant to this article;

4 (2) Contain a legally sufficient description of the real
5 property subject to the covenant;

6 (3) Describe the activity and use limitations on the real
7 property;

8 (4) Identify every holder;

9 (5) Be signed and notarized by the agency, every holder,
10 and unless waived by the agency every owner of the fee simple
11 of the real property subject to the covenant; and

12 (6) Identify the name and location of any administrative
13 record for the environmental response project reflected in the
14 environmental covenant.

15 (b) In addition to the information required by subsection (a)
16 of this section, an environmental covenant may contain other
17 information, restrictions and requirements agreed to by the
18 persons who signed it, including any:

19 (1) Requirements for notice following transfer of a speci-
20 fied interest in, or concerning proposed changes in use of,
21 applications for building permits for, or proposals for any site
22 work affecting the contamination on, the property subject to the
23 covenant;

24 (2) Requirements for periodic reporting describing compli-
25 ance with the covenant;

26 (3) Rights of access to the property granted in connection
27 with implementation or enforcement of the covenant;

28 (4) A brief narrative description of the contamination and
29 remedy, including the contaminants of concern, the pathways
30 of exposure, limits on exposure and the location and extent of
31 the contamination;

32 (5) Limitation on amendment or termination of the cove-
33 nant in addition to those contained in sections nine and ten of
34 this article; and

35 (6) Rights of the holder in addition to its right to enforce the
36 covenant pursuant to section eleven of this article.

37 (c) In addition to other conditions for its approval of an
38 environmental covenant, the agency may require those persons
39 specified by the agency who have interests in the real property
40 to sign the covenant.

§22-22B-5. Validity; effect on other instruments.

1 (a) An environmental covenant that complies with this
2 article runs with the land.

3 (b) An environmental covenant that is otherwise effective
4 is valid and enforceable even if:

5 (1) It is not appurtenant to an interest in real property;

6 (2) It can be or has been assigned to a person other than the
7 original holder;

8 (3) It is not of a character that has been recognized tradi-
9 tionally at common law;

- 10 (4) It imposes a negative burden;
- 11 (5) It imposes an affirmative obligation on a person having
12 an interest in the real property or on the holder;
- 13 (6) The benefit or burden does not touch or concern real
14 property;
- 15 (7) There is no privity of estate or contract;
- 16 (8) The holder dies, ceases to exist, resigns or is replaced;
17 or
- 18 (9) The owner of an interest subject to the environmental
19 covenant and the holder are the same person.

20 (c) An instrument that creates restrictions or obligations
21 with respect to real property that would qualify as activity and
22 use limitations except for the fact that the instrument was
23 recorded before the effective date of the enactment of this
24 article during the regular session of the Legislature in two
25 thousand five is not invalid or unenforceable because of any of
26 the limitations on enforcement of interests described in subsec-
27 tion (b) of this section or because it was identified as an
28 easement, servitude, deed restriction or other interest. This
29 article does not apply in any other respect to such an instru-
30 ment.

31 (d) This article does not invalidate or render unenforceable
32 any interest, whether designated as an environmental covenant
33 or other interest, that is otherwise enforceable under the law of
34 this state.

§22-22B-6. Relationship to other land-use law.

1 This article does not authorize a use of real property that is
2 otherwise prohibited by zoning, by law other than this article

3 regulating use of real property, or by a recorded instrument that
4 has priority over the environmental covenant. An environmen-
5 tal covenant may prohibit or restrict uses of real property which
6 are authorized by zoning or by law other than this article.

§22-22B-7. Notice.

1 (a) A copy of an environmental covenant shall be provided
2 by the persons and in the manner required by the agency to:

3 (1) Each person that signed the covenant;

4 (2) Each person holding a recorded interest in the real
5 property subject to the covenant;

6 (3) Each person in possession of the real property subject
7 to the covenant;

8 (4) Each municipality or other unit of local government in
9 which real property subject to the covenant is located; and

10 (5) Any other person the agency requires.

11 (b) The validity of a covenant is not affected by failure to
12 provide a copy of the covenant as required under this section.

§22-22B-8. Recording.

1 (a) An environmental covenant and any amendment or
2 termination of the covenant must be recorded in every county
3 in which any portion of the real property subject to the covenant
4 is located. For purposes of indexing, a holder shall be treated as
5 a grantee.

6 (b) Except as otherwise provided in subsection (c), section
7 nine of this article, an environmental covenant is subject to the

- 8 laws of this state governing recording and priority of interests
9 in real property.

§22-22B-9. Duration; amendment by court action.

1 (a) An environmental covenant is perpetual unless it is:

2 (1) By its terms limited to a specific duration or terminated
3 by the occurrence of a specific event;

4 (2) Terminated by consent pursuant to section ten of this
5 article;

6 (3) Terminated pursuant to subsection (b) of this section;

7 (4) Terminated by foreclosure of an interest that has priority
8 over the environmental covenant; or

9 (5) Terminated or modified in an eminent domain proceed-
10 ing, but only if:

11 (A) The agency that signed the covenant is a party to the
12 proceeding;

13 (B) All persons identified in subsections (a) and (b), section
14 ten of this article are given notice of the pendency of the
15 proceeding; and

16 (C) The court determines, after hearing, that the termination
17 or modification will not adversely affect human health or the
18 environment.

19 (b) If the agency that signed an environmental covenant has
20 determined that the intended benefits of the covenant can no
21 longer be realized, a court, under the doctrine of changed
22 circumstances, in an action in which all persons identified in
23 subsections (a) and (b), section ten of this article have been

24 given notice, may terminate the covenant or reduce its burden
25 on the real property subject to the covenant. The agency's
26 determination or its failure to make a determination upon
27 request is subject to review pursuant to article five, chapter
28 twenty-nine-a of this code.

29 (c) Except as otherwise provided in subsections (a) and (b)
30 of this section, an environmental covenant may not be extin-
31 guished, limited or impaired through issuance of a tax deed,
32 foreclosure of a tax lien, or application of the doctrine of
33 adverse possession, prescription, abandonment, waiver, lack of
34 enforcement, or acquiescence, or a similar doctrine.

35 (d) An environmental covenant may not be extinguished,
36 limited, or impaired except as authorized by this article.

§22-22B-10. Amendment or termination by consent.

1 (a) An environmental covenant may be amended or
2 terminated by consent only if the amendment or termination is
3 signed by:

4 (1) The agency;

5 (2) Unless waived by the agency, the current owner of the
6 fee simple of the real property subject to the covenant;

7 (3) Each person that originally signed the covenant, unless
8 the person waived in a signed record the right to consent or a
9 court finds that the person no longer exists or cannot be located
10 or identified with the exercise of reasonable diligence; and

11 (4) Except as otherwise provided in subdivision (2),
12 subsection (d) of this section, the holder.

13 (b) If an interest in real property is subject to an environ-
14 mental covenant, the interest is not affected by an amendment

15 of the covenant unless the current owner of the interest consents
16 to the amendment or has waived in a signed record the right to
17 consent to amendments.

18 (c) Except for an assignment undertaken pursuant to a
19 governmental reorganization, assignment of an environmental
20 covenant to a new holder is an amendment.

21 (d) Except as otherwise provided in an environmental
22 covenant:

23 (1) A holder may not assign its interest without consent of
24 the other parties;

25 (2) A holder may be removed and replaced by agreement of
26 the other parties specified in subsection (a) of this section; and

27 (e) A court of competent jurisdiction may fill a vacancy in
28 the position of holder.

§22-22B-11. Enforcement of environmental covenant.

1 (a) A civil action for injunctive or other equitable relief for
2 violation of an environmental covenant may be maintained by:

3 (1) A party to the covenant;

4 (2) The agency or, if it is not the agency, the Department of
5 Environmental Protection;

6 (3) Any person to whom the covenant expressly grants
7 power to enforce;

8 (4) A person whose interest in the real property or whose
9 collateral or liability may be affected by the alleged violation of
10 the covenant; or

11 (5) A municipality or other unit of local government in
12 which the real property subject to the covenant is located.

13 (b) This article does not limit the regulatory authority of the
14 agency or the Department of Environmental Protection under
15 law other than this article with respect to an environmental
16 response project.

17 (c) A person is not responsible for or subject to liability for
18 environmental remediation solely because it has the right to
19 enforce an environmental covenant.

§22-22B-12. Uniformity of application and construction.

1 In applying and construing this uniform act, consideration
2 must be given to the need to promote uniformity of the law with
3 respect to its subject matter among states that enact it.

§22-22B-13. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits or supersedes the federal
2 Electronic Signatures in Global and National Commerce Act
3 (15 U. S. C. Section 7001, *et seq.*) but does not modify, limit or
4 supersede Section 101 of said Act (15 U.S.C. Section 7001(a))
5 or authorize electronic delivery of any of the notices described
6 in Section 103 of said Act (15 U. S. C. Section 7003(b)).

§22-22B-14. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held invalid, the invalidity does not
3 affect other provisions or applications of this article which can
4 be given effect without the invalid provision or application, and
5 to this end the provisions of this article are severable.

CHAPTER 112

(H. B. 2333 — By Rick Thompson, Brown, Delong,
Hrutkay, Mahan, Pino and Ellem)

[Passed March 24, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 6, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-27-1, §22-27-2, §22-27-3, §22-27-4, §22-27-5, §22-27-6, §22-27-7, §22-27-8, §22-27-9, §22-27-10, §22-27-11, and §22-27-12, all relating to establishing a program to encourage voluntary reclamation of lands adversely affected by mining by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or reduction and abatement of water pollution; stating legislative purpose and intent; setting forth legislative findings; providing definitions for applicable terms; defining eligibility for the protections and immunities; setting forth specific exemptions from liability for landowners; setting forth specific exemptions from liability for persons who provide equipment at no cost or at cost for a reclamation project; and providing exceptions to coverage under the proposed legislation.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-27-1, §22-27-2, §22-27-3, §22-27-4, §22-27-5, §22-27-6, §22-27-7, §22-27-8, §22-27-9, §22-27-10, §22-27-11 and §22-27-12, all to read as follows:

ARTICLE 27. ENVIRONMENTAL GOOD SAMARITAN ACT.

§22-27-1. Declaration of policy and purpose.

- §22-27-2. Legislative findings.
- §22-27-3. Definitions.
- §22-27-4. Eligibility and project inventory.
- §22-27-5. Landowner liability limitation and exceptions.
- §22-27-6. Project sponsor liability limitation and exceptions.
- §22-27-7. Permits and zoning.
- §22-27-8. Relationship to federal and state programs.
- §22-27-9. General permits.
- §22-27-10. Exceptions.
- §22-27-11. Water supply replacement.
- §22-27-12. Rules.

§22-27-1. Declaration of policy and purpose.

1 This article is intended to encourage the improvement of
2 land and water adversely affected by mining, to aid in the
3 protection of wildlife, to decrease soil erosion, to aid in the
4 prevention and abatement of the pollution of rivers and streams,
5 to protect and improve the environmental values of the citizens
6 of this state and to eliminate or abate hazards to health and
7 safety. It is the intent of the Legislature to encourage voluntary
8 reclamation of lands adversely affected by mining. The purpose
9 of this article is to improve water quality and to control and
10 eliminate water pollution resulting from mining extraction or
11 exploration by limiting the liability which could arise as a result
12 of the voluntary reclamation of abandoned lands or the reduc-
13 tion and abatement of water pollution. This article is not
14 intended to limit the liability of a person who by law is or may
15 become responsible to reclaim the land or address the water
16 pollution or anyone who by contract, order or otherwise is
17 required to or agrees to perform the reclamation or abate the
18 water pollution.

§22-27-2. Legislative findings.

1 The Legislature finds and declares as follows:

- 2 (1) The state's long history of mining has left some lands
3 and waters unreclaimed and polluted.

4 (2) These abandoned lands and polluted waters are unpro-
5 ductive, diminish the tax base and are serious impediments to
6 the economic welfare and growth of this state.

7 (3) The unreclaimed lands and polluted waters present a
8 danger to the health, safety and welfare of the people and the
9 environment.

10 (4) The State of West Virginia does not possess sufficient
11 resources to reclaim all the abandoned lands and to abate the
12 water pollution.

13 (5) Numerous landowners, citizens, watershed associations,
14 environmental organizations and governmental entities who do
15 not have a legal responsibility to reclaim the abandoned lands
16 or to abate the water pollution are interested in addressing these
17 problems but are reluctant to engage in such reclamation and
18 abatement activities because of potential liabilities associated
19 with the reclamation and abatement activities.

20 (6) It is in the best interest of the health, safety and welfare
21 of the people of this state and the environment to encourage
22 reclamation of the abandoned lands and abatement of water
23 pollution.

24 (7) That this act will encourage and promote the reclama-
25 tion of these properties.

§22-27-3. Definitions.

1 As used in this article unless used in a context that clearly
2 requires a different meaning, the term:

3 (a) "Abandoned lands" means land adversely affected by
4 mineral extraction and left or abandoned in an unreclaimed or
5 inadequately reclaimed condition.

6 (b) "Consideration" means something of value promised,
7 given or performed in exchange for something which has the
8 effect of making a legally enforceable contract. For the purpose
9 of this article, the term does not include a promise to a land-
10 owner to repair damage caused by a reclamation project or
11 water pollution abatement project when the promise is made in
12 exchange for access to the land.

13 (c) "Department" means the West Virginia Department of
14 Environmental Protection.

15 (d) "Eligible land" means land adversely affected by
16 mineral extraction and left or abandoned in an unreclaimed or
17 inadequately reclaimed condition or causing water pollution
18 and for which no person has a continuing reclamation or water
19 pollution abatement obligation.

20 (e) "Eligible landowner" means a landowner that provides
21 access to or use of the project work area at no cost for a
22 reclamation or water pollution abatement project who is not or
23 will not become responsible under state or federal law to
24 reclaim the land or address the water pollution existing or
25 emanating from the land.

26 (f) "Eligible project sponsor" means a person that provides
27 equipment, materials or services at no cost or at cost for a
28 reclamation or water pollution abatement project who is not or
29 will not become responsible under state or federal law to
30 reclaim the land or address the water pollution existing or
31 emanating from the land.

32 (g) "Landowner" means a person who holds either legal or
33 equitable interest in real property.

34 (h) "Mineral" means any aggregate or mass of mineral
35 matter, whether or not coherent, which is extracted by mining.
36 This includes, but is not limited to, limestone, dolomite, sand,

37 gravel, slate, argillite, diabase, gneiss, micaceous sandstone
38 known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc
39 ore, vermiculite, clay and anthracite and bituminous coal.

40 (i) "Permitted activity site" means a site permitted by the
41 department of environmental protection under the provisions of
42 article two, three or four of this chapter.

43 (j) "Person" means a natural person, partnership, associa-
44 tion, association members, corporation, an agency, instrumen-
45 tality or entity of federal or state government or other legal
46 entity recognized by law as the subject of rights and liabilities.

47 (k) "Project work area" means that land necessary for a
48 person to complete a reclamation project or a water pollution
49 abatement project.

50 (l) "Reclamation project" means the restoration of eligible
51 land to productive use by regrading and revegetating the land to
52 stable contours that blend in and complement the drainage
53 pattern of the surrounding terrain with no highwalls, spoil piles
54 or depressions to accumulate water, or to decrease or eliminate
55 discharge of water pollution.

56 (m) "Water pollution" means the man-made or man-
57 induced alteration of the chemical, physical, biological and
58 radiological integrity of water located in the state.

59 (n) "Water pollution abatement facilities" means the
60 methods for treatment or abatement of water pollution located
61 on eligible lands. These methods include, but are not limited to,
62 a structure, system, practice, technique or method constructed,
63 installed or followed to reduce, treat or abate water pollution.

64 (o) "Water pollution abatement project" means a plan for
65 treatment or abatement of water pollution located on eligible
66 lands.

§22-27-4. Eligibility and project inventory.

1 (a) *General rule.* — An eligible landowner or eligible
2 project sponsor who voluntarily provides equipment, materials
3 or services at no charge or at cost for a reclamation project or
4 a water pollution abatement project in accordance with the
5 provisions of this article is immune from civil liability and may
6 raise the protections afforded by the provisions of this article in
7 any subsequent legal proceeding which is brought to enforce
8 environmental laws or otherwise impose liability. An eligible
9 landowner or eligible project sponsor is only entitled to the
10 protections and immunities provided by this article after
11 meeting all eligibility requirements and compliance with a
12 detailed written plan of the proposed reclamation project or
13 water pollution abatement project which is submitted to and
14 approved by the department. The project plan shall include the
15 objective of the project and a description of the work to be
16 performed to accomplish the objective and shall, additionally,
17 identify the project location, project boundaries, project
18 participants and all landowners.

19 (b) *Notice.* — The department shall give written notice by
20 certified mail to adjacent property owners and riparian land
21 owners located downstream of the proposed project, provide
22 Class IV public notice of the proposed project in a newspaper
23 of general circulation, published in the locality of the proposed
24 project, and shall give public notice in the state register. The
25 project sponsor may also provide public notice. Any person
26 having an interest which may be adversely affected by the
27 proposed project has the right to file written objections to the
28 department within thirty days after receipt of the written notice
29 or within thirty days after the last publication of the Class IV
30 notice. The department shall provide to the project sponsor a
31 copy of each written objection received during the public
32 comment period, which shall conclude at the expiration of the
33 applicable thirty-day period provided for in this section.

34 (c) *Advice.* — The department may provide advice to the
35 landowner or to other interested persons based upon the
36 department's knowledge and experience in performing reclama-
37 tion projects and water pollution abatement projects.

38 (d) *Departmental review.* — The department shall review
39 each proposed reclamation project and approve the project if
40 the department determines the proposed project:

41 (1) Will result in the appropriate reclamation and regrading
42 of the land according to all applicable laws and regulations;

43 (2) Will result in the appropriate revegetation of the site;

44 (3) Is not likely to result in pollution as defined in article
45 eleven of this chapter; and

46 (4) Is likely to improve the water quality and is not likely
47 to make the water pollution worse.

48 (e) *Project inventory.* — The department shall develop and
49 maintain a system to inventory and record each project, the
50 project location and boundaries, each landowner and each
51 person identified in a project plan provided to the department.
52 The inventory shall include the results of the department's
53 review of the proposed project and, where applicable, include
54 the department's findings under subsection (b), section ten of
55 this article.

56 (f) *Appeal.* — A person aggrieved by a department decision
57 to approve or disapprove a reclamation project or a water
58 pollution abatement project has the right to file an appeal with
59 the environmental quality board under the provisions of article
60 one, chapter twenty-two-b of this code.

§22-27-5. Landowner liability limitation and exceptions.

1 (a) *General rule.* — Except as specifically provided in
2 subsections (b) and (c) of this section, an eligible landowner
3 who provides access to the land, without charge or other
4 consideration, which results in the implementation of a recla-
5 mation project or a water pollution abatement project:

6 (1) Is immune from liability for any injury or damage
7 suffered by persons working under the direct supervision of the
8 project sponsor while such persons are within the project work
9 area;

10 (2) Is immune from liability for any injury to or damage
11 suffered by a third party which arises out of or occurs as a result
12 of an act or omission of the project sponsor which occurs
13 during the implementation of the reclamation project or the
14 water pollution abatement project;

15 (3) Is immune from liability for any injury to or damage
16 suffered by a third party which arises out of or occurs as a result
17 of a reclamation project or a water pollution abatement project;

18 (4) Is immune from liability for any pollution resulting
19 from a reclamation project or water pollution abatement
20 project;

21 (5) Is immune from liability for the operation, maintenance
22 or repair of the water pollution abatement facilities constructed
23 or installed during the project unless the eligible landowner
24 negligently damages or destroys the water pollution abatement
25 facilities or denies access to the project sponsor who is respon-
26 sible for the operation, maintenance or repair the water pollu-
27 tion abatement facilities.

28 (b) *Duty to warn.* — The eligible landowner shall warn the
29 project sponsor of known, latent, dangerous conditions located
30 on the project work area which are not the subject of the
31 reclamation project or the water pollution abatement project.

32 Nothing in this article shall limit an eligible landowner's
33 liability which results from the eligible landowner's failure to
34 warn of such known, latent, dangerous conditions.

35 (c) *Exceptions to immunity.* — Nothing in this article may
36 limit an eligible landowner's liability which results from a
37 reclamation project or water pollution abatement project and
38 which would otherwise exist:

39 (1) For injury or damage resulting from the landowner's
40 acts or omissions which are reckless or constitute gross
41 negligence or willful misconduct.

42 (2) Where the landowner accepts or requires consideration
43 for allowing access to the land for the purpose of implementing
44 a reclamation project or water pollution abatement project or to
45 operate, maintain or repair water pollution abatement facilities
46 constructed or installed during a water pollution abatement
47 project.

48 (3) For the landowner's unlawful activities.

49 (4) For damage to adjacent landowners or downstream
50 riparian landowners which results from a reclamation project or
51 water pollution abatement project where written notice or
52 public notice of the proposed project was not provided.

§22-27-6. Project sponsor liability limitation and exceptions.

1 (a) *General rule.* — Except as specifically provided in
2 subsection (b) of this section, a project sponsor who provides
3 equipment, materials or services at no cost or at cost for a
4 reclamation project or a water pollution abatement project:

5 (1) Is immune from liability for any injury to or damage
6 suffered by a person which arises out of or occurs as a result of
7 the water pollution abatement facilities constructed or installed
8 during the water pollution abatement project;

9 (2) Is immune from liability for any pollution emanating
10 from the water pollution abatement facilities constructed or
11 installed during the water pollution abatement project unless the
12 person affects an area that is hydrologically connected to the
13 water pollution abatement project work area and causes
14 increased pollution by activities which are unrelated to the
15 implementation of a water pollution abatement project, Pro-
16 vided that the project sponsor implements, operates, and
17 maintains the project in accordance with the plans approved by
18 the department;

19 (3) Is immune from liability for the operation, maintenance
20 and repair of the water pollution abatement facilities con-
21 structed or installed during the water pollution abatement
22 project.

23 (b) *Exceptions.* —

24 (1) Nothing in this article shall limit in any way the liability
25 of a project sponsor which liability results from the reclamation
26 project or the water pollution abatement project and which
27 would otherwise exist:

28 (A) For injury or damage resulting from the project
29 sponsor's acts or omissions which are reckless or constitute
30 gross negligence or willful misconduct.

31 (B) For the person's unlawful activities.

32 (C) For damages to adjacent landowners or downstream
33 riparian landowners which result from a reclamation project or
34 a water pollution abatement project where written notice or
35 public notice of the proposed project was not provided.

36 (2) Nothing in this article shall limit in any way the liability
37 of a person who the department has found to be in violation of
38 any other provision or provisions of this chapter.

§22-27-7. Permits and zoning.

1 Nothing in this article may be construed as waiving any
2 existing permit requirements or waiving any local zoning
3 requirements.

§22-27-8. Relationship to federal and state programs.

1 The provisions of this article shall not prevent the depart-
2 ment from enforcing requirements necessary or imposed by the
3 federal government as a condition to receiving or maintaining
4 program authorization, delegation, primacy or federal funds.

§22-27-9. General permits.

1 If the department determines it will further the purposes of
2 this article, the department may issue a general permit for each
3 reclamation project or water pollution abatement project, which
4 shall:

5 (1) Encompass all of the activities included in the reclama-
6 tion project or water pollution abatement project.

7 (2) Be issued in place of any individual required stream
8 encroachment, earth disturbance or national pollution discharge
9 elimination system permits.

§22-27-10. Exceptions.

1 (a) *General rule.* — Any person who under existing law
2 shall be or may become responsible to reclaim the land or treat
3 or abate the water pollution or any person who for consideration
4 or who receives some other benefit through a contract or any
5 person who through a consent order and agreement or is
6 ordered to perform or complete reclamation or treat or abate
7 water pollution as well as a surety which provided a bond for
8 the site is not eligible nor may receive the benefit of the
9 protections and immunities available under this article.

10 (b) *Projects near mining or coal refuse sites.* — This article
11 does not apply to a reclamation project or a water pollution
12 abatement project that is located adjacent to, hydrologically
13 connected to or in close proximity to a site permitted under
14 articles two, three or four of this chapter unless:

15 (1) The reclamation project or water pollution abatement
16 project is submitted to the department in writing before the
17 project is started; and

18 (2) The department finds:

19 (A) The reclamation project or the water pollution abate-
20 ment project will not adversely affect the permittee's obliga-
21 tions under the permit and the applicable law;

22 (B) The activities on the project work area cannot be used
23 by the permittee to avoid the permittee's reclamation or water
24 pollution treatment or abatement obligations; and

25 (3) The department issues a written notice of its findings
26 and the approval of the project.

27 (c) *Projects in lieu of civil or administrative penalties.* —
28 This article shall not apply to a reclamation project or a water
29 pollution abatement project that is performed in lieu of paying
30 civil or administrative penalties.

§22-27-11. Water supply replacement.

1 A public or private water supply affected by contamination
2 or the diminution caused by the implementation of a reclama-
3 tion project or the implementation of a water pollution abate-
4 ment project shall be restored or replaced by the department
5 with an alternate source of water adequate in quantity and
6 quality for the purposes served by the water supply.

§22-27-12. Rules.

- 1 The department may propose legislative rules in accordance
- 2 with article three, chapter twenty-nine-a of this code as needed
- 3 to implement the provisions of this article.

CHAPTER 113

(Com. Sub. for S. B. 700 — By Senators McCabe, Bailey and Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-28-1, §22-28-2, §22-28-3, §22-28-4, §22-28-5, §22-28-6, §22-28-7, §22-28-8 and §22-28-9, all relating to the creation of a Community Infrastructure Investment Program within the Department of Environmental Protection; legislative findings; definitions; granting rule-making authority; authority to promulgate emergency rules; establishing process for issuance of certificate of appropriateness; providing for community infrastructure investment agreements; setting minimum terms; authority of Division of Health and Department of Environmental Protection not affected; requiring report to Joint Committee on Government and Finance; providing for administrative fees; establishing exemption from authority of Public Service Commission; and setting time limits for approval.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-28-1, §22-28-2, §22-

28-3, §22-28-4, §22-28-5, §22-28-6, §22-28-7, §22-28-8 and §22-28-9, all to read as follows:

ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.

§22-28-1. Legislative findings.

§22-28-2. Definitions.

§22-28-3. Creation of community infrastructure investment project; certificate of appropriateness; rule-making authority.

§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.

§22-28-5. Authority of the Department of Environmental Protection and Division of Health not affected.

§22-28-6. Time for approval.

§22-28-7. Fees.

§22-28-8. Exemption from Public Service Commission approval.

§22-28-9. Rule-making authority.

§22-28-1. Legislative findings.

1 The Legislature finds and declares that:

2 (a) There is a growing need for the extension of public
3 water and sewer services throughout the state and that the
4 extension of such services and facilities maintains the health
5 and economic vitality of the citizens of West Virginia. In
6 addition, access to such infrastructure facilities is equal
7 essential to development in all regions of the state.

8 (b) The extension of public water and sewer services
9 promotes public health and safety in that it enables businesses,
10 residences, municipalities and other entities to comply with
11 state and federal water quality standards.

12 (c) The cost of publicly owned sewer and water facilities
13 are normally born by the state, its subdivisions and the citizens
14 of West Virginia and public indebtedness incurred to construct
15 such facilities constitutes a financial burden on the state and its
16 political subdivisions, as well as residential consumers.

17 (d) The rates for public water and sewer services charged
18 to customers of all service classes have risen in recent years
19 due primarily to the cost of utility construction and the cost of
20 debt service associated with such construction.

21 (e) There are private business entities that are in need of
22 water and sewer services for various residential, commercial
23 and industrial projects throughout the state and that those
24 entities are willing to pay the cost associated with constructing
25 needed public water and sewer services and to dedicate the
26 facility to the local certificated public utility after construction
27 of such facilities.

28 (f) Those private business entities need a method by which
29 to enter into agreements with municipal utilities or public
30 service districts that would enable the construction of new
31 infrastructure as well as the expansion of existing facilities.

32 (g) The dedication of such infrastructure facilities to the
33 local certificated public utility without cost greatly benefits the
34 citizens of the state and promotes industrial, commercial and
35 economic development.

§22-28-2. Definitions.

1 For the purposes of this article, the following words or
2 terms defined have the meaning ascribed to them herein:

3 (a) "Certificate of appropriateness" shall refer to the
4 document evidencing approval of a project and is issued by the
5 Secretary of the Department of Environmental Protection
6 pursuant to the provisions of this article. The issuance of such
7 a certificate shall exempt the project from the provisions of
8 section eleven, article two, chapter twenty-four of this code
9 and, in the case of a public service district, from the provisions
10 of section twenty-five, article thirteen-a, chapter sixteen of this
11 code.

12 (b) "Community infrastructure investment agreement" shall
13 refer to a written agreement between a municipal utility or
14 public service district and a person that provides for the
15 transfer of legal title to a project facility from the person to the
16 municipal utility or public service district.

17 (c) "Community infrastructure investment project" shall
18 refer to any newly constructed or enlarged and improved
19 project facility that may be transferred to a municipal utility or
20 public service district without cost to the municipal utility or
21 public service district pursuant to the provisions of this article.

22 (d) "Person" shall refer to any individual, partnership, firm,
23 society, association, trust, corporation or other business entity.

24 (e) "Project cost" shall refer to the capital cost of proposed
25 community infrastructure investment project facilities to be
26 constructed pursuant to the provisions of this article. "Project
27 cost" shall also refer to newly constructed or enlarged and
28 improved existing project facilities. Project cost shall not refer
29 to any of the costs or expenses of ordinary operation and
30 maintenance of the project facilities once they become opera-
31 tional.

32 (f) "Project facilities" shall refer to waste water treatment
33 plants or water treatment plants constructed pursuant to the
34 provisions of this article and include, but are not limited to,
35 related storage buildings or structures, meters, hydrants, pump
36 stations, force and gravity mains, transmission lines and other
37 such fixtures related to the construction of water or sewer
38 facilities. Project facilities shall not refer to the ordinary
39 extension of collection and distribution lines or facilities from
40 or to the project constructed pursuant to the provisions of this
41 article to the property of any user of project facilities.

42 (g) "Public service district" shall refer to those public
43 corporations and political subdivisions of the state created
44 pursuant to the provisions of section two, article thirteen-a,
45 chapter sixteen of this code.

46 (h) "Secretary" shall refer to the Secretary of the Depart-
47 ment of Environmental Protection established in section six,
48 article one of this chapter.

**§22-28-3. Creation of community infrastructure investment
project; certificate of appropriateness; rule-
making authority.**

1 (a) There is hereby created a Community Infrastructure
2 Investment Program within the Department of Environmental
3 Protection. This Program will facilitate the construction or
4 expansion of project facilities for the promotion of economic
5 development and the protection of public health and environ-
6 ment in the state. Any public service district or municipal
7 utility that wishes to accept a project facility constructed
8 pursuant to a community infrastructure investment agreement
9 with a project cost not to exceed ten million dollars may apply
10 to the secretary for approval of such project. Nothing herein
11 shall be construed to require a public service district or
12 municipal utility to use this program.

13 (b) Where the Secretary shall have found that the commu-
14 nity infrastructure investment project shall have met the
15 requirements contained in this article, the Secretary shall issue
16 a certificate of appropriateness to the municipal utility or
17 public service district as evidence of such approval.

18 (c) Municipal utilities or public service districts may jointly
19 enter into agreements with persons for the purpose of applying
20 to the Secretary of the Department of Environmental Protection
21 for approval of project facilities. The minimum terms and

22 conditions of such agreements are established by the provisions
23 of section four of this article.

24 (d) The Secretary will, by legislative rule, establish the
25 criteria for the approval of such projects and shall have sole
26 authority to make such determination.

**§22-28-4. Community infrastructure investment agreements;
report to Joint Committee on Government and
Finance.**

1 (a) Municipal utilities and public service districts have the
2 power and authority to enter into community infrastructure
3 investment agreements with any person for the purpose of
4 constructing new project facilities or substantially improving
5 or expanding project facilities.

6 (b) Notwithstanding any other provision in this code to the
7 contrary, the Secretary shall have the power and the authority
8 to review and approve all such community infrastructure
9 investment agreements pursuant to this article.

10 (c) Each such agreement shall contain as a minimum the
11 following terms and conditions to be performed by the parties
12 thereto:

13 (1) The project facilities shall be engineered and con-
14 structed in accordance with the requirements for new construc-
15 tion established by the municipal utility or public service
16 district;

17 (2) Proof or certification of the financial ability of the
18 municipal utility or public service district to maintain and
19 operate the public facilities;

20 (3) Certification that upon completion and activation of the
21 project facility or improvements to the project facility, the title

22 to the public facility shall be transferred without cost to the
23 municipal utility or public service district;

24 (4) A finding that the construction of the new public
25 facility, or the substantial improvement or expansion of an
26 existing public facility, either: (i) Fosters economic growth by
27 promoting commercial, industrial or residential development;
28 and (ii) improves water quality or otherwise enables the
29 affected territory to achieve compliance with any applicable
30 state or federal health or environmental law;

31 (5) The municipal utility or public service district will
32 receive or otherwise obtain without cost to the public all
33 necessary rights-of-way for the operation of the public facility;

34 (6) The rates charged by the municipal utility or public
35 service district to new customers to be served by the project
36 facility shall be the rates in effect at the time of transfer of the
37 project facility to the utility plus any additional cost of service
38 borne by the municipal utility or public service district as a
39 result of the project facility until such time as new rates may be
40 finally enacted by the municipal utility or proposed by the
41 public service district and approved by the Public Service
42 Commission and the rates charged by the municipal utility or
43 the public service district to existing customers shall not be
44 impacted as a result of the obligation of the public service
45 district or municipal utility pursuant to the community infra-
46 structure investment agreement;

47 (7) Confirmation that the agreement does not violate any
48 of the bond covenants imposed on the municipal utility or
49 public service district;

50 (8) Proof that necessary permits, where applicable, have
51 been obtained from the Division of Health and the Department
52 of Environmental Protection;

53 (9) Evidence that the person responsible for the construc-
54 tion of or improvements to the public facility has provided
55 funding to the municipal utility or public service district for the
56 engagement of an engineer qualified to design and certify the
57 structural integrity and capacity of the project facility;

58 (10) Proof that the person responsible for construction of
59 or improvements to the public facility has obtained a perfor-
60 mance bond payable to the municipal utility or public service
61 district equal to the estimated cost of construction: *Provided,*
62 That the form of the bond required by this section shall be
63 approved by the Secretary and may include, at the option of the
64 Secretary, surety bonding, collateral bonding (including cash
65 and securities), establishment of an escrow account, letters of
66 credit, performance bonding fund participation as established
67 by the Secretary, self-bonding or a combination of these
68 methods; and

69 (11) Any other conditions that the secretary may determine
70 to be relevant as established.

71 (d) Where the Secretary has found that the community
72 infrastructure investment agreement meets the requirements
73 contained in this article, the Secretary shall issue a certificate
74 of appropriateness to the parties as evidence of such approval.

75 (e) Not later than thirty days prior to the issuance of a
76 certificate of appropriateness for any community infrastructure
77 investment project, the Secretary shall first submit a report of
78 the same to the Joint Committee on Government and Finance.

**§22-28-5. Authority of the Department of Environmental Pro-
tection and Division of Health not affected.**

1 Nothing contained in this article shall be construed to
2 affect the authority of the Department of Environmental

3 Protection pursuant to the provisions of this chapter, nor the
4 authority of the Division of Health pursuant to the provisions
5 of chapter sixteen of this code. Facilities discharging into the
6 Potomac River watershed and its tributaries shall be designed
7 to achieve nutrient reductions, for both Nitrogen and Phospho-
8 rus, consistent with West Virginia's participation in the
9 Chesapeake Bay Program upon implementation of the Chesa-
10 peake Bay standards by the Secretary.

§22-28-6. Time for approval.

1 The Secretary shall approve or reject all applications for a
2 community investment infrastructure project or agreement
3 within thirty days, unless, by mutual agreement, such time
4 period is extended. In no case shall the time period extend
5 beyond ninety days.

§22-28-7. Fees.

1 The Secretary shall establish by legislative rule a schedule
2 of fees reasonably calculated to pay for the costs of the
3 administration of the provisions of this article.

§22-28-8. Exemption from Public Service Commission approval.

1 All project facilities constructed or improved pursuant to
2 the provisions of this article shall be exempt from the provi-
3 sions of chapter twenty-four of this code until such time as title
4 to the public facility shall be transferred to the municipal utility
5 or public service district. Nothing herein shall be construed to
6 give the Public Service Commission authority to regulate or
7 intervene in the approval and construction of any project or
8 agreement provided in this article. Notwithstanding any other
9 provision of this code to the contrary, the acquisition of a
10 project facility by a municipality or public service district
11 under the provisions of this article shall not require the

- 12 issuance of a certificate of convenience and necessity from the
13 Public Service Commission.

§22-28-9. Rule-making authority.

1 The Secretary shall have the authority to propose legisla-
2 tive rules for promulgation in accordance with the provisions
3 of section one, article three, chapter twenty-nine-a of this code
4 to effectuate the purposes of this article. Notwithstanding any
5 provision of this code to the contrary, the proposed legislative
6 rules for this article filed in the state register by the first day of
7 August, two thousand five, may be filed as emergency rules.

CHAPTER 114

(Com. Sub. for S. B. 424 — By Senators Unger and Yoder)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-1-29, relating to the authority of personal representatives with regard to conservation or preservation easements; and providing that a personal representative, trustee, administrator or executor may sell, donate or amend conservation or preservation easements under certain conditions.

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 §44-1-29, to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.**§44-1-29. Authority of personal representative concerning conservation and preservation easements.**

1 (a) A personal representative, trustee, administrator or
2 executor of a decedent or a decedent's estate is hereby granted
3 the authority to:

4 (1) Sell a conservation or preservation easement created
5 prior to the decedent's death under article twelve, chapter eight-
6 a of this code or article twelve, chapter twenty of this code;

7 (2) Donate a conservation or preservation easement created
8 prior to the decedent's death under article twelve, chapter eight-
9 a of this code or article twelve, chapter twenty of this code;

10 (3) Amend a conservation or preservation easement created
11 prior to the decedent's death under article twelve, chapter eight-
12 a of this code or article twelve, chapter twenty of this code and
13 recorded on the decedent's real property in order to obtain the
14 benefit of the estate tax exclusion allowed under §2031(c) of
15 the United States Internal Revenue Code of 1986, as amended;

16 (4) Execute a deed of conservation or preservation ease-
17 ment and related documents when decedent's application to
18 establish and convey an easement was approved by a holder
19 during the nine-month period preceding the date of decedent's
20 death, but the deed of conservation or preservation easement
21 and related documents were not signed by the decedent before
22 his or her death: *Provided*, That before executing these docu-
23 ments, the personal representative, trustee or executor complies
24 with the provisions of subsection (b) of this section; or

25 (5) Execute a deed of conservation or preservation ease-
26 ment and related documents when decedent's application to
27 establish and convey an easement was submitted to a holder

28 before decedent's death but is approved by a holder after the
29 decedent's death: *Provided*, That before executing these
30 documents, the personal representative, trustee, administrator
31 or executor complies with the provisions of subsection (b) of
32 this section.

33 (b) The personal representative, trustee, administrator or
34 executor shall ensure that the sale, donation, amendment or
35 transfer of a conservation or preservation easement complies
36 with the following:

37 (1) The proposed sale, donation, transfer or amendment
38 satisfies the requirements set forth in the provisions of article
39 twelve, chapter eight-a of this code or article twelve, chapter
40 twenty of this code, as applicable to the particular easement;

41 (2) The proposed sale, donation, transfer or amendment is
42 to a qualified conservation organization or holder and the
43 organization or holder agrees to accept the conservation or
44 preservation easement; and

45 (3) The sale, donation, transfer or amendment meets one of
46 the following conditions:

47 (A) All heirs, beneficiaries and devisees with interests in
48 the real estate affected provide written consent; or

49 (B) The will or other testamentary instrument directs the
50 personal representative, trustee or executor to sell or donate the
51 conservation or preservation easement; or

52 (C) At the time of the decedent's death, the decedent had a
53 pending application for a sale or donation of a conservation or
54 preservation easement and such conservation or preservation
55 easement was in process of settlement.

CHAPTER 115

**(S. B. 153 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed March 22, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 6, 2005.]

AN ACT to amend and reenact §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five; to amend and reenact §6B-2-4 and §6B-2-10 of said code, as contained in said acts; and to amend and reenact §6B-3-3a and §6B-3-3c of said code, as contained in said acts, all relating generally to the administration of ethical standards of public officers and employees; revising confidentiality requirements for Ethics Commission members and staff, the Review Board, complainants and informants; revising provisions prohibiting willful disclosure of confidential information; prohibiting the submission of false or misleading information to the Commission; providing for the deposit of funds into the general revenue fund of the state; establishing fees in legislative rules; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five, be amended and reenacted; that §6B-2-4 and §6B-2-10 of said code, as contained in said acts, be amended and reenacted; and that §6B-3-3a and §6B-3-3c of said code, as contained in said acts, be amended and reenacted, all to read as follows:

Article

1. **Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.**
2. **West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearance Before Public Agencies.**
3. **Lobbyists.**

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-6. Deposit of funds.

1 All moneys collected pursuant to this chapter except fines
 2 imposed pursuant to paragraph (D), subdivision (1), subsection
 3 (r), section four, article two of this chapter shall be deposited in
 4 the general revenue fund in the state treasury pursuant to the
 5 provisions of section two, article two, chapter twelve of this
 6 code.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCE BEFORE PUBLIC AGENCIES.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.
 §6B-2-10. Violations and penalties.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

1 (a) Upon the filing of a complaint, the Executive Director
 2 of the Commission or his or her designee shall, within three
 3 working days, acknowledge the receipt of the complaint by
 4 first-class mail unless the complaint was initiated by the
 5 Commission or the complainant or his or her representative
 6 personally filed the complaint with the Commission and was
 7 given a receipt or other acknowledgment evidencing the filing
 8 of the complaint. No political party or officer, employee or
 9 agent of a political party acting in his or her official capacity

10 may file a complaint for a violation of this chapter with the
11 Commission. Nothing in this section prohibits a private citizen,
12 acting in that capacity, from filing a verified complaint with the
13 Commission under this section. Within fourteen days after the
14 receipt of a complaint, the Executive Director shall refer the
15 complaint to the Review Board created pursuant to section two-
16 a of this article.

17 (b) Upon the referral of a complaint by the Executive
18 Director pursuant to subsection (a) of this section, the Review
19 Board shall determine whether the allegations of the complaint,
20 if taken as true, would constitute a violation of law upon which
21 the Commission could properly act under the provisions of this
22 chapter. If the complaint is determined by a majority vote of the
23 Review Board to be insufficient in this regard, the Review
24 Board shall dismiss the complaint.

25 (c) Upon a finding by the Review Board that the complaint
26 is sufficient, the Executive Director shall give notice of a
27 pending investigation to the complainant, if any, and to the
28 respondent. The notice of investigation shall be mailed to the
29 parties and, in the case of the respondent, shall be mailed as
30 certified mail, return receipt requested, marked "Addressee
31 only, personal and confidential". The notice shall describe the
32 conduct of the respondent which is alleged to violate the law
33 and a copy of the complaint shall be appended to the notice
34 mailed to the respondent. Each notice of investigation shall
35 inform the respondent that the purpose of the investigation is to
36 determine whether probable cause exists to believe that a
37 violation of law has occurred which may subject the respondent
38 to administrative sanctions by the Commission, criminal
39 prosecution by the state, or civil liability. The notice shall
40 further inform the respondent that he or she has a right to
41 appear before the Review Board and that he or she may respond
42 in writing to the Commission within thirty days after the receipt
43 of the notice, but that no fact or allegation shall be taken as
44 admitted by a failure or refusal to timely respond.

45 (d) Within the 45-day period following the mailing of a
46 notice of investigation, the Review Board shall proceed to
47 consider: (1) The allegations raised in the complaint; (2) any
48 timely received written response of the respondent; and (3) any
49 other competent evidence gathered by or submitted to the
50 Commission which has a proper bearing on the issue of
51 probable cause. A respondent may appear before the Review
52 Board and make an oral response to the complaint. The Com-
53 mission shall promulgate rules prescribing the manner in which
54 a respondent may present his or her oral response. The Com-
55 mission may ask a respondent to disclose specific amounts
56 received from a source and request other detailed information
57 not otherwise required to be set forth in a statement or report
58 filed under the provisions of this chapter if the information
59 sought is considered to be probative as to the issues raised by
60 a complaint or an investigation initiated by the Commission.
61 Any information thus received shall be confidential except as
62 provided by subsection (e) of this section. If a person asked to
63 provide information fails or refuses to furnish the information
64 to the Commission, the Commission may exercise its subpoena
65 power as provided in this chapter and any subpoena issued by
66 the Commission shall have the same force and effect as a
67 subpoena issued by a circuit court of this state. Enforcement of
68 any subpoena may be had upon application to a circuit court of
69 the county in which the Review Board is conducting an
70 investigation through the issuance of a rule or an attachment
71 against the respondent as in cases of contempt.

72 (e) (1) All investigations, complaints, reports, records,
73 proceedings and other information received by the Commission
74 and related to complaints made to the Commission or investiga-
75 tions conducted by the Commission pursuant to this section,
76 including the identity of the complainant or respondent, are
77 confidential and may not be knowingly and improperly dis-
78 closed by any current or former member or employee of the
79 Commission or the Review Board except as follows:

80 (A) Once there has been a finding that probable cause exists
81 to believe that a respondent has violated the provisions of this
82 chapter and the respondent has been served by the Commission
83 with a copy of the Review Board's order and the statement of
84 charges prepared pursuant to the provisions of subsection (g) of
85 this section, the complaint and all reports, records,
86 nonprivileged and nondeliberative material introduced at any
87 probable cause hearing held pursuant to the complaint cease to
88 be confidential.

89 (B) After a finding of probable cause, any subsequent
90 hearing held in the matter for the purpose of receiving evidence
91 or the arguments of the parties or their representatives shall be
92 open to the public and all reports, records and nondeliberative
93 materials introduced into evidence at the hearing, as well as the
94 Commission's orders, are not confidential.

95 (C) The Commission may release any information relating
96 to an investigation at any time if the release has been agreed to
97 in writing by the respondent.

98 (D) The complaint and the identity of the complainant shall
99 be disclosed to a person named as respondent immediately upon
100 the respondent's request.

101 (E) Where the Commission is otherwise required by the
102 provisions of this chapter to disclose information or to proceed
103 in such a manner that disclosure is necessary and required to
104 fulfill those requirements.

105 (2) If, in a specific case, the Commission finds that there is
106 a reasonable likelihood that the dissemination of information or
107 opinion in connection with a pending or imminent proceeding
108 will interfere with a fair hearing or otherwise prejudice the due
109 administration of justice, the Commission shall order that all or
110 a portion of the information communicated to the Commission

111 to cause an investigation and all allegations of ethical miscon-
112 duct or criminal acts contained in a complaint shall be confi-
113 dential and the person providing the information or filing a
114 complaint shall be bound to confidentiality until further order
115 of the Commission.

116 (f) If the members of the Review Board fail to find probable
117 cause, the proceedings shall be dismissed by the Commission
118 in an order signed by the members of the Review Board. Copies
119 of the order of dismissal shall be sent to the complainant and
120 served upon the respondent forthwith. If the Review Board
121 decides by a unanimous vote that there is probable cause to
122 believe that a violation under this chapter has occurred, the
123 members of the Review Board shall sign an order directing the
124 Commission staff to prepare a statement of charges and assign
125 the matter for hearing to the Commission or a hearing examiner
126 as the Commission may subsequently direct. The Commission
127 shall then schedule a hearing, to be held within ninety days after
128 the date of the order, to determine the truth or falsity of the
129 charges. The Commission's review of the evidence presented
130 shall be de novo. For the purpose of this section, service of
131 process upon the respondent is obtained at the time the respon-
132 dent or the respondent's agent physically receives the process,
133 regardless of whether the service of process is in person or by
134 certified mail.

135 (g) At least eighty days prior to the date of the hearing, the
136 Commission shall serve the respondent by certified mail, return
137 receipt requested, with the statement of charges and a notice of
138 hearing setting forth the date, time and place for the hearing.
139 The scheduled hearing may be continued only upon a showing
140 of good cause by the respondent or under other circumstances
141 as the Commission, by legislative rule, directs.

142 (h) The Commission may sit as a hearing board to adjudi-
143 cate the case or may permit an assigned hearing examiner

144 employed by the Commission to preside at the taking of
145 evidence. The Commission shall, by legislative rule, establish
146 the general qualifications for hearing examiners. The legislative
147 rule shall also contain provisions which ensure that the func-
148 tions of a hearing examiner will be conducted in an impartial
149 manner and describe the circumstances and procedures for
150 disqualification of hearing examiners.

151 (i) A member of the Commission or a hearing examiner
152 presiding at a hearing may:

153 (1) Administer oaths and affirmations, compel the atten-
154 dance of witnesses and the production of documents, examine
155 witnesses and parties and otherwise take testimony and estab-
156 lish a record;

157 (2) Rule on offers of proof and receive relevant evidence;

158 (3) Take depositions or have depositions taken when the
159 ends of justice will be served;

160 (4) Regulate the course of the hearing;

161 (5) Hold conferences for the settlement or simplification of
162 issues by consent of the parties;

163 (6) Dispose of procedural requests or similar matters;

164 (7) Accept stipulated agreements;

165 (8) Take other action authorized by the Ethics Commission
166 consistent with the provisions of this chapter.

167 (j) With respect to allegations of a violation under this
168 chapter, the complainant has the burden of proof. The West
169 Virginia Rules of Evidence governing proceedings in the courts
170 of this state shall be given like effect in hearings held before the
171 Commission or a hearing examiner. The Commission shall, by

172 rule, regulate the conduct of hearings so as to provide full
173 procedural due process to a respondent. Hearings before a
174 hearing examiner shall be recorded electronically. When
175 requested by either of the parties, the presiding officer shall
176 order a transcript, verified by oath or affirmation, of each
177 hearing held and so recorded. In the discretion of the Commis-
178 sion, a record of the proceedings may be made by a certified
179 court reporter. Unless otherwise ordered by the Commission,
180 the cost of preparing a transcript shall be paid by the party
181 requesting the transcript. Upon a showing of indigency, the
182 Commission may provide a transcript without charge. Within
183 fifteen days following the hearing, either party may submit to
184 the hearing examiner that party's proposed findings of fact. The
185 hearing examiner shall thereafter prepare his or her own
186 proposed findings of fact and make copies of the findings
187 available to the parties. The hearing examiner shall then submit
188 the entire record to the Commission for final decision.

189 (k) The recording of the hearing or the transcript of
190 testimony, as the case may be, and the exhibits, together with
191 all papers and requests filed in the proceeding, and the proposed
192 findings of fact of the hearing examiner and the parties,
193 constitute the exclusive record for decision by the Commission,
194 unless by leave of the Commission a party is permitted to
195 submit additional documentary evidence or take and file
196 depositions or otherwise exercise discovery.

197 (l) The Commission shall set a time and place for the
198 hearing of arguments by the complainant and respondent, or
199 their respective representatives, and shall notify the parties
200 thereof. Briefs may be filed by the parties in accordance with
201 procedural rules promulgated by the Commission. The Com-
202 mission shall issue a final decision in writing within forty-five
203 days of the receipt of the entire record of a hearing held before
204 a hearing examiner or, in the case of an evidentiary hearing held
205 by the Commission acting as a hearing board in lieu of a

206 hearing examiner, within twenty-one days following the close
207 of the evidence.

208 (m) A decision on the truth or falsity of the charges against
209 the respondent and a decision to impose sanctions must be
210 approved by at least seven members of the Commission.

211 (n) Members of the Commission shall recuse themselves
212 from a particular case upon their own motion with the approval
213 of the Commission or for good cause shown upon motion of a
214 party. The remaining members of the Commission shall, by
215 majority vote, select a temporary member of the Commission
216 to replace a recused member: *Provided*, That the temporary
217 member selected to replace a recused member shall be a person
218 of the same status or category, provided by subsection (b),
219 section one of this article, as the recused member.

220 (o) Except for statements made in the course of official
221 duties to explain Commission procedures, no member or
222 employee or former member or employee of the Commission
223 may make any public or nonpublic comment about any pro-
224 ceeding previously or currently before the Commission. Any
225 member or employee or former member or employee of the
226 Commission who violates this subsection is subject to the
227 penalties contained in subsection (e), section ten of this article.
228 In addition, violation of this subsection by a current member or
229 employee of the Commission is grounds for immediate removal
230 from office or termination of employment.

231 (p) A complainant may be assisted by a member of the
232 Commission staff assigned by the Commission after a determi-
233 nation of probable cause.

234 (q) No employee of the Commission assigned to prosecute
235 a complaint may participate in the Commission deliberations or
236 communicate with Commission members or the public concern-
237 ing the merits of a complaint.

238 (r) (1) If the Commission finds by evidence beyond a
239 reasonable doubt that the facts alleged in the complaint are true
240 and constitute a material violation of this article, it may impose
241 one or more of the following sanctions:

242 (A) Public reprimand;

243 (B) Cease and desist orders;

244 (C) Orders of restitution for money, things of value, or
245 services taken or received in violation of this chapter;

246 (D) Fines not to exceed five thousand dollars per violation;
247 or

248 (E) Reimbursement to the Commission for the actual costs
249 of investigating and prosecuting a violation. Any reimburse-
250 ment ordered by the Commission for its costs under this
251 paragraph shall be collected by the Commission and deposited
252 pursuant to section six, article one of this chapter.

253 (2) In addition to imposing the above-specified sanctions,
254 the Commission may recommend to the appropriate govern-
255 mental body that a respondent be terminated from employment
256 or removed from office.

257 (3) The Commission may institute civil proceedings in the
258 circuit court of the county in which a violation occurred for the
259 enforcement of sanctions.

260 (s) At any stage of the proceedings under this section, the
261 Commission may enter into a conciliation agreement with a
262 respondent if the agreement is deemed by a majority of the
263 members of the Commission to be in the best interest of the
264 state and the respondent. Any conciliation agreement must be
265 disclosed to the public: *Provided*, That negotiations leading to
266 a conciliation agreement, as well as information obtained by the

267 Commission during the negotiations, shall remain confidential
268 except as may be otherwise set forth in the agreement.

269 (t) Decisions of the Commission involving the issuance of
270 sanctions may be appealed to the circuit court of Kanawha
271 County, or to the circuit court of the county where the violation
272 is alleged to have occurred, only by the respondent and only
273 upon the grounds set forth in section four, article five, chapter
274 twenty-nine-a of this code.

275 (u) (1) Any person who in good faith files a verified
276 complaint or any person, official or agency who gives credible
277 information resulting in a formal complaint filed by Commis-
278 sion staff is immune from any civil liability that otherwise
279 might result by reason of such actions.

280 (2) If the Commission determines, by clear and convincing
281 evidence, that a person filed a complaint or provided informa-
282 tion which resulted in an investigation knowing that the
283 material statements in the complaint or the investigation request
284 or the information provided were not true; filed an unsubstantiated
285 complaint or request for an investigation in reckless
286 disregard of the truth or falsity of the statements contained
287 therein; or filed one or more unsubstantiated complaints which
288 constituted abuse of process, the Commission shall:

289 (A) Order the complainant or informant to reimburse the
290 respondent for his or her reasonable costs;

291 (B) Order the complainant or informant to reimburse the
292 respondent for his or her reasonable attorney fees; and

293 (C) Order the complainant or informant to reimburse the
294 Commission for the actual costs of its investigation.

295 In addition, the Commission may decline to process any
296 further complaints brought by the complainant, the initiator of
297 the investigation or the informant.

298 (3) The sanctions authorized in this subsection are not
299 exclusive and do not preclude any other remedies or rights of
300 action the respondent may have against the complainant or
301 informant under the law.

302 (v) (1) If at any stage in the proceedings under this section
303 it appears to a Review Board, a hearing examiner or the
304 Commission that there is credible information or evidence that
305 the respondent may have committed a criminal violation, the
306 matter shall be referred to the full Commission for its consider-
307 ation. If, by a vote of two thirds of the members of the full
308 Commission, it is determined that probable cause exists to
309 believe a criminal violation has occurred, the Commission shall
310 refer the matter to the appropriate county prosecuting attorney
311 having jurisdiction for a criminal investigation and possible
312 prosecution. Deliberations of the Commission with regard to
313 referring a matter for criminal investigation by a prosecuting
314 attorney shall be private and confidential. Notwithstanding any
315 other provision of this article, once a referral for criminal
316 investigation is made under the provisions of this subsection,
317 the ethics proceedings shall be held in abeyance until action on
318 the referred matter is concluded. If the referral of the matter to
319 the prosecuting attorney results in a criminal conviction of the
320 respondent, the Commission may resume its investigation or
321 prosecution of the ethics violation, but may not impose a fine
322 as a sanction if a violation is found to have occurred.

323 (2) If fewer than two thirds of the full Commission deter-
324 mine that a criminal violation has occurred, the Commission
325 shall remand the matter to the Review Board, the hearing
326 examiner or the Commission itself as a hearing board, as the
327 case may be, for further proceedings under this article.

328 (w) The provisions of this section shall apply to violations
329 of this chapter occurring after the thirtieth day of September,
330 one thousand nine hundred eighty-nine, and within one year

331 before the filing of a complaint: *Provided*, That the applicable
332 statute of limitations for violations which occur on or after the
333 first day of July, two thousand five, is two years after the date
334 on which the alleged violation occurred.

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of subsection
2 (e), (f) or (g), section five of this article or violates the provi-
3 sions of subdivision (1), subsection (e), section four of this
4 article is guilty of a misdemeanor and, upon conviction, shall be
5 confined in jail for a period not to exceed six months or shall be
6 fined not more than one thousand dollars, or both. A member or
7 employee of the Commission or the Review Board convicted of
8 violating said subdivision is subject to immediate removal from
9 office or discharge from employment.

10 (b) Any person who violates the provisions of subsection
11 (f), section six of this article by willfully and knowingly filing
12 a false financial statement or knowingly and willfully conceal-
13 ing a material fact in filing the statement is guilty of a misde-
14 meanor and, upon conviction, shall be fined not more than one
15 thousand dollars, or confined in jail not more than one year, or
16 both.

17 (c) Any person who knowingly fails or refuses to file a
18 financial statement required by section six of this article is
19 guilty of a misdemeanor and, upon conviction, shall be fined
20 not less than one hundred dollars nor more than one thousand
21 dollars.

22 (d) If any Commission member or staff knowingly violates
23 subsection (o), section four of this article, such person, upon
24 conviction thereof, shall be guilty of a misdemeanor and shall
25 be fined not less than one hundred dollars nor more than one
26 thousand dollars.

27 (e) Any person who violates the provisions of subdivision
28 (2), subsection (e), section four of this article by knowingly and
29 willfully disclosing any information made confidential by an
30 order of the Commission is subject to administrative sanction
31 by the Commission as provided in subsection (r) of said section.

32 (f) Any person who knowingly gives false or misleading
33 material information to the Commission or who induces or
34 procures another person to give false or misleading material
35 information to the Commission is subject to administrative
36 sanction by the Commission as provided in subsection (r),
37 section four of this article.

ARTICLE 3. LOBBYISTS.

§6B-3-3a. Registration fees.

§6B-3-3c. Lobbyist training course.

§6B-3-3a. Registration fees.

1 (a) Each lobbyist shall, at the time he or she registers, pay
2 the Commission a base registration fee of one hundred dollars,
3 plus one hundred dollars for each employer represented, to be
4 filed with the initial registration statement and with each new
5 registration statement filed by the lobbyist in subsequent odd
6 numbered years. Whenever a lobbyist modifies his or her
7 registration to add additional employers, an additional registra-
8 tion fee of one hundred dollars for each additional employer
9 represented shall be paid to the Commission.

10 (b) All fees authorized and collected pursuant to this article
11 shall be paid to the Ethics Commission and thereafter deposited
12 pursuant to section six, article one of this chapter.

§6B-3-3c. Lobbyist training course.

1 The Commission shall provide a training course for
2 registered lobbyists and prospective lobbyists at least twice

3 each year regarding the provisions of the ethics code relevant
4 to lobbyists. One such course shall be conducted during the
5 month of January. In addition to the registration fees authorized
6 in section three-a of this article, the Commission may collect a
7 reasonable fee established by legislative rule authorized
8 pursuant to article three, chapter twenty-nine-a of this code
9 from those attending lobbyist training, which is to be collected
10 by the Ethics Commission and deposited pursuant to section
11 six, article one of this chapter. To maintain registration and
12 engage in lobbying activities, a lobbyist must complete one
13 such training course per year.

CHAPTER 116

(H. B. 2885 — By Delegates Perdue, Long and Hatfield)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to repeal §16-3-4a of the Code of West Virginia, 1931, as amended; to repeal §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-5A-5, §26-5A-6 and §26-5A-7 of said code; and to amend said code by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9 all relating to tuberculosis testing, control, treatment and commitment.

Be it enacted by the Legislature of West Virginia:

That §16-3-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-A-5, §26-5A-6 and §26-5A-7 of said code be repealed; and that said code be amended by adding thereto a new article, designated §16-

3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9, all to read as follows:

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-1. Purpose and legislative findings.

§16-3D-2. Definitions.

§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; Commissioner to approve the test; X-rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.

§16-3D-4. Report of cases, admissions, registration of patients.

§16-3D-5. Forms for reporting and committing patients; other records.

§16-3D-6. Cost of maintenance and treatment of patients.

§16-3D-7. Procedure when patient is a health menace to others; court ordered treatment; requirements for discharge; appeals.

§16-3D-8. Return of escapees from state tuberculosis institutions.

§16-3D-9. Procedures for immediate involuntary commitment; rules.

§16-3D-1. Purpose and legislative findings.

1 (a) The purpose of this article is to bring together the state
2 law governing compulsory testing for tuberculosis (TB) of
3 students and school personnel as well as the statutes pertaining
4 to the treatment, control and commitment of persons with the
5 disease at hospitals, clinics and other health care facilities
6 throughout the state.

7 (b) The targeted tuberculin testing and treatment guidelines
8 published by the Centers for Disease Control and Prevention
9 (CDC) in the year two thousand recommends that routine
10 testing of low-risk populations for administrative purposes be
11 discontinued. The elimination of routine retesting of school
12 personnel in accordance with this recommendation will result
13 in significant savings to the state.

14 (c) According to the CDC, high risk groups or persons that
15 should be tested for latent TB infection include:

- 16 (1) Close contacts of a person known or suspected to have
17 TB;
- 18 (2) Foreign-born persons from areas where TB is common;
- 19 (3) Residents and employees of high-risk congregate
20 settings;
- 21 (4) Health care workers who serve high-risk clients;
- 22 (5) Medically underserved, low-income populations;
- 23 (6) High-Risk racial or ethnic minority populations;
- 24 (7) Children exposed to adults in high-risk categories;
- 25 (8) Persons who inject illicit drugs;
- 26 (9) Persons with HIV infection; and
- 27 (10) Persons with certain medical conditions, such as
28 substance abuse, chest X-ray findings suggestive of previous
29 TB, diabetes mellitus, silicosis, prolonged corticosteroid
30 therapy, other immunosuppressive therapy, cancer of the head
31 and neck, end-stage renal disease, intestinal bypass or
32 gastrectomy, chronic malabsorption syndromes, or low body
33 weight of ten percent or more below the ideal.
- 34 (d) Early diagnosis, proper and complete treatment for
35 people with active TB disease prevents transmission to others
36 as well as preventing the emergence of multidrug resistant TB.
- 37 (e) The TB Control Program should be funded at levels
38 necessary to accomplish directly observed therapy for all
39 patients with active TB disease in West Virginia and to imple-
40 ment targeted testing of high-risk groups.

§16-3D-2. Definitions.

1 As used in this article:

2 (1) "Tuberculosis" means a communicable disease caused
3 by the bacteria, *Mycobacterium tuberculosis*, which is demon-
4 strated by clinical, bacteriological, radiographic or epidemio-
5 logical evidence;

6 (2) "Bureau" means the Bureau for Public Health in the
7 Department of Health and Human Resources;

8 (3) "Commissioner" means the Commissioner of the
9 Bureau for Public Health, who is the state health officer;

10 (4) "Local board of health," "local board" or "board" means
11 a board of health serving one or more counties or one or more
12 municipalities or a combination thereof;

13 (5) "Local health department" means the staff of the local
14 board of health; and

15 (6) "Local health officer" means the individual physician
16 with a current West Virginia license to practice medicine who
17 supervises and directs the activities of the local health depart-
18 ment services, staff and facilities and is appointed by the local
19 board of health with approval by the Commissioner.

**§16-3D-3. Compulsory testing for tuberculosis of school children
and school personnel; Commissioner to approve
the test; X-rays required for reactors; suspension
from school or employment for pupils and person-
nel found to have tuberculosis.**

1 (a) All students transferring from a school located outside
2 this state or enrolling for the first time from outside the state
3 shall furnish a certification from a licensed physician stating
4 that a tuberculin skin test, approved by the Commissioner, has
5 been made within four months prior to the beginning of the
6 school year. If the student cannot produce certification from a

7 physician as required by this section then the student shall have
8 an approved tuberculin skin test done with the result read and
9 evaluated prior to admittance to school.

10 (b) Test results must be recorded on the certification
11 required by subsection (a) of this section. Positive reactors to
12 the skin test must be immediately evaluated by a physician and,
13 if medically indicated, X-rayed, and receive periodic X-rays
14 thereafter, when medically indicated. Pupils found to have
15 tuberculosis shall be temporarily removed from school while
16 their case is reviewed and evaluated by their physician and the
17 local health officer. Pupils shall return to school when the local
18 health officer indicates that it is safe and appropriate for them
19 to return.

20 (c) Notwithstanding any other provision of this code to the
21 contrary, all school personnel shall have one approved tubercu-
22 lin skin test at the time of employment performed by the local
23 health department or the person's physician. Additional
24 tuberculosis skin tests or other medical screens may be required
25 by the local health department or Commissioner, if medically
26 indicated. Positive reactors and those with previous positive
27 skin tests are to be immediately referred to a physician for
28 evaluation and treatment or further studies. School personnel
29 found to have tuberculosis shall have their employment
30 suspended until the local health officer, in consultation with the
31 Commissioner, approves a return to work. School personnel
32 who have not had the required examination will be suspended
33 from employment until reports of examination are confirmed by
34 the local health officer.

35 (d) The local health officer shall be responsible for arrang-
36 ing proper follow-up of school personnel and students who are
37 unable to obtain physician evaluation for a positive tuberculin
38 skin test.

39 (e) The Commissioner shall have the authority to require
40 selective testing of students and school personnel for tuberculo-
41 sis when there is reason to believe that they may have been
42 exposed to the tuberculosis organism. School nurses shall
43 identify and refer any students or school personnel to the local
44 health officer in instances where they have reason to suspect
45 that the individual has been exposed to tuberculosis or has
46 symptoms indicative of the disease.

§16-3D-4. Report of cases, admissions, registration of patients.

1 (a) Every physician practicing in this state, every public
2 health officer in the state, and every chief medical officer
3 having charge of any hospital or clinic or other similar public
4 or private institution in the state shall report electronically or in
5 writing to the local health department in the patient's county of
6 residence all information required by the Commissioner for
7 every person having tuberculosis who comes under his or her
8 observation or care. Such report shall be made within
9 twenty-four hours after diagnosis.

10 (b) Every local health department shall forward all reports
11 of tuberculosis cases filed pursuant to this section to the Bureau
12 tuberculosis program within twenty-four hours of receipt of
13 such reports.

14 (c) The chief medical officer of each tuberculosis institu-
15 tion, hospital or other health care facility shall report the
16 admission of any patient with tuberculosis to the Bureau
17 together with any other information the Commissioner may
18 require. He or she shall make a similar report of the discharge
19 or death of any patient. From such reports and other sources,
20 the Bureau shall prepare and keep current a register of persons
21 in this state with tuberculosis. The name of a person so regis-
22 tered shall not be made public nor shall the register be accessi-
23 ble to anyone except by order of the Bureau, the patient, or by
24 the order of the judge of a court of record.

§16-3D-5. Forms for reporting and committing patients; other records.

1 (a) The Bureau shall prescribe the written and electronic
2 forms for reporting all required information regarding patients
3 with tuberculosis.

4 (b) The Bureau shall prescribe the written and electronic
5 forms to be used in committing patients to any state hospital or
6 other health care facility where care and treatment of tuberculo-
7 sis patients is conducted.

§16-3D-6. Cost of maintenance and treatment of patients.

1 The cost of maintenance and treatment of patients admitted
2 to state designated tuberculosis institutions shall be paid out of
3 funds appropriated for the respective institutions. No patient
4 shall be required to pay for such maintenance and treatment, but
5 the institutions are authorized to receive any voluntary pay-
6 ments therefore.

**§16-3D-7. Procedure when patient is a health menace to others;
court ordered treatment; requirements for discharge; appeals.**

1 (a) If any practicing physician, public health officer, or
2 chief medical officer having under observation or care any
3 person with tuberculosis is of the opinion that the environmen-
4 tal conditions of that person are not suitable for proper isolation
5 or control by any type of local quarantine as prescribed by the
6 Bureau, and that the person is unable or unwilling to conduct
7 himself or herself and to live in such a manner as not to expose
8 members of his or her family or household or other persons
9 with whom he or she may be associated to danger of infection,
10 he or she shall report the facts to the Bureau which shall
11 investigate or have investigated the circumstances alleged.

12 (b) If the Commissioner or local health officer finds that
13 any person's physical condition is a health menace to others,
14 the Commissioner or local health officer shall petition the
15 circuit court of the county in which the person resides, request-
16 ing an individualized course of treatment to deal with the
17 person's current or inadequately treated tuberculosis. Refusal
18 to adhere to prescribed treatment may result in an order of the
19 court committing the person to a health care facility equipped
20 for the treatment of tuberculosis: *Provided*, That if the Commis-
21 sioner or local health officer determines that an emergency
22 situation exists which warrants the immediate detention and
23 commitment of a person with tuberculosis, an application for
24 immediate involuntary commitment may be filed pursuant to
25 section nine of this article.

26 (c) Upon receiving the petition, the court shall fix a date for
27 hearing thereof and notice of the petition and the time and place
28 for hearing shall be served personally, at least seven days
29 before the hearing, upon the person with tuberculosis alleged to
30 be dangerous to the health of others.

31 (d) If, upon hearing, it appears that the complaint of the
32 Bureau is well founded, that other less restrictive treatment
33 options have been exhausted, that the person has tuberculosis,
34 and that the person is a danger to others, the court shall commit
35 the individual to a health care facility equipped for the care and
36 treatment of persons with tuberculosis. The person shall be
37 deemed to be committed until discharged in the manner
38 authorized in subsection (e) of this section: *Provided*, That the
39 hearing and notice provisions of this subsection do not apply to
40 immediate involuntary commitments as provided in section
41 nine of this article.

42 (e) The chief medical officer of the institution to which any
43 person with tuberculosis has been committed may discharge
44 that person when, after consultation with the Commissioner and

45 the local health officer in the patient's county of residence, it is
46 agreed that the person may be discharged without danger to the
47 health of others. The chief medical officer shall report immedi-
48 ately to the Commissioner and to the local health officer in the
49 patient's county of residence each discharge of a person with
50 tuberculosis.

51 (f) Every person committed under the provisions of this
52 section shall observe all the rules of the institution. Any patient
53 so committed may, by direction of the chief medical officer of
54 the institution, be placed apart from the others and restrained
55 from leaving the institution so long as he or she continues to
56 have tuberculosis and remains a health menace.

57 (g) Nothing in this section may be construed to prohibit any
58 person committed to any institution under the provisions of this
59 section from applying to the Supreme Court of Appeals for a
60 review of the evidence on which the commitment was made.
61 Nothing in this section may be construed or operate to empower
62 or authorize the Commissioner or the chief medical officer of
63 the institution to restrict in any manner the individual's right to
64 select any method of tuberculosis treatment offered by the
65 institution.

§16-3D-8. Return of escapees from state tuberculosis institutions.

1 If any person confined in a state tuberculosis institution by
2 virtue of an order of a circuit court as provided in sections
3 seven and nine of this article shall escape, the chief medical
4 officer shall issue a notice giving the name and description of
5 the person escaping and requesting his or her apprehension and
6 return to the hospital. The chief medical officer shall issue a
7 warrant directed to the sheriff of the county commanding him
8 or her to arrest and carry the escaped person back to the
9 hospital, which warrant may be executed in any part of the
10 state. If the person flees to another state, the chief medical

11 officer shall notify the appropriate state health official in the
12 state where the person has fled, and that state health official
13 may take the actions that are necessary for the return of the
14 person to the hospital.

**§16-3D-9. Procedures for immediate involuntary commitment;
rules.**

1 (a) An application for immediate involuntary commitment
2 of a person with tuberculosis may be filed by the Commissioner
3 or local health officer, in the circuit court of the county in
4 which the person resides. The application shall be filed under
5 oath, and shall present information and facts which establish
6 that the person with tuberculosis has been uncooperative or
7 irresponsible with regard to treatment, quarantine or safety
8 measures, presents a health menace to others, and is in need of
9 immediate hospitalization.

10 (b) Upon receipt of the application, the circuit court may
11 enter an order for the individual named in the action to be
12 detained and taken into custody for the purpose of holding a
13 probable cause hearing. The order shall specify that the hearing
14 be held forthwith and shall appoint counsel for the individual:
15 *Provided*, That in the event immediate detention is believed to
16 be necessary for the protection of the individual or others at a
17 time when no circuit court judge is available for immediate
18 presentation of the application, a magistrate may accept the
19 application and, upon a finding that immediate detention is
20 necessary, may order the individual to be temporarily commit-
21 ted until the earliest reasonable time that the application can be
22 presented to the circuit court, which period of time shall not
23 exceed twenty-four hours except as provided in subsection (c)
24 of this section.

25 (c) A probable cause hearing shall be held before a magis-
26 trate or circuit judge of the county in which the individual is a
27 resident or where he or she was found. If requested by the
28 individual or his or her counsel, the hearing may be postponed
29 for a period not to exceed forty-eight hours, or as soon thereaf-
30 ter as possible.

31 (d) The individual shall be present at the probable cause
32 hearing and shall have the right to present evidence, confront all
33 witnesses and other evidence against him or her, and to
34 examine testimony offered, including testimony by the Bureau
35 or its designees.

36 (e) At the conclusion of the hearing the magistrate or circuit
37 court judge shall enter an order stating whether there is proba-
38 ble cause to believe that the individual is likely to cause serious
39 harm to himself, herself or others as a result of his or her
40 disease and actions. If probable cause is found, the individual
41 shall be immediately committed to a health care facility
42 equipped for the care and treatment of persons with tuberculo-
43 sis. The person shall remain so committed until discharged in
44 the manner authorized pursuant to subsection (e), section seven
45 of this article: *Provided*, That in the case of an alcoholic or drug
46 user, the judge or magistrate shall first order the individual
47 committed to a detoxification center for detoxification prior to
48 commitment to health care facility equipped for the care and
49 treatment of persons with tuberculosis.

50 (f) The Bureau shall propose rules for legislative approval
51 in accordance with the provisions of article three, chapter
52 twenty-nine-a of this code to implement the provisions of this
53 article, including, but not limited to, rules relating to the
54 transport and temporary involuntary commitment of patients.

CHAPTER 117

(Com. Sub. for H. B. 2111 — By Delegates Beane and Michael)

[Passed April 9, 2005; in effect ninety day from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §16-4C-14 of the Code of West Virginia, 1931, as amended, relating to allowing paramedics the right to practice in a hospital emergency room setting; and authorizing the promulgation of legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §16-4C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-14. Services that may be performed by emergency medical service personnel.

1 Notwithstanding any other provision of law, emergency
2 medical service personnel may provide the services as deter-
3 mined by the commissioner by legislative rule pursuant to the
4 provisions of article three, chapter twenty-nine-a of this code.
5 Legislative rules governing provision of these services in a
6 hospital emergency room setting shall be developed by the
7 commissioner and shall include provisions allowing paramedics
8 to function under the direct supervision of a registered profes-
9 sional nurse in a hospital emergency room setting. Provision of
10 these services in an emergency room hospital setting shall not

11 be initiated until a legislative rule establishing training require-
12 ments, standards and requirements for these functions is in
13 effect. The Legislature therefore directs the commissioner to
14 propose this legislative rule on or before the first day of July,
15 two thousand six. Further, the Commissioner may promulgate
16 this rule as an emergency rule pursuant to the provisions of
17 section fifteen, article three, chapter twenty-nine-a of this code.
18 Any rule so promulgated shall provide that paramedics are
19 under the jurisdiction of the commissioner. The West Virginia
20 Board of Registered Professional Nurses may propose legisla-
21 tive rules, pursuant to article three, chapter twenty-nine-a of the
22 code relating to the scope of practice for nurses as those
23 practices relates to overseeing these paramedics. The provisions
24 of this section and any rules promulgated thereunder may not
25 be construed to alter in any manner the duties, role or responsi-
26 bilities of attending physicians regarding the providing and
27 oversight of patient care.

CHAPTER 118

**(Com. Sub. for H. B. 2381 — By Delegates Amores,
Webster, Palumbo and Kominar)**

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect ninety days from passage.]

[Approved by the Governor on May, 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-15; to amend and reenact §16-5C-5 of said code; to amend and reenact §16-5D-5 of said code; to amend and reenact §16-5E-1a of said code; and to amend and reenact §16-5N-5 of said code, all relating to patient

or resident visitation rights; requiring public or private hospitals to permit patient visitation privileges for nonrelatives under certain circumstances; and requiring the director to propose legislative rules for certain resident visitation rights at nursing homes, assisted living residences, legally unlicensed health care homes and residential care communities.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated § 16-5B-15; that § 16-5C-5 of said code be amended and reenacted; that 16-5D-5 of said code be amended and reenacted; that § 16-5E-1a of said code be amended and reenacted; and that § 16-5N-5 of said code be amended and reenacted, all to read as follows:

Article

5B. Hospitals and Similar Institutions.

5C. Nursing Homes.

5D. Assisted Living Residences.

5E. Registration and Inspection of Service Providers in Legally Unlicensed Health Care Homes.

5N. Residential Care Communities..

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-15. Hospital visitation.

1 (a) A public or private hospital licensed pursuant to the
2 provisions of section two of this article is required to permit
3 patient visitation privileges for nonrelatives unless otherwise
4 requested by the patient or legal designee. For purposes of this
5 section, the term “legal designee” means and includes those
6 persons eighteen years of age or older, appointed by the patient
7 to make health care decisions for the patient pursuant to the
8 provisions of section six, article thirty of this chapter.

9 (b) It is the intent of the Legislature that this section
10 facilitate a patient's visitation with nonrelative individuals, and
11 may not, in any way, restrict or limit allowable uses and
12 disclosures of protected health information pursuant to the
13 Health Insurance Portability and Accountability Act, 42 U.S.C.
14 §1320d-2 and the accompanying regulations in 45 CFR
15 164.500.

16 (c) No provision of this section may be construed to prevent
17 a hospital from otherwise restricting visitation privileges in
18 order to prevent harm to the patient or disruption to the facility.

ARTICLE 5C. NURSING HOMES.

§16-5C-5. Rules; minimum standards for nursing homes.

1 (a) All rules shall be proposed for legislative approval in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code. The director shall recommend the
4 adoption, amendment or repeal of such rules as may be neces-
5 sary or proper to carry out the purposes and intent of this
6 article.

7 (b) The director shall recommend rules establishing
8 minimum standards of operation of nursing homes including,
9 but not limited to, the following:

10 (1) Administrative policies, including: (A) An affirmative
11 statement of the right of access to nursing homes by members
12 of recognized community organizations and community legal
13 services programs whose purposes include rendering assistance
14 without charge to residents, consistent with the right of resi-
15 dents to privacy; and (B) a statement of the rights and responsi-
16 bilities of residents in nursing homes which prescribe, as a
17 minimum, such a statement of residents' rights as included in
18 the United States Department of Health and Human Services
19 regulations, in force on the effective date of this article,

20 governing participation of nursing homes in the Medicare and
21 Medicaid programs pursuant to titles eighteen and nineteen of
22 the Social Security Act;

23 (2) Minimum numbers of administrators, medical directors,
24 nurses, aides and other personnel according to the occupancy of
25 the facility;

26 (3) Qualifications of facility's administrators, medical
27 directors, nurses, aides, and other personnel;

28 (4) Safety requirements;

29 (5) Sanitation requirements;

30 (6) Personal services to be provided;

31 (7) Dietary services to be provided;

32 (8) Medical records;

33 (9) Social and recreational activities to be made available;

34 (10) Pharmacy services;

35 (11) Nursing services;

36 (12) Medical services;

37 (13) Physical facility;

38 (14) Resident rights;

39 (15) Visitation privileges that:

40 (A) Permit immediate access to a resident, subject to the
41 resident's right to deny or withdraw consent at any time, by
42 immediate family or other relatives of the resident;

43 (B) Permit immediate access to a resident, subject to
44 reasonable restrictions and the resident's right to deny or
45 withdraw consent at any time, by others who are visiting with
46 the consent of the resident; and

47 (C) Permit access to other specific persons or classes of
48 persons consistent with state and federal law.

49 (16) Admission, transfer and discharge rights.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-5. Rules; minimum standards for assisted living residences.

1 (a) The secretary shall propose rules for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code to carry out the purposes and intent
4 of this article and to enable the secretary to exercise the powers
5 and perform the duties conferred upon the secretary by this
6 article.

7 (b) The secretary shall propose rules establishing minimum
8 standards of operation of assisted living residences, including,
9 but not limited to, the following:

10 (1) Administrative policies, including:

11 (A) An affirmative statement of the right of access to
12 assisted living residences by members of recognized commu-
13 nity organizations and community legal services programs
14 whose purposes include rendering assistance without charge to
15 residents, consistent with the right of residents to privacy; and

16 (B) A statement of the rights and responsibilities of
17 residents;

18 (2) Minimum numbers and qualifications of personnel,
19 including management, medical and nursing, aides, orderlies
20 and support personnel, according to the size and classification
21 of the assisted living residence;

22 (3) Safety requirements;

23 (4) Sanitation requirements;

24 (5) Protective and personal services to be provided;

25 (6) Dietary services to be provided;

26 (7) Maintenance of health records;

27 (8) Social and recreational activities to be made available;

28 (9) Physical facilities;

29 (10) Requirements related to provision of limited and
30 intermittent nursing;

31 (11) Visitation privileges governing access to a resident by
32 immediate family or other relatives of the resident and by other
33 persons who are visiting with the consent of the resident; and

34 (12) Such other categories as the secretary determines to be
35 appropriate to ensure resident's health, safety and welfare.

36 (c) The secretary shall include in rules detailed standards
37 for each of the categories of standards established pursuant to
38 subsections (b) and (d) of this section and shall classify such
39 standards as follows:

40 (1) Class I standards are standards the violation of which,
41 as the secretary determines, would present either an imminent
42 danger to the health, safety or welfare of any resident or a

43 substantial probability that death or serious physical harm
44 would result;

45 (2) Class II standards are standards which the secretary
46 determines have a direct or immediate relationship to the
47 health, safety or welfare of any resident, but which do not
48 create imminent danger;

49 (3) Class III standards are standards which the secretary
50 determines have an indirect or a potential impact on the health,
51 safety or welfare of any resident.

52 (d) An assisted living residence shall attain substantial
53 compliance with standards established pursuant to this section
54 and such other requirements for a license as may be established
55 by rule under this article.

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1a. Powers, rights and duties of the director.

1 In the administration of this article, the director shall have
2 the following powers, duties and rights:

3 (a) To promulgate and enforce rules governing complaint
4 investigations within the homes of legally unlicensed health
5 care providers registered under this article. Such rules shall
6 include the minimum health, safety and welfare standards in the
7 following areas:

8 (1) Physical environment;

9 (2) Nutrition;

10 (3) Requirements related to limited and intermittent nursing
11 care;

- 12 (4) Medication administration;
- 13 (5) Protective and personal services to be provided;
- 14 (6) Treatment;
- 15 (7) Visitation privileges governing access to a resident by
16 immediate family or other relatives of the resident and by other
17 persons who are visiting with the consent of the resident;
- 18 (8) Such other categories as the director determines to be
19 appropriate to ensure residents' health, safety and welfare.
- 20 (b) To exercise as sole authority all powers relating to
21 issuance, suspension and revocation of registration of legally
22 unlicensed homes providing health care;
- 23 (c) To issue directed plans of correction for deficiencies
24 identified during complaint investigations;
- 25 (d) To order closure of any home for failure to comply with
26 a directed plan of corrections;
- 27 (e) To take all actions required under the provisions of
28 sections three, four, five and six of this article; and
- 29 (f) To deny registration to any operator of a legally unli-
30 censed home who is listed on the state abuse registry.

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-5. Rules; minimum standards for residential care communities.

- 1 (a) The secretary shall, by the first day of July, one thou-
2 sand nine hundred ninety-eight, propose all rules that may be
3 necessary or proper to implement or effectuate the purposes and
4 intent of this article and to enable the director to exercise the

5 powers and perform the duties conferred herein. All rules
6 authorized or required pursuant to this article shall be proposed
7 by the secretary and promulgated in accordance with the
8 provisions governing legislative rules, contained in article three,
9 chapter twenty-nine-a of this code.

10 (b) The secretary shall propose rules establishing minimum
11 standards for the operation of residential care communities,
12 including, but not limited to, the following:

13 (1) Administrative policies, including: (i) An affirmative
14 statement of the right of access to residential care communities
15 by members of recognized community organizations and
16 community legal services programs whose purposes include
17 rendering assistance without charge to residents, consistent with
18 the right of residents to privacy; and (ii) a statement of the
19 rights and responsibilities of residents;

20 (2) Minimum numbers and qualifications of residential care
21 community personnel according to the size, classification and
22 health care needs of the residential care community;

23 (3) Safety requirements, except for those fire and life safety
24 requirements under the jurisdiction of the State Fire Marshal;

25 (4) Sanitation requirements;

26 (5) Protective and personal services required to be pro-
27 vided;

28 (6) Dietary services required to be provided;

29 (7) Maintenance of health records, including confidential-
30 ity;

31 (8) Social and recreational activities required to be made
32 available;

33 (9) Physical facilities;

34 (10) Requirements related to limited and intermittent
35 nursing care;

36 (11) Visitation privileges governing access to a resident by
37 immediate family or other relatives of the resident and by other
38 persons who are visiting with the consent of the resident; and

39 (12) Other items or considerations that the secretary
40 considers appropriate to ensure the health, safety and welfare of
41 residents of residential care communities.

42 (c) The secretary shall propose rules that include detailed
43 specifications for each category of standards required under
44 subsections (b) and (d) of this section, and shall classify these
45 standards as follows:

46 (1) Class I standards, the violation of which presents either
47 an imminent danger to the health, safety or welfare of a resident
48 or a substantial probability that death or serious physical harm
49 may result;

50 (2) Class II standards, the violation of which directly
51 implicates the health, safety or welfare of a resident, but which
52 does not present imminent danger thereto; and

53 (3) Class III standards, the violation of which has an
54 indirect or potential impact on the health, safety or welfare of
55 any resident.

56 (d) A residential care community shall attain substantial
57 compliance in every category of standard enumerated in this
58 section in order to be considered as being in substantial
59 compliance with the requirements of this article and the rules
60 promulgated hereunder.

61 (e) Until such time as the secretary proposes rules govern-
62 ing residential care communities under this section, existing
63 rules governing residential board and care homes shall apply to
64 residential care communities and shall be construed so as to
65 conform with the provisions of this article in their application
66 to residential care communities: *Provided*, That to the extent
67 any provisions of the rule governing residential board and care
68 homes conflict with the provisions of this article, the provisions
69 of this article shall govern.

CHAPTER 119

(S. B. 236 — By Senators Prezioso, Hunter,
Sharpe, Unger, Boley and Foster)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5R-6, all relating to the Alzheimer's Special Care Standards Act; establishing training requirements for employees, staff and contractors in certain health facilities on the subject of Alzheimer's disease.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5R-6, to read as follows:

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-6. Alzheimer 's and dementia care training; rules.

1 (a) For the purposes of this section, "resident" means an
2 individual receiving care or services in an adult day care
3 facility, nursing home, assisted living facility or residential care
4 community.

5 (b) The Secretary shall propose rules for legislative
6 approval in accordance with the provisions of article three,
7 chapter twenty-nine-s of this code, setting minimum standards
8 for Alzheimer's and dementia care training of all staff, employ-
9 ees and contractors that come in regular and direct contact with
10 residents.

11 (c) The standards established in this section shall apply to
12 adult day care facilities, nursing homes, assisted living facilities
13 and residential care communities who provide services under
14 the supervision of a licensed operator.

CHAPTER 120

(Com. Sub. for S. B. 19 — By Senator Kessler)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §9-4-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-2-6 of said code, relating to elimination of the dormant Advisory Board for the Secretary of the Department of Health and Human Resources; and adding within the Department of Health and Human Resources the Office of Inspector General.

Be it enacted by the Legislature of West Virginia:

That §9-4-1 of the Code of West Virginia, 1931, as amended, be repealed; and that §9-2-6 of said code be amended and reenacted to read as follows:

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

§9-2-6. Powers of Secretary.

1 Within limits of state appropriations and federal grants and
2 subject to provisions of state and federal laws and regulations,
3 the Secretary, in addition to all other powers, duties and
4 responsibilities granted and assigned to that office in this
5 chapter and elsewhere by law, is authorized and empowered to:

6 (1) Promulgate, amend, revise and rescind Department rules
7 respecting the organization and government of the Department
8 and the execution and administration of those powers, duties
9 and responsibilities granted and assigned by this chapter and
10 elsewhere by law to the Department and the Secretary.

11 (2) Promulgate, amend, revise and rescind Department rules
12 and regulations respecting qualifications for receiving the
13 different classes of welfare assistance consistent with or
14 permitted by federal laws, rules and policies, but not inconsis-
15 tent with state law: *Provided*, That such rules and policies
16 respecting qualifications shall permit the expenditure of state
17 funds to pay for care rendered in any birthing center licensed
18 under the provisions of article two-e, chapter sixteen of this
19 code by a licensed nurse midwife or midwife as this occupation
20 is defined in section one, article fifteen, chapter thirty of this
21 code and which care is within the scope of duties for such
22 licensed nurse midwife or midwife as permitted by the provi-
23 sions of section seven of said article.

24 (3) Obtain by purchase or lease such grounds, buildings,
25 office or other space, equipment, facilities and services as may
26 be necessary for the execution and administration of those
27 powers, duties and responsibilities granted and assigned by this
28 chapter and elsewhere by law to the Department and the
29 Secretary.

30 (4) Sign and execute in the name of the state by the state
31 Department of Health and Human Resources any contract or
32 agreement with the federal government or its agencies, other
33 states, political subdivisions of this state, corporations, associa-
34 tions, partnerships or individuals.

35 (5) Establish such special funds as may be required by the
36 federal Social Security Act, as amended, or by any other Act or
37 Acts of Congress, in order for this state to take full advantage
38 of the benefits and provisions thereof relating to the federal-
39 state assistance and federal assistance programs administered
40 by the Department and to make payments into and disburse-
41 ments out of any such special fund or funds in accordance with
42 the requirements of the federal Social Security Act, as
43 amended, or any other Act or Acts of Congress, and in accor-
44 dance with applicable state law and the objects and purposes of
45 this chapter. In addition, the state Department of Health and
46 Human Resources, through the Secretary, is hereby authorized
47 to accept any and all gifts or grants, whether in money, land,
48 services or materials, which gift or gifts, if in the form of
49 moneys, shall be placed in a separate fund and expended solely
50 for the purpose of public assistance programs. No part of this
51 special fund shall revert to the general revenue funds of this
52 state. No expenses incurred pursuant to this special fund shall
53 be a charge against the general funds of this state.

54 (6) Establish within the Department an Office of Inspector
55 General for the purpose of conducting and supervising investi-
56 gations and for the purpose of providing quality control for the

57 programs of the Department. The Office of Inspector General
58 shall be headed by the Inspector General who shall report
59 directly to the Secretary. Neither the Secretary nor any
60 employee of the Department may prevent, inhibit or prohibit the
61 Inspector General or his or her employees from initiating,
62 carrying out or completing any investigation, quality control
63 review or other activity oversight of public integrity by the
64 Office of the Inspector General. The Secretary shall place
65 within the Office of Inspector General any function he or she
66 deems necessary. Qualification, compensation and personnel
67 practice relating to the employees of the Office of the Inspector
68 General, including that of the position of Inspector General,
69 shall be governed by the classified service provisions of article
70 six, chapter twenty-nine of this code and rules promulgated
71 thereunder. The Inspector General shall supervise all personnel
72 of the Office of Inspector General.

73 (7) Provide at Department expense a program of continuing
74 professional, technical and specialized instruction for the
75 personnel of the Department.

76 (8) Pay from available funds all or part of the reasonable
77 expenses incurred by a person newly employed by the Depart-
78 ment in moving his household furniture, effects and immediate
79 family from his or her place of residence in this state to his or
80 her place of employment in this state; and to pay from available
81 funds all or part of the reasonable expenses incurred by a
82 Department employee in moving his or her household furniture,
83 effects and immediate family as a result of a reassignment of
84 the employee which is considered desirable, advantageous to
85 and in the best interests of the state, but no part of the moving
86 expenses of any one such employee shall be paid more fre-
87 quently than once in twelve months or for any movement other
88 than from one place of employment in this state to another
89 place of employment in this state.

90 (9) Establish and maintain such institutions as are necessary
91 for the temporary care, maintenance and training of children
92 and other persons.

93 (10) Prepare and submit state plans which will meet the
94 requirements of federal laws, rules governing federal-state
95 assistance and federal assistance and which are not inconsistent
96 with state law.

97 (11) Organize within the Department a Board of Review,
98 consisting of a Chairman appointed by the Secretary and as
99 many assistants or employees of the Department as may be
100 determined by the Secretary and as may be required by federal
101 laws and rules respecting state assistance, federal-state assis-
102 tance and federal assistance, such Board of Review to have such
103 powers of a review nature and such additional powers as may
104 be granted to it by the Secretary and as may be required by
105 federal laws and rules respecting federal-state assistance and
106 federal assistance.

107 (12) Provide by rules such review and appeal procedures
108 within the Department of Health and Human Resources as may
109 be required by applicable federal laws and rules respecting state
110 assistance, federal-state assistance and federal assistance and as
111 will provide applicants for, and recipients of all, classes of
112 welfare assistance an opportunity to be heard by the Board of
113 Review, a member thereof, or individuals designated by the
114 Board, upon claims involving denial, reduction, closure, delay
115 or other action or inaction pertaining to public assistance.

116 (13) Provide by rules, consistent with requirements of
117 applicable federal laws and rules, application forms and
118 application procedures for the various classes of public assis-
119 tance.

120 (14) Provide locations for making applications for the
121 various classes of public assistance.

122 (15) Provide a citizen or group of citizens an opportunity to
123 file objections and to be heard upon objections to the grant of
124 any class of public assistance.

125 (16) Delegate to the personnel of the Department all powers
126 and duties vested in the Secretary, except the power and
127 authority to sign contracts and agreements.

128 (17) Make such reports in such form and containing such
129 information as may be required by applicable federal laws and
130 rules respecting federal-state assistance and federal assistance.

131 (18) Invoke any legal, equitable or special remedies for the
132 enforcement of the provisions of this chapter.

CHAPTER 121

**(Com. Sub. for H. B. 2816 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)**

[Passed April 9, 2005, in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and to amend and reenact §18-2-6a, §18-2-7a and §18-2-9 of said code, all relating to promoting healthy lifestyles; creating a Healthy Lifestyles Office in the Department of Health and Human Resources; establishing the functions of the Office; creating a special revenue account; establishing a voluntary private sector partnership program to encourage healthy lifestyles; establishing physical activity requirements in the schools; using body mass index as an indicator of progress;

encouraging the use of healthy beverages in schools; and adding requirements for health education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and that §18-2-6a, §18-2-7a and §18-2-9 of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-1E-1. Findings and purposes.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

§5-1E-3. Powers and duties of the Office.

§5-1E-4. Partnership to encourage healthy lifestyles by children and families.

§5-1E-5. Creation of a Healthy Lifestyles Fund.

§5-1E-1. Findings and purposes.

1 The Legislature finds and declares that the rise in obesity
2 and related weight problems accompanied by the resulting
3 incidence of chronic disease has created a health care crisis that
4 burdens the health care infrastructure of the state. The Legisla-
5 ture also finds that the State of West Virginia must take an
6 informed, sensitive approach to communicate and educate the
7 citizens of the state about health issues related to obesity and

8 inappropriate weight gain. The Legislature further finds that the
9 state must take action to assist West Virginia citizens in
10 engaging in healthful eating and regular physical activity. The
11 Legislature further finds that the state must invest in research
12 that improves understanding of inappropriate weight gain and
13 obesity. These efforts are needed to coordinate the state's
14 interest in improving the health of its citizens and in reducing
15 the cost of health care. Therefore, it is the purpose of this article
16 to create, as an integral part of the Department of Health and
17 Human Resources, an entity to coordinate the efforts of all
18 agencies to prevent and remedy obesity and related weight
19 problems and to ensure that all citizens are being educated on
20 this serious health risk that is affecting the state.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

1 There is hereby created the Office of Healthy Lifestyles
2 within the Department of Health and Human Resources. The
3 management of this office shall be provided in the manner
4 determined by the Secretary of the Department of Health and
5 Human Resources to be in the best interest of the state and its
6 citizens.

§5-1E-3. Powers and duties of the Office.

1 The Office of Healthy Lifestyles shall:

2 (1) Establish a Healthy Lifestyle Coalition to assure
3 consistency of the public health and private sector approach to
4 dealing with programs that address the problems that affect
5 overweight and obese individuals; to provide a forum for
6 discussing the issues that affect healthy lifestyles and to identify
7 best practices that can be replicated. By the first day of July,
8 two thousand five, the Governor shall appoint thirteen members
9 of the Coalition whose terms shall be for a period of four years,
10 and the members may be reappointed to a second term. The
11 terms may be staggered by the Governor to assure continuity of

12 experience on the Coalition. Members shall represent state
13 agencies, community organizations and other entities which
14 have an interest and expertise in obesity. Members may not be
15 compensated but shall receive reimbursement for expenses
16 incurred while performing the business of the Coalition. The
17 Coalition shall meet monthly for at least the first eighteen
18 months of the Coalition to develop and implement an action
19 plan to meet the goals established by the Coalition;

20 (2) Establish a clinical advisory committee to assure a
21 unified approach using the latest research to assure consistency
22 in program development;

23 (3) Establish a statewide voluntary private sector partner-
24 ship and recognition program for employers, merchants,
25 restaurants and other private sector businesses to encourage the
26 development or further advance current programs that encour-
27 age healthy lifestyles;

28 (4) Coordinate higher education training programs for
29 dietary and exercise physiology students with rural health care
30 providers;

31 (5) Coordinate existing health promotion initiatives to
32 assure clear, concise and consistent communication;

33 (6) Solicit, accept and expend grants, gifts, bequests,
34 donations and other funds from any source for programs that
35 will enable the state to accomplish the goals of this program;

36 (7) Develop a cross-agency series of goals to ensure
37 consistency throughout the system of providers and agencies
38 working in the area of improving lifestyles;

39 (8) Establish as a goal to increase the prevalence of healthy
40 weight among all people in the state because obesity leads to
41 diabetes, heart disease, strokes and kidney failure. These

42 diseases, often arising in older age as a result of unhealthy
43 lifestyles that began during a person's youth, place an undue
44 financial burden on individuals, the health care industry and
45 state health care programs;

46 (9) Consider the resources of the local health departments
47 and recommend ongoing relationships, as appropriate, between
48 local health departments, family resource networks, faith-based
49 organizations, cooperative extension services, farm bureaus and
50 other health care providers;

51 (10) Encourage the development of incentives for participa-
52 tion in employee wellness programs. Incentives may be based
53 upon, but should not be limited to, the employee's completion
54 of health questionnaires or participating in healthy lifestyles
55 initiatives, and may use experiences of successful initiatives
56 that have occurred in this state. The action plan should include
57 among its targets, state government employees in this incentive
58 program;

59 (11) Build upon existing initiatives that focus on any of the
60 coalition's goals, soliciting input from these initiatives and
61 eliminating duplication of efforts;

62 (12) Report its progress annually by the first of December
63 to the Legislative Oversight Commission on Health and Human
64 Resource Accountability.

**§5-1E-4. Partnership to encourage healthy lifestyles by children
and families.**

1 (a) The West Virginia Healthy Lifestyles program will
2 develop a statewide voluntary private sector partnership
3 program to work with businesses throughout the state that
4 encourage and promote healthy lifestyles among their employ-
5 ees and communities.

6 (b) Beginning the first day of July, two thousand five, those
7 businesses voluntarily choosing to participate in the Healthy
8 Lifestyles program shall submit their own detailed programs to
9 the Office of Healthy Lifestyles for review. The programs
10 should be creative and unique, highlighting the efforts of the
11 business to promote healthy lifestyles to West Virginians
12 through sensible diet and physical fitness.

13 (c) The West Virginia Healthy Lifestyles program will
14 develop a recognition program for private sector enterprises
15 that develop or advance programs that address the problems
16 affecting overweight and obese individuals and that promote a
17 healthy lifestyle.

18 (d) Any business program promoting healthy lifestyles that
19 is recognized by the Office of Healthy Lifestyles will be issued
20 a universally recognized logo, suitable for public display by the
21 business.

22 (e) Marketing of programs recognized by the Office of
23 Healthy Lifestyles shall take place through all state agencies.
24 The West Virginia Public Employees Insurance Agency, the
25 Bureau for Medical Services and the West Virginia Workers'
26 Compensation Commission shall aggressively market this
27 program to their members for the purposes of health promotion
28 among their members.

29 (f) The Office of Healthy Lifestyles shall market recog-
30 nized programs to other businesses, as models, to help create
31 additional programs promoting healthy lifestyles.

32 (g) The Office of Healthy Lifestyles shall report annually
33 by the first day of December to the Legislative Oversight
34 Commission on Health and Human Resources Accountability:
35 (1) The number of participants; (2) the impact on businesses as
36 established by a survey of participating businesses; and (3) the

37 results of consumer satisfaction surveys all designed by the
38 Office of Healthy Lifestyles.

§5-1E-5. Creation of a Healthy Lifestyles Fund.

1 There is hereby created in the State Treasury a separate
2 special revenue account, which shall be an interest bearing
3 account, to be known as the “ Healthy Lifestyles Fund” . The
4 special revenue account shall consist of all appropriations made
5 by the Legislature, income from the investment of moneys held
6 in the special revenue account and all other sums available for
7 deposit to the special revenue account from any source, public
8 or private. No expenditures for purposes of this section are
9 authorized from collections except in accordance with the
10 provisions of article three, chapter twelve of this code and upon
11 fulfillment of the provisions set forth in article two, chapter
12 eleven-b of this code. Any balance remaining in the special
13 revenue account at the end of any state fiscal year does not
14 revert to the general revenue fund but remains in the special
15 revenue account and shall be used solely in a manner consistent
16 with this article. No expenses incurred under this section shall
17 be a charge against the general funds of the state.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6a. Sale of healthy beverages and soft drinks in schools.

§18-2-7a. Legislative findings; required physical education; program in physical
fitness.

§18-2-9. Required courses of instruction; violation and penalty.

§18-2-6a. Sale of healthy beverages and soft drinks in schools.

1 (a) In order to generate funding for necessary programs and
2 supplies, county boards may permit the sale of healthy beverages
3 and soft drinks in county schools except during breakfast
4 and lunch periods as follows:

5 (1) During a school day, soft drinks may not be sold in
6 areas accessible to students in an elementary school, middle
7 school or junior high school through vending machines on the
8 premises, in school stores or in school canteens or through fund
9 raisers by students, teachers, groups or by any other means. In
10 elementary, middle school or junior high school, only healthy
11 beverages may be sold in vending machines on the premises, in
12 school canteens or through fundraisers by students, teachers,
13 groups or by any other means. Nothing in this section shall be
14 construed to prohibit or limit sale or distribution of any food or
15 beverage item through fund-raising activities of students,
16 teachers or educational groups when the items are intended for
17 sale off the school grounds.

18 (2) Those high schools which permit the sale of soft drinks
19 through vending machines also shall offer for sale healthy
20 beverages. Of the total beverages offered for sale, at least fifty
21 percent shall be healthy beverages. Vending machines contain-
22 ing healthy beverages shall be in the same location or substan-
23 tially similar location as vending machines containing soft
24 drinks.

25 (3) The sale of healthy beverages and soft drinks shall be in
26 compliance with the rules of the National School Lunch
27 Program and the School Breakfast Program of the State Board
28 and the Nutrition Service of the United States Department of
29 Agriculture, which became effective on the seventeenth day of
30 June, one thousand nine hundred eighty-five. Seventy-five
31 percent of the profits from the sale of healthy beverages and
32 soft drinks shall be allocated by a majority vote of the faculty
33 senate of each school and twenty-five percent of the profits
34 from the sale of healthy beverages and soft drinks shall be
35 allocated to the purchase of necessary supplies by the principal
36 of the school.

37 (b) For the purposes of this section:

38 (1) “ School day” means the period of time between the
39 arrival of the first student at the school building and the end of
40 the last instructional period; and

41 (2) “ Healthy beverage” means water, one hundred percent
42 fruit and vegetable juice, low-fat milk and other juice beverages
43 with a minimum of twenty percent real juice.

**§18-2-7a. Legislative findings; required physical education;
program in physical fitness.**

1 (a) The Legislature hereby finds that obesity is a problem
2 of epidemic proportions in this state. There is increasing
3 evidence that all segments of the population, beginning with
4 children, are becoming more sedentary, more overweight, and
5 more likely to develop health risks and diseases including Type
6 II Diabetes, high blood cholesterol and high blood pressure. The
7 Legislature further finds that the promotion of physical activity
8 during the school day for school children is a crucial step in
9 combating this growing epidemic and in changing the attitudes
10 and behavior of the residents of this state toward health
11 promoting physical activity.

12 (b) As a result of these findings, the State Department of
13 Education shall establish the requirement that each child
14 enrolled in the public schools of this state actively participates
15 in physical education classes during the school year to the level
16 of his or her ability as follows:

17 (1) *Kindergarten to and including grade five.* — Not less
18 than thirty minutes of physical education, including physical
19 exercise and age appropriate physical activities, for not less
20 than three days a week.

21 (2) *Grade six to and including grade eight.* — Not less than
22 one full period of physical education, including physical
23 exercise and age appropriate physical activities, each school
24 day of one semester of the school year.

25 (3) *Grade nine to and including grade twelve.* —Not less
26 than one full course credit of physical education, including
27 physical exercise and age appropriate physical activities which
28 shall be required for graduation and the opportunity to enroll in
29 an elective lifetime physical education course.

30 (c) Enrollment in physical education classes and activities
31 required by the provisions of this section shall not exceed, and
32 shall be consistent with, state guidelines for enrollment in all
33 other subjects and classes: *Provided*, That schools which do not
34 currently have the number of certified physical education
35 teachers or required physical setting may develop alternate
36 programs that will enable current staff and physical settings to
37 be used to meet the physical education requirements established
38 herein. These alternate programs shall be submitted to the State
39 Department of Education and the Healthy Lifestyle Council for
40 approval. Those schools needing to develop alternate programs
41 shall not be required to implement this program until the school
42 year commencing two thousand six.

43 (d) The State Board shall prescribe a program within the
44 existing health and physical education program which incorpo-
45 rates fitness testing, reporting, recognition, fitness events and
46 incentive programs which requires the participation in grades
47 four through eight and the required high school course. The
48 program shall be selected from nationally accepted fitness
49 testing programs designed for school-aged children that test
50 cardiovascular fitness, muscular strength and endurance,
51 flexibility and body composition: *Provided*, That nothing in this
52 subsection shall be construed to prohibit the use of programs
53 designed under the auspices of the President's Council on
54 Physical Fitness and Sports. The program shall include modi-
55 fied tests for exceptional students. Each school in the state shall
56 participate in National Physical Fitness and Sports Month in
57 May of each year and shall make every effort to involve the
58 community it serves in the related events.

59 (e) Body mass index measures shall be used as an indicator
60 of progress toward promoting healthy lifestyles among school-
61 aged children. The body mass index measures shall be deter-
62 mined using student height and weight data and reported to the
63 State Department of Education via the West Virginia Education
64 Information System. Body mass index measures shall be
65 included in kindergarten screening procedures. Students in
66 grades four through eight and students enrolled in high school
67 physical education courses shall have their body mass index
68 measured through required fitness testing procedures. All
69 school personnel responsible for conducting and reporting body
70 mass index measures shall receive training or written documen-
71 tation on the appropriate methodology for assessing the body
72 mass index and reporting data in a manner that protects student
73 confidentiality. All body mass index data shall be reported in
74 aggregate to the Governor, the State Board of Education, the
75 Healthy Lifestyles Coalition and the Legislative Oversight
76 Commission on Health and Human Resource Accountability.

§18-2-9. Required courses of instruction; violation and penalty.

1 (a) In all public, private, parochial and denominational
2 schools located within this state, there shall be given prior to
3 the completion of the eighth grade at least one year of instruc-
4 tion in the history of the State of West Virginia. The schools
5 shall require regular courses of instruction by the completion of
6 the twelfth grade in the history of the United States, in civics,
7 in the Constitution of the United States, and in the government
8 of the State of West Virginia for the purpose of teaching,
9 fostering and perpetuating the ideals, principles and spirit of
10 political and economic democracy in America and increasing
11 the knowledge of the organization and machinery of the
12 government of the United States and of the State of West
13 Virginia. The State Board shall, with the advice of the State
14 Superintendent, prescribe the courses of study covering these
15 subjects for the public schools. It shall be the duty of the

16 officials or boards having authority over the respective private,
17 parochial and denominational schools to prescribe courses of
18 study for the schools under their control and supervision similar
19 to those required for the public schools. To further such study,
20 every high school student eligible by age for voter registration
21 shall be afforded the opportunity to register to vote pursuant to
22 section twenty-two, article two, chapter three of this code.

23 (b) The State Board shall cause to be taught in all of the
24 public schools of this state the subject of health education,
25 including instruction in any of the grades six through twelve as
26 considered appropriate by the county board, on: (1) The
27 prevention, transmission and spread of acquired immune
28 deficiency syndrome and other sexually transmitted diseases;
29 (2) substance abuse, including the nature of alcoholic drinks
30 and narcotics, tobacco products, and other potentially harmful
31 drugs, with special instruction as to their effect upon the human
32 system and upon society in general; and (3) the importance of
33 healthy eating and physical activity to maintaining healthy
34 weight. The course curriculum requirements and materials for
35 the instruction shall be adopted by the State Board by rule in
36 consultation with the Department of Health and Human
37 Resources. The State Board shall prescribe a standardized
38 health education assessment to be administered within health
39 education classes to measure student health knowledge and
40 program effectiveness.

41 An opportunity shall be afforded to the parent or guardian
42 of a child subject to instruction in the prevention, transmission
43 and spread of acquired immune deficiency syndrome and other
44 sexually transmitted diseases to examine the course curriculum
45 requirements and materials to be used in the instruction. The
46 parent or guardian may exempt the child from participation in
47 the instruction by giving notice to that effect in writing to the
48 school principal.

49 (c) Any person violating the provisions of this section shall
50 be guilty of a misdemeanor and, upon conviction thereof, shall
51 be fined not exceeding ten dollars for each violation, and each
52 week during which there is a violation shall constitute a
53 separate offense. If the person so convicted occupy a position
54 in connection with the public schools, that person shall auto-
55 matically be removed from that position and shall be ineligible
56 for reappointment to that or a similar position for the period of
57 one year.

CHAPTER 122

**(Com. Sub. for H. B. 3328 — By Mr. Speaker, Mr. Kiss,
and Delegate Trump)
[By Request of the Executive]**

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, all relating to the Office of Emergency Services; changing the name of the Office of Emergency Services to the Division of Homeland Security and Emergency Management; transferring duties, functions, personnel and related entities; specifying qualifications of the Director; directing entities to coordinate and cooperate with the Secretary of the Department of Military Affairs and Public Safety as to the receipt of federal funds for homeland security and emergency services purposes; providing that the Governor may require certain reports from entities receiving services, equipment, supplies, materials or funds for homeland security and emergency services purposes; and requiring copies of reports to be furnished to the Legislature.

Be it enacted by the Legislature of West Virginia:

That §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§15-5-1. Policy and purpose.

§15-5-2. Definitions.

§15-5-3. Division of Homeland Security and Emergency Management created.

§15-5-13. Appropriations; acceptance of services, gifts, grants and loans.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the
2 occurrence of disasters of unprecedented size and destructive-
3 ness, resulting from terrorism, enemy attack, sabotage or other
4 hostile action, or from fire, flood, earthquakes or other natural
5 or man-made causes and in order to insure that preparations of
6 this state will be adequate to deal with such disasters, and
7 generally to provide for the common defense and to protect the
8 public peace, health and safety and to preserve the lives and
9 property of the people of the state, it is hereby found and
10 declared to be necessary: (1) To create the Division of Home-
11 land Security and Emergency Management and to authorize the
12 creation of local and regional organizations for emergency
13 services in the political subdivisions of the state; (2) to confer
14 upon the Governor, and upon the executive heads of governing
15 bodies of the political subdivisions of the state the emergency
16 powers provided herein; (3) to provide for the rendering of
17 mutual aid among the political subdivisions of the state and
18 with other states and to cooperate with the federal government
19 with respect to the carrying out of emergency services and
20 homeland security functions; (4) and to establish and imple-
21 ment comprehensive homeland security and emergency

22 management plans to deal with such disasters. It is further
23 declared to be the purpose of this article and the policy of the
24 state that all homeland security and emergency management
25 funds and functions of this state be coordinated to the maximum
26 extent with the Secretary of the Department of Military Affairs
27 and Public Safety and with the comparable functions of the
28 federal government including its various departments and
29 agencies, of other states and localities and of private agencies
30 of every type, so that the most effective preparation and use
31 may be made of the nation's and this state's manpower,
32 resources and facilities for dealing with any disaster that may
33 occur.

§15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for and the
3 carrying out of all emergency functions, other than functions for
4 which military forces are primarily responsible, to protect,
5 respond and recover, to prevent, detect, deter and mitigate, to
6 minimize and repair injury and damage resulting from disasters
7 or other event caused by flooding, terrorism, enemy attack,
8 sabotage or other natural or other man-made causes. These
9 functions include, without limitation, fire-fighting services,
10 police services, medical and health services, communications,
11 radiological, chemical and other special weapons defense,
12 evacuation of persons from stricken areas, emergency welfare
13 services, emergency transportation, existing or properly
14 assigned functions of plant protection, temporary restoration of
15 public utility services and other functions related to the health,
16 safety and welfare of the citizens of this state, together with all
17 other activities necessary or incidental to the preparation for
18 and carrying out of the foregoing functions. Disaster includes
19 the imminent threat of disaster as well as its occurrence and any
20 power or authority exercisable on account of a disaster that may

21 be exercised during the period when there is an imminent threat
22 thereof;

23 (b) "Local organization for emergency services" means an
24 organization created in accordance with the provisions of this
25 article by state or local authority to perform local emergency
26 services function;

27 (c) "Mobile support unit" means an organization for
28 emergency services created in accordance with the provisions
29 of this article by state or local authority to be dispatched by the
30 Governor to supplement local organizations for emergency
31 services in a stricken area;

32 (d) "Political subdivision" means any county or municipal
33 corporation in this state;

34 (e) "Board" means the West Virginia Disaster Recovery
35 Board created by this article;

36 (f) "Code" means the Code of West Virginia, one thousand
37 nine hundred thirty-one, as amended;

38 (g) "Community facilities" means a specific work or
39 improvement within this state or a specific item of equipment
40 or tangible personal property owned or operated by any
41 political subdivision or nonprofit corporation and used within
42 this state to provide any essential service to the general public;

43 (h) "Disaster" means the occurrence or imminent threat of
44 widespread or severe damage, injury, or loss of life or property
45 resulting from any natural or terrorist or man-made cause,
46 including weapons of mass destruction, fire, flood, earthquake,
47 wind, snow, storm, chemical or oil spill or other water or soil
48 contamination, epidemic, air contamination, blight, drought,
49 infestation or other public calamity requiring emergency action;

50 (i) “Disaster recovery activities” means activities under-
51 taken prior to, during or following a disaster to provide, or to
52 participate in the provision of, emergency services, temporary
53 housing, residential housing, essential business activities and
54 community facilities;

55 (j) “Essential business activities” means a specific work or
56 improvement within this state or a specific item of equipment
57 or tangible personal property used within this state by any
58 person to provide any essential goods or service deemed by the
59 authority to be necessary for recovery from a disaster;

60 (k) “Person” means any individual, corporation, voluntary
61 organization or entity, partnership, firm or other association,
62 organization or entity organized or existing under the laws of
63 this or any other state or country;

64 (l) “Recovery fund” means the West Virginia Disaster
65 Recovery Trust Fund created by this article;

66 (m) “Residential housing” means a specific work or
67 improvement within this state undertaken primarily to provide
68 dwelling accommodations, including the acquisition, construc-
69 tion or rehabilitation of land, buildings and improvements
70 thereto, for residential housing, including, but not limited to,
71 facilities for temporary housing and emergency housing, and
72 such other nonhousing facilities as may be incidental or
73 appurtenant thereto;

74 (n) “Temporary housing” means a specific work or im-
75 provement within this state undertaken primarily to provide
76 dwelling accommodations, including the acquisition, construc-
77 tion or rehabilitation of land, buildings and improvements
78 thereto, for temporary residential shelters or housing for victims
79 of a disaster and such other nonhousing facilities as may be
80 incidental or appurtenant thereto; and

81 (o) "Secretary" means the Secretary of the West Virginia
82 Department of Military Affairs and Public Safety.

§15-5-3. Division of Homeland Security and Emergency Management created.

1 (a) The Office of Emergency Services is continued as the
2 Division of Homeland Security and Emergency Management
3 within the Department of Military Affairs and Public Safety.
4 All of the allied, advisory, affiliated or related entities and
5 funds associated with the Office of Emergency Services and all
6 its functions, personnel and property, are transferred to,
7 incorporated in and administered as a part of the Division of
8 Homeland Security and Emergency Management. Wherever the
9 words "Office of Emergency Services" appear in this code, they
10 shall mean the Division of Homeland Security and Emergency
11 Management.

12 (b) A Director of the Division of Homeland Security and
13 Emergency Management shall be appointed by the Governor,
14 by and with the advice and consent of the Senate. The Governor
15 shall consider applicants for Director who at a minimum: (1)
16 Have at least five years managerial or strategic planning
17 experience; (2) are knowledgeable in matters relating to public
18 safety, homeland security, emergency management and
19 emergency response; and (3) have at a minimum, a federally
20 issued secret level security clearance or have submitted to or
21 will submit to a security clearance investigation for the purpose
22 of obtaining, at a minimum, a federally issued secret level
23 security clearance.

24 (c) The Director may employ such technical, clerical,
25 stenographic and other personnel, fix their compensation and
26 make expenditures within the appropriation to the Division or
27 from other funds made available for the purpose of providing
28 homeland security and emergency management services to

29 carry out the purpose of this article. Employees of the Division
30 of Homeland Security and Emergency Management shall be
31 members of the State Civil Service System and all appoint-
32 ments of the office, except those required by law to be exempt,
33 shall be a part of the classified service under the Civil Service
34 System.

35 (d) The Director and other personnel of the Division of
36 Homeland Security and Emergency Management shall be
37 provided with appropriate office space, furniture, equipment,
38 supplies, stationery and printing in the same manner as pro-
39 vided for personnel of other state agencies.

40 (e) The Director, subject to the direction and control of the
41 Governor through the Secretary of the Department of Military
42 Affairs and Public Safety, shall be executive head of the
43 Division of Homeland Security and Emergency Management
44 and shall be responsible to the Governor and the Secretary of
45 the Department of Military Affairs and Public Safety for
46 carrying out the program for homeland security and emergency
47 management in this state. The Director in consultation with the
48 Secretary of the Department of Military Affairs and Public
49 Safety shall coordinate the activities of all organizations for
50 homeland security and emergency management within the state
51 and maintain liaison with and cooperate with homeland
52 security, emergency management and other emergency service
53 and civil defense agencies and organizations of other states and
54 of the federal government, and shall have additional authority,
55 duties and responsibilities authorized by this article as may be
56 prescribed by the Governor or the Secretary of the Department
57 of Military Affairs and Public Safety.

58 (f) The Director shall have the power to acquire in the name
59 of the state by purchase, lease or gift, real property and rights
60 or easements necessary or convenient to construct thereon the
61 necessary building or buildings for housing and homeland
62 security and emergency management control center.

§15-5-13. Appropriations; acceptance of services, gifts, grants and loans.

1 (a) Each political subdivision shall have the power to make
2 appropriations in the manner provided by law for making
3 appropriations for the ordinary expenses of such political
4 subdivision for the payment of expenses of its local organiza-
5 tion for emergency services or of its proportionate share of
6 expenses of a regional organization for emergency services, or
7 both.

8 (b) Whenever the federal government or any agency or
9 officer thereof shall offer to any authority, corporation, partner-
10 ship or other entity, public or private or the state, or through the
11 state to any political subdivision thereof, services, equipment,
12 supplies, materials or funds by way of gift, grant or loan, for
13 purposes relating to homeland security or emergency services,
14 the state, after consultation and in coordination with the
15 Secretary and acting through the Governor, or a political
16 subdivision after consultation and in coordination with the
17 Secretary and acting with the consent of the Governor and
18 through its executive officer or governing body, may accept the
19 offer. Upon acceptance, the Governor of the state or executive
20 officer or governing body of the political subdivision may
21 authorize any officer of the state or of the political subdivision,
22 as the case may be, to receive services, equipment, supplies,
23 materials or funds on behalf of the state or the political subdivi-
24 sion and subject to the terms of the offer and the rules and
25 regulations, if any, of the agency making the offer.

26 (c) Whenever any person, firm or corporation shall offer to
27 the state or to any political subdivision thereof, services,
28 equipment, supplies, materials or funds by way of gift, grant or
29 loan, for purposes relating to homeland security or emergency
30 services, the state, after consultation and in coordination with
31 the Secretary and acting through the Governor, or the political

32 subdivision after consultation and in coordination with the
33 Secretary and acting through its executive officer or governing
34 body, may accept the offer. Upon acceptance, the Governor of
35 the state or executive officer or governing body of the political
36 subdivision may authorize any officer of the state or of the
37 political subdivision, as the case may be, to receive services,
38 equipment, supplies, materials or funds on behalf of the state or
39 the political subdivision and subject to the terms of the offer.

40 (e) The Governor may require any agency, authority,
41 corporation, partnership or other entity to furnish a report, in
42 both written and electronic form, detailing the source and
43 receipt of all services, equipment, supplies, materials or funds
44 for purposes relating to homeland security or emergency
45 services as a condition of receiving these from the state. Within
46 ten days of the receipt of any reports required under this
47 subsection, the Governor shall furnish copies thereof to the
48 Legislature.

CHAPTER 123

**(H. B. 2780 — By Delegates Perdue, R. Thompson,
Ellem, Hamilton, Walters, Campbell and Tabb)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended, relating to racetrack video lottery; increasing the allocation of racetrack video lottery net terminal income to be used for payment into the pension plan for employees of the Licensed Racing Association and correspondingly reducing the allocation of racetrack video lottery net terminal

income to licensees; deleting provisions relating to a racetrack which does not have a breeder's program supported by the Thoroughbred Development Fund or Greyhound Breeding Development Fund, requiring the one and one-half percent of terminal net income designated for the West Virginia Thoroughbred Development Fund to be diverted to the special fund established by the licensee and used for payment of regular purses; limiting allocation to workers' compensation and providing for distribution of certain funds to be deposited in the special fund established by the licensee and used for payment of regular purses; providing for expiration of certain income into the Workers' Compensation Debt Reduction Fund.

Be it enacted by the Legislature of West Virginia:

That §29-22A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

- 1 (a) The commission shall provide to manufacturers, or
- 2 applicants applying for a manufacturer's permit, the protocol
- 3 documentation data necessary to enable the respective manufac-
- 4 turer's video lottery terminals to communicate with the
- 5 commission's central computer for transmitting auditing
- 6 program information and for activation and disabling of video
- 7 lottery terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed race-
13 tracks must provide the commission thirty days' advance notice
14 of any proposed account changes in order to assure the uninter-
15 rupted electronic transfer of funds. From the gross terminal
16 income remitted by the licensee to the commission, the com-
17 mission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after the deduction is the net terminal
21 income. The amount deducted for administrative costs and
22 expenses of the commission may not exceed four percent of
23 gross terminal income: *Provided*, That any amounts deducted
24 by the commission for its actual costs and expenses that
25 exceeds its actual costs and expenses shall be deposited into the
26 State Lottery Fund. For all fiscal years beginning on or after the
27 first day of July, two thousand one, the commission shall not
28 receive an amount of gross terminal income in excess of the
29 amount of gross terminal income received during the fiscal year
30 ending on the thirtieth day of June, two thousand one, but four
31 percent of any amount of gross terminal income received in
32 excess of the amount of gross terminal income received during
33 the fiscal year ending on the thirtieth day of June, two thousand
34 one, shall be deposited into the fund established in section
35 eighteen-a, article twenty-two of this chapter.

36 (c) Net terminal income shall be divided as set out in this
37 subsection. For all fiscal years beginning on or after the first
38 day of July, two thousand one, any amount of net terminal
39 income received in excess of the amount of net terminal income
40 received during the fiscal year ending on the thirtieth day of
41 June, two thousand one, shall be divided as set out in section
42 ten-b of this article. The licensed racetrack's share is in lieu of

43 all lottery agent commissions and is considered to cover all
44 costs and expenses required to be expended by the licensed
45 racetrack in connection with video lottery operations. The
46 division shall be made as follows:

47 (1) The commission shall receive thirty percent of net
48 terminal income, which shall be paid into the State Lottery
49 Fund as provided in section ten-a of this article;

50 (2) Until the first day of July, two thousand five, fourteen
51 percent of net terminal income at a licensed racetrack shall be
52 deposited in the special fund established by the licensee, and
53 used for payment of regular purses in addition to other amounts
54 provided for in article twenty-three, chapter nineteen of this
55 code, on and after the first day of July, two thousand five, the
56 rate shall be seven percent of net terminal income;

57 (3) The county where the video lottery terminals are located
58 shall receive two percent of the net terminal income: *Provided,*
59 *That:*

60 (A) Beginning the first day of July, one thousand nine
61 hundred ninety-nine, and thereafter, any amount in excess of
62 the two percent received during the fiscal year one thousand
63 nine hundred ninety-nine by a county in which a racetrack is
64 located that has participated in the West Virginia Thoroughbred
65 Development Fund since on or before the first day of January,
66 one thousand nine hundred ninety-nine shall be divided as
67 follows:

68 (i) The county shall receive fifty percent of the excess
69 amount; and

70 (ii) The municipalities of the county shall receive fifty
71 percent of the excess amount, said fifty percent to be divided
72 among the municipalities on a per capita basis as determined by

73 the most recent decennial United States census of population;
74 and

75 (B) Beginning the first day of July, one thousand nine
76 hundred ninety-nine, and thereafter, any amount in excess of
77 the two percent received during the fiscal year one thousand
78 nine hundred ninety-nine by a county in which a racetrack other
79 than a racetrack described in paragraph (A) of this proviso is
80 located and where the racetrack has been located in a municipi-
81 pality within the county since on or before the first day of
82 January, one thousand nine hundred ninety-nine shall be
83 divided, if applicable, as follows:

84 (i) The county shall receive fifty percent of the excess
85 amount; and

86 (ii) The municipality shall receive fifty percent of the
87 excess amount; and

88 (C) This proviso shall not affect the amount to be received
89 under this subdivision by any other county other than a county
90 described in paragraph (A) or (B) of this proviso;

91 (4) One percent of net terminal income shall be paid for and
92 on behalf of all employees of the licensed racing association by
93 making a deposit into a special fund to be established by the
94 racing commission to be used for payment into the pension plan
95 for all employees of the licensed racing association;

96 (5) The West Virginia Thoroughbred Development Fund
97 created under section thirteen-b, article twenty-three, chapter
98 nineteen of this code and the West Virginia Greyhound Breed-
99 ing Development Fund created under section ten of said article
100 shall receive an equal share of a total of not less than one and
101 one-half percent of the net terminal income;

102 (6) The West Virginia Racing Commission shall receive
103 one percent of the net terminal income which shall be deposited
104 and used as provided in section thirteen-c, article twenty-three,
105 chapter nineteen of this code.

106 (7) A licensee shall receive forty-six and one-half percent
107 of net terminal income.

108 (8) (A) The tourism promotion fund established in section
109 twelve, article two, chapter five-b of this code shall receive
110 three percent of the net terminal income: *Provided*, That for the
111 fiscal year beginning the first day of July, two thousand three,
112 the Tourism Commission shall transfer from the Tourism
113 Promotion Fund five million dollars of the three percent of the
114 net terminal income described in this section and section ten-b
115 of this article into the fund administered by the West Virginia
116 economic development authority pursuant to section seven,
117 article fifteen, chapter thirty-one of this code, five million
118 dollars into the Capitol Renovation and Improvement Fund
119 administered by the Department of Administration pursuant to
120 section six, article four, chapter five-a of this code and five
121 million dollars into the tax reduction and federal funding
122 increased compliance fund; and

123 (B) Notwithstanding any provision of paragraph (A) of this
124 subdivision to the contrary, for each fiscal year beginning after
125 the thirtieth day of June, two thousand four, this three percent
126 of net terminal income and the three percent of net terminal
127 income described in paragraph (B), subdivision (8), subsection
128 (a), section ten-b of this article shall be distributed as provided
129 in this paragraph as follows:

130 (i) 1.375 percent of the total amount of net terminal income
131 described in this section and in section ten-b of this article shall
132 be deposited into the Tourism Promotion Fund created under
133 section twelve, article two, chapter five-b of this code;

134 (ii) 0.375 percent of the total amount of net terminal
135 income described in this section and in section ten-b of this
136 article shall be deposited into the Development Office Promo-
137 tion Fund created under section three-b, article two, chapter
138 five-b of this code;

139 (iii) 0.5 percent of the total amount of net terminal income
140 described in this section and in section ten-b of this article shall
141 be deposited into the Research Challenge Fund created under
142 section ten, article one-b, chapter eighteen-b of this code;

143 (iv) 0.6875 percent of the total amount of net terminal
144 income described in this section and in section ten-b of this
145 article shall be deposited into the Capitol Renovation and
146 Improvement Fund administered by the Department of Admin-
147 istration pursuant to section six, article four, chapter five-a of
148 this code; and

149 (v) 0.0625 percent of the total amount of net terminal
150 income described in this section and in section ten-b of this
151 article shall be deposited into the 2004 Capitol Complex
152 Parking Garage Fund administered by the Department of
153 Administration pursuant to section five-a, article four, chapter
154 five-a of this code;

155 (9) (A) On and after the first day of July, two thousand five,
156 seven percent of net terminal income shall be deposited into the
157 Workers' Compensation Debt Reduction Fund created in
158 section five, article two-d, chapter twenty-three of this code:
159 *Provided*, That in any fiscal year when the amount of money
160 generated by this subdivision totals eleven million dollars, all
161 subsequent distributions under this subdivision shall be
162 deposited in the special fund established by the licensee and
163 used for the payment of regular purses in addition to the other
164 amounts provided for in article twenty-three, chapter nineteen
165 of this code;

166 (B) The deposit of the seven percent of net terminal income
167 into the Workers' Compensation Debt Reduction Fund pursuant
168 to this subdivision shall expire and not be imposed with respect
169 to these funds and shall be deposited in the special fund
170 established by the licensee and used for payment of regular
171 purses in addition to the other amounts provided for in article
172 twenty-three, chapter nineteen of this code, on and after the first
173 day of the month following the month in which the Governor
174 certifies to the Legislature that: (i) The revenue bonds issued
175 pursuant to article two-d, chapter twenty-three of this code,
176 have been retired or payment of the debt service provided for,
177 and (ii) that an independent certified actuary has determined
178 that the unfunded liability of the old fund, as defined in chapter
179 twenty-three of this code, has been paid or provided for in its
180 entirety; and

181 (10) The remaining one percent of net terminal income
182 shall be deposited as follows:

183 (A) For the fiscal year beginning the first day of July, two
184 thousand three, the veterans memorial program shall receive
185 one percent of the net terminal income until sufficient moneys
186 have been received to complete the veterans memorial on the
187 grounds of the State Capitol Complex in Charleston, West
188 Virginia. The moneys shall be deposited in the State Treasury
189 in the Division of Culture and History Special Fund created
190 under section three, article one-i, chapter twenty-nine of this
191 code: *Provided*, That only after sufficient moneys have been
192 deposited in the fund to complete the veterans memorial and to
193 pay in full the annual bonded indebtedness on the veterans
194 memorial, not more than twenty thousand dollars of the one
195 percent of net terminal income provided for in this subdivision
196 shall be deposited into a special revenue fund in the State
197 Treasury, to be known as the "John F. 'Jack' Bennett Fund".
198 The moneys in this fund shall be expended by the Division of
199 Veterans Affairs to provide for the placement of markers for the

200 graves of veterans in perpetual cemeteries in this state. The
201 Division of Veterans Affairs shall promulgate legislative rules
202 pursuant to the provisions of article three, chapter twenty-nine-a
203 of this code specifying the manner in which the funds are spent,
204 determine the ability of the surviving spouse to pay for the
205 placement of the marker and setting forth the standards to be
206 used to determine the priority in which the veterans grave
207 markers will be placed in the event that there are not sufficient
208 funds to complete the placement of veterans grave markers in
209 any one year, or at all. Upon payment in full of the bonded
210 indebtedness on the veterans memorial, one hundred thousand
211 dollars of the one percent of net terminal income provided for
212 in this subdivision shall be deposited in the special fund in the
213 Division of Culture and History created under section three,
214 article one-i, chapter twenty-nine of this code and be expended
215 by the Division of Culture and History to establish a West
216 Virginia veterans memorial archives within the cultural center
217 to serve as a repository for the documents and records pertain-
218 ing to the veterans memorial, to restore and maintain the
219 monuments and memorial on the capitol grounds: *Provided,*
220 *however,* That five hundred thousand dollars of the one percent
221 of net terminal income shall be deposited in the State Treasury
222 in a special fund of the Department of Administration, created
223 under section five, article four, chapter five-a of this code, to be
224 used for construction and maintenance of a parking garage on
225 the State Capitol Complex; and the remainder of the one
226 percent of net terminal income shall be deposited in equal
227 amounts in the Capitol Dome and Improvements Fund created
228 under section two, article four, chapter five-a of this code and
229 cultural facilities and capitol resources matching grant program
230 fund created under section three, article one of this chapter.

231 (B) For each fiscal year beginning after the thirtieth day of
232 June, two thousand four:

233 (i) Five hundred thousand dollars of the one percent of net
234 terminal income shall be deposited in the State Treasury in a
235 special fund of the Department of Administration, created under
236 section five, article four, chapter five-a of this code, to be used
237 for construction and maintenance of a parking garage on the
238 State Capitol Complex; and

239 (ii) The remainder of the one percent of net terminal
240 income and all of the one percent of net terminal income
241 described in paragraph (B), subdivision (9), subsection (a),
242 section ten-b of this article twenty-two-a shall be distributed as
243 follows: The net terminal income shall be deposited in equal
244 amounts into the Capitol Dome and Capitol Improvements fund
245 created under section two, article four, chapter five-a of this
246 code and the cultural facilities and capitol resources matching
247 grant program fund created under section three, article one,
248 chapter twenty-nine of this code until a total of one million five
249 hundred thousand dollars is deposited into the cultural facilities
250 and capitol resources matching grant program fund; thereafter,
251 the remainder shall be deposited into the Capitol Dome and
252 Capitol Improvements Fund.

253 (d) Each licensed racetrack shall maintain in its account an
254 amount equal to or greater than the gross terminal income from
255 its operation of video lottery machines, to be electronically
256 transferred by the commission on dates established by the
257 commission. Upon a licensed racetrack's failure to maintain
258 this balance, the commission may disable all of a licensed
259 racetrack's video lottery terminals until full payment of all
260 amounts due is made. Interest shall accrue on any unpaid
261 balance at a rate consistent with the amount charged for state
262 income tax delinquency under chapter eleven of this code. The
263 interest shall begin to accrue on the date payment is due to the
264 commission.

265 (e) The commission's central control computer shall keep
266 accurate records of all income generated by each video lottery
267 terminal. The commission shall prepare and mail to the licensed
268 racetrack a statement reflecting the gross terminal income
269 generated by the licensee's video lottery terminals. Each
270 licensed racetrack shall report to the commission any discrepan-
271 cies between the commission's statement and each terminal's
272 mechanical and electronic meter readings. The licensed
273 racetrack is solely responsible for resolving income discrepan-
274 cies between actual money collected and the amount shown on
275 the accounting meters or on the commission's billing statement.

276 (f) Until an accounting discrepancy is resolved in favor of
277 the licensed racetrack, the commission may make no credit
278 adjustments. For any video lottery terminal reflecting a discrep-
279 ancy, the licensed racetrack shall submit to the commission the
280 maintenance log which includes current mechanical meter
281 readings and the audit ticket which contains electronic meter
282 readings generated by the terminal's software. If the meter
283 readings and the commission's records cannot be reconciled,
284 final disposition of the matter shall be determined by the
285 commission. Any accounting discrepancies which cannot be
286 otherwise resolved shall be resolved in favor of the commis-
287 sion.

288 (g) Licensed racetracks shall remit payment by mail if the
289 electronic transfer of funds is not operational or the commission
290 notifies licensed racetracks that remittance by this method is
291 required. The licensed racetracks shall report an amount equal
292 to the total amount of cash inserted into each video lottery
293 terminal operated by a licensee, minus the total value of game
294 credits which are cleared from the video lottery terminal in
295 exchange for winning redemption tickets, and remit the amount
296 as generated from its terminals during the reporting period. The
297 remittance shall be sealed in a properly addressed and stamped
298 envelope and deposited in the United States mail no later than

299 noon on the day when the payment would otherwise be com-
300 pleted through electronic funds transfer.

301 (h) Licensed racetracks may, upon request, receive addi-
302 tional reports of play transactions for their respective video
303 lottery terminals and other marketing information not consid-
304 ered confidential by the commission. The commission may
305 charge a reasonable fee for the cost of producing and mailing
306 any report other than the billing statements.

307 (i) The commission has the right to examine all accounts,
308 bank accounts, financial statements and records in a licensed
309 racetrack's possession, under its control or in which it has an
310 interest and the licensed racetrack shall authorize all third
311 parties in possession or in control of the accounts or records to
312 allow examination of any of those accounts or records by the
313 commission.

CHAPTER 124

(S. B. 531 — By Senator Unger)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §16-5I-1, §16-5I-2, §16-5I-3, §16-5I-4, §16-5I-5 and §16-5I-6 of the Code of West Virginia, 1931, as amended, all relating to the Hospice Licensure Act; requiring compliance with the Centers for Medicare and Medicaid Services; and penalties.

Be it enacted by the Legislature of West Virginia:

That §16-5I-1, §16-5I-2, §16-5I-3, §16-5I-4, §16-5I-5 and §16-5I-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5I. HOSPICE LICENSURE ACT.

§16-5I-1. Purpose and short title.

§16-5I-2. Definitions.

§16-5I-3. Hospices to obtain license; application; fees and inspections.

§16-5I-4. Suspension; revocation.

§16-5I-5. Secretary of Health and Human Resources to establish rules.

§16-5I-6. Violations; penalties; injunction.

§16-5I-1. Purpose and short title.

- 1 This article shall be known as the Hospice Licensure Act.
- 2 The purpose of this Act is to establish licensing requirements
- 3 for hospices. It is the intent of the Legislature to establish,
- 4 promote and make available within this state a comprehensive
- 5 hospice care program for the treatment of physical, emotional
- 6 and mental symptoms of terminal illness.

§16-5I-2. Definitions.

- 1 (a) "Bereavement services" means support services
- 2 designed to assist individuals to experience, respond emotion-
- 3 ally to and adjust to the death of another person.

- 4 (b) "Hospice" means a coordinated program of home and
- 5 inpatient care provided directly or through an agreement under
- 6 the direction of an identifiable hospice administration which
- 7 provides palliative and supportive medical and other health
- 8 services to terminally ill individuals and their families. Hospice
- 9 utilizes a medically directed interdisciplinary team. A hospice
- 10 program of care provides care to meet the physical, psychologi-
- 11 cal, social, spiritual and other special needs which are experi-
- 12 enced during the final stages of illness and during dying and
- 13 bereavement.

14 (c) "Interdisciplinary team" means the hospice patient and
15 the patient's family, the attending physician and the following
16 hospice personnel: Physician, nurse, social worker, clergy and
17 trained volunteer. Providers of supportive services such as
18 mental health, pharmaceutical and any other appropriate allied
19 health services may also be included on the team as the needs
20 of the individual dictate.

21 (d) "Palliative services" means treatment directed at
22 controlling pain, relieving other symptoms and focusing on the
23 special needs of the individual and family as they experience
24 the stress of the dying process, rather than treatment designed
25 for investigation and intervention for the purpose of cure or
26 prolongation of life.

27 (e) "Terminally ill" means that an individual has a medical
28 prognosis that his or her life expectancy is six months or less or
29 another length of time determined by the centers for medicare
30 and medicaid services and designated in federal hospice
31 regulations.

32 (f) "Secretary" means the Secretary of the West Virginia
33 Department of Health and Human Resources. The Secretary
34 may define in regulation any term or phrase used in this article
35 which is not expressly defined.

§16-5I-3. Hospices to obtain license; application; fees and inspections.

1 (a) No person, partnership, association or corporation or
2 any governmental unit or any division, department, board or
3 agency thereof may operate a hospice without first obtaining a
4 license from the Secretary in accordance with the provisions of
5 this article and the rules lawfully promulgated hereunder.

6 (b) Any person, partnership, association or corporation or
7 any governmental unit or any division, department, board or

8 agency thereof desiring a license hereunder shall file with the
9 Secretary an application in such form as the Secretary shall
10 prescribe and furnish accompanied by a fee to be determined by
11 the Board of Health, based upon the number of persons served
12 by the hospice. The Secretary shall inspect the hospice prior to
13 issuing a license. Upon receipt and review of an application for
14 license, the Secretary shall issue a license if the hospice is in
15 compliance with the provisions of this article and with the rules
16 lawfully promulgated hereunder. The license is not transferable
17 or assignable.

18 (c) A license shall expire one year from the date of issu-
19 ance. Sixty days prior to the expiration date, an application for
20 renewal shall be submitted on forms furnished by the Secretary.
21 A license shall be renewed if the Secretary determines that the
22 applicant is in compliance with this article and with all rules
23 promulgated hereunder.

24 (d) The Secretary or his or her designee shall inspect all
25 hospices that are subject to rules adopted pursuant to this article
26 periodically and at least as often as required by the Centers for
27 Medicare and Medicaid Services in order to determine compli-
28 ance with the provisions of this article and with rules adopted
29 hereunder, and regulations promulgated by the Centers for
30 Medicare and Medicaid Services.

§16-5I-4. Suspension; revocation.

1 (a) The Secretary is authorized to suspend or revoke a
2 license issued hereunder if the provisions of this article or of the
3 rules are violated.

4 (b) Before any such license is suspended or revoked,
5 however, written notice shall be given the licensee, stating the
6 grounds of the complaint, and the date, time and place set for
7 the hearing on the complaint, which date shall not be less than
8 thirty days from the time notice is given. Such notice shall be

9 sent by registered mail to the licensee at the address where the
10 hospice concerned is located. The licensee shall be entitled to
11 be represented by legal counsel at the hearing.

12 (c) If a license is revoked as herein provided, a new
13 application for a license shall be considered by the Secretary if,
14 when and after the conditions upon which revocation was based
15 have been corrected and evidence of this fact has been fur-
16 nished. A new license shall then be granted after proper
17 inspection has been made and all provisions of this article and
18 rules promulgated hereunder have been satisfied.

19 (d) All of the pertinent provisions of article five, chapter
20 twenty-nine-a of this code shall apply to and govern any
21 hearing authorized and required by the provisions of this article
22 and the administrative procedure in connection with and
23 following any such hearing, with like effect as if the provisions
24 of said article five were set forth in extenso in this section.

25 (e) Any applicant or licensee who is dissatisfied with the
26 decision of the Secretary as a result of the hearing provided in
27 this section may, within thirty days after receiving notice of the
28 decision, appeal to the circuit court, in term or in vacation, of
29 Kanawha County for judicial review of the decision.

30 (f) The court may affirm, modify or reverse the decision of
31 the Secretary and either the applicant or licensee or the Secre-
32 tary may appeal from the court's decision to the Supreme Court
33 of Appeals.

**§16-5I-5. Secretary of Health and Human Resources to establish
rules.**

1 The Secretary of the Department of Health and Human
2 Resources may promulgate rules in accordance with the
3 provisions of chapter twenty-nine-a of this code for the
4 licensure of hospice programs to ensure adequate care, treat-

5 ment, health, safety, welfare and comfort of hospice patients.
6 Such rules shall include, but not be limited to:

7 (a) The qualifications and supervision of licensed and
8 nonlicensed personnel;

9 (b) The provision and coordination of inpatient care and in-
10 home treatment services, including the development of a
11 written plan of care;

12 (c) The management, operation, staffing and equipping of
13 the hospice program;

14 (d) The clinical and business records kept by the hospice;

15 (e) The procedures for the review of utilization and quality
16 of patient care; and

17 (f) Such other requirements as the Secretary determines to
18 be appropriate.

§16-5I-6. Violations; penalties; injunction.

1 (a) Any person, partnership, association or corporation and
2 any local governmental unit or any division, department, board
3 or agency thereof which establishes, conducts, manages or
4 operates a hospice without first obtaining a license therefor as
5 herein provided, or which violates any provisions of this article
6 or any rule or regulation lawfully promulgated thereunder, shall
7 be assessed a civil penalty by the Secretary not to exceed fifty
8 dollars for each violation. Each day of continuing violation
9 after conviction shall be considered a separate violation.

10 (b) Notwithstanding the existence or pursuit of any other
11 remedy, the Secretary may, in the manner provided by law,
12 maintain an action in the name of the state for an injunction
13 against any person, partnership, association, corporation or any

14 governmental unit or any division, department, board or agency
15 thereof to restrain or prevent the establishment, conduct,
16 management or operation of any hospice or violation of any
17 provisions of this article or any rule or regulation lawfully
18 promulgated thereunder without first obtaining a license
19 therefor in the manner hereinbefore provided.

CHAPTER 125

**(S. B. 237 — By Senators McCabe, Bailey, Edgell,
McKenzie, Kessler and Foster)**

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §7-18-2, §7-18-9, and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the hotel occupancy tax generally; allowing municipalities to increase the rate of tax imposed to six percent; exempting certain hotels from the imposition of the tax; authorizing imposition of certain tax by counties on certain hotels located in municipality; requiring public hearings on proposed increases; providing additional legislative findings as to purposes for which public financial support should be provided; and providing a misdemeanor criminal penalty for members of governing bodies who vote for or cause expenditures of tax revenues for purposes not specified in said article.

Be it enacted by the Legislature of West Virginia:

That §7-18-2, §7-18-9 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-2. Rate of tax.

§7-18-9. Total amount collected to be remitted.

§7-18-14. Proceeds of tax; application of proceeds.

§7-18-2. Rate of tax.

1 The rate of tax imposed shall be three percent of the
2 consideration paid for the use or occupancy of a hotel room:
3 *Provided*, That on and after the first day of July, two thousand
4 five, a municipality may by ordinance increase the rate of tax
5 imposed in this section to not more than six percent of the
6 consideration paid for the use or occupancy of a hotel room:
7 *Provided, however*, That notwithstanding any other provision
8 of this article to the contrary, a municipality may not impose
9 any tax authorized by this article on a hotel located within its
10 corporate limits upon which a county was imposing a tax
11 authorized by this article on or after the first day of January,
12 two thousand five, and continuously thereafter to and including
13 the effective date of annexation of the territory in which the
14 hotel is located pursuant to article six, chapter eight of this code
15 and as to that hotel, the county is authorized to continue to
16 impose and collect the tax authorized by this article at the rate
17 of three percent of the consideration paid for the use or occu-
18 pancy of a hotel room: *Provided further*, That in the event the
19 county commission duly enters an order of record that ceases to
20 impose the tax authorized by this article on that hotel, then, as
21 to that hotel, the municipality in which the hotel is located by
22 reason of the annexation may impose the tax authorized by this
23 article. Prior to the second reading of an ordinance proposed by
24 a municipality to increase the rate of tax, the municipality shall
25 conduct a properly noticed public hearing on the issue. The
26 consideration paid for the use or occupancy of a hotel room
27 shall not include the amount of tax imposed on the transaction
28 under article fifteen, chapter eleven of this code or charges for
29 meals, valet service, room service, telephone service or other

30 charges or consideration not paid for use or occupancy of a
31 hotel room.

§7-18-9. Total amount collected to be remitted.

1 A profit may not accrue to any person as a result of the
2 collection of the tax authorized under this article. Notwith-
3 standing that the total amount of taxes collected by a hotel
4 operator may be in excess of the amount for which a consumer
5 would be liable by the application of the levy imposed under
6 this article for the occupancy of a hotel room or rooms, the total
7 amount of all taxes collected by any hotel operator shall be
8 remitted to the taxing authority as hereinafter provided.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* — The net proceeds of the tax
2 collected and remitted to the taxing authority pursuant to this
3 article shall be deposited into the general revenue fund of such
4 municipality or county commission and, after appropriation
5 thereof, shall be expended only as provided in subsections (b)
6 and (c) of this section.

7 (b) *Required expenditures.* — At least fifty percent of the
8 net revenue receivable during the fiscal year by a county or a
9 municipality pursuant to this article shall be expended in the
10 following manner for the promotion of conventions and
11 tourism:

12 (1) *Municipalities.* — If a convention and visitor's bureau
13 is located within the municipality, county or region, the
14 governing body of such municipality shall appropriate the
15 percentage required by this subsection to that bureau. If a
16 convention and visitor's bureau is not located within such
17 municipality, county or region, then the percentage appropria-
18 tion required by this subsection shall be appropriated as
19 follows:

20 (i) Any hotel located within such municipality, county or
21 region may apply to such municipality for an appropriation to
22 such hotel of a portion of the tax authorized by this article and
23 collected by such hotel and remitted to such municipality, for
24 uses directly related to the promotion of tourism and travel,
25 including advertising, salaries, travel, office expenses, publica-
26 tions and similar expenses. The portion of such tax allocable to
27 such hotel shall not exceed seventy-five percent of that portion
28 of such tax collected and remitted by such hotel which is
29 required to be expended pursuant to this subsection: *Provided,*
30 That prior to appropriating any moneys to such hotel such
31 municipality shall require the submission of, and give approval
32 to, a budget setting forth the proposed uses of such moneys.

33 (ii) If there is more than one convention and visitor's
34 bureau located within a municipality, county or region, the city
35 council may allocate the tax authorized by this article to one or
36 more of such bureaus in such portion as the city council in its
37 sole discretion determines.

38 (iii) The balance of net revenue required to be expended by
39 this subsection shall be appropriated to the regional travel
40 council serving the area in which the municipality is located.

41 (2) *Counties.* — If a convention and visitor's bureau is
42 located within a county or region, the county commission shall
43 appropriate the percentage required by this subsection to that
44 convention and visitor's bureau. If a convention and visitor's
45 bureau is not located within such county or region, then the
46 percentage appropriation required by this subsection shall be
47 appropriated as follows:

48 (i) Any hotel located within such county or region may
49 apply to such county for an appropriation to such hotel of a
50 portion of the tax authorized by this article and collected by
51 such hotel and remitted to such county, for uses directly related

52 to the promotion of tourism and travel, including advertising,
53 salaries, travel, office expenses, publications and similar
54 expenses. The portion of such tax allocable to such hotel shall
55 not exceed seventy-five percent of that portion of such tax
56 collected and remitted by such hotel which is required to be
57 expended pursuant to this subsection: *Provided*, That prior to
58 appropriating any moneys to such hotel such county shall
59 require the submission of, and give approval to, a budget setting
60 forth the proposed uses of such moneys.

61 (ii) If there is more than one convention and visitor's
62 bureau located within a county or region, the county commis-
63 sion may allocate the tax authorized by this article to one or
64 more of such bureaus in such portion as the county commission
65 in its sole discretion determines.

66 (iii) The balance of net revenue required to be expended by
67 this subsection shall be appropriated to the regional travel
68 council serving the area in which the county is located.

69 (3) *Legislative finding.* — The Legislature hereby finds and
70 declares that in order to attract new business and industry to this
71 state and to retain existing business and industry all to provide
72 the citizens of the state with economic security, and to advance
73 the business prosperity and economic welfare of this state, it is
74 necessary to enhance recreational and tourism opportunities.
75 Therefore, in order to promote recreation and tourism, the
76 Legislature finds that public financial support should be
77 provided for constructing, equipping, improving and maintain-
78 ing projects, agencies and facilities which promote recreation
79 and tourism. The Legislature also finds that the support of
80 convention and visitor's bureaus, hotels and regional travel
81 councils is a public purpose for which funds may be expended.
82 Local convention and visitor's bureaus, hotels and regional
83 travel councils receiving funds under this subsection may
84 expend such funds for the payment of administrative expenses,

85 and for the direct or indirect promotion of conventions and
86 tourism, and for any other uses and purposes authorized by
87 subdivisions (1) and (2) of this subsection.

88 (c) *Permissible expenditures.* — After making the appropri-
89 ation required by subsection (b) of this section, the remaining
90 portion of the net revenues receivable during the fiscal year by
91 such county or municipality, pursuant to this article, may be
92 expended for one or more of the purposes set forth in this
93 subsection, but for no other purpose. The purposes for which
94 expenditures may be made pursuant to this subsection are as
95 follows:

96 (1) The planning, construction, reconstruction, establish-
97 ment, acquisition, improvement, renovation, extension, enlarge-
98 ment, equipment, maintenance, repair and operation of publicly
99 owned convention facilities, including, but not limited to,
100 arenas, auditoriums, civic centers and convention centers;

101 (2) The payment of principal or interest or both on revenue
102 bonds issued to finance such convention facilities;

103 (3) The promotion of conventions;

104 (4) The construction, operation or maintenance of public
105 parks, tourist information centers and recreation facilities
106 (including land acquisition);

107 (5) The promotion of the arts;

108 (6) Historic sites;

109 (7) Beautification projects; or

110 (8) Medical care, in an amount not exceeding one hundred
111 thousand dollars, in any county where: (i) There is an urgent
112 necessity to preserve the delivery of acute medical care

113 services; (ii) there is an increase in need for acute medical care
114 services directly related to tourism; (iii) recurrent flooding in
115 the county significantly disrupts, on a periodic basis, the
116 delivery of acute medical care services; (iv) there is an inade-
117 quate economic base within the county from any source other
118 than tourism to preserve the delivery of acute medical care
119 services; (v) there is an inadequate economic base directly
120 related to low population in the county, specifically, a popula-
121 tion of less than ten thousand persons according to the census
122 of the year one thousand nine hundred ninety; and (vi) there is
123 one and only one hospital within the county; and the county
124 commission makes specific findings, by resolution, that all of
125 the foregoing conditions within the county exist.

126 (d) *Definitions.* — For purposes of this section, the follow-
127 ing terms are defined:

128 (1) *Convention and visitor's bureau and visitor's and*
129 *convention bureau.* — “Convention and visitor’s bureau” and
130 “visitor’s and convention bureau” are interchangeable and
131 either shall mean a nonstock, nonprofit corporation with a full-
132 time staff working exclusively to promote tourism and to attract
133 conventions, conferences and visitors to the municipality,
134 county or region in which such convention and visitor’s bureau
135 or visitor’s and convention bureau is located or engaged in
136 business within.

137 (2) *Convention center.* — “Convention center” means a
138 convention facility owned by the state, a county, a municipality
139 or other public entity or instrumentality and shall include all
140 facilities, including armories, commercial, office, community
141 service and parking facilities and publicly owned facilities
142 constructed or used for the accommodation and entertainment
143 of tourists and visitors, constructed in conjunction with the
144 convention center and forming reasonable appurtenances
145 thereto.

146 (3) *Fiscal year*. — “Fiscal year” means the year beginning
147 the first day of July and ending the thirtieth day of June of the
148 next calendar year.

149 (4) *Net proceeds*. — “Net proceeds” means the gross
150 amount of tax collections less the amount of tax lawfully
151 refunded.

152 (5) *Promotion of the arts*. — “Promotion of the arts” means
153 activity to promote public appreciation and interest in one or
154 more of the arts. It includes the promotion of music for all
155 types, the dramatic arts, dancing, painting and the creative arts
156 through shows, exhibits, festivals, concerts, musicals and plays.

157 (6) *Recreational facilities*. — “Recreational facilities”
158 means and includes any public park, parkway, playground,
159 public recreation center, athletic field, sports arena, stadium,
160 skating rink or arena, golf course, tennis courts and other park
161 and recreation facilities, whether of a like or different nature,
162 that are owned by a county or municipality.

163 (7) *Region*. — “Region” means an area consisting of one or
164 more counties that have agreed by contract to fund a convention
165 and visitor’s bureau to promote those counties.

166 (8) *Regional travel council*. — “Regional travel council”
167 means a nonstock, nonprofit corporation, with a full-time staff
168 working exclusively to promote tourism and to attract conven-
169 tions, conferences and visitors to the region of this state served
170 by the regional travel council.

171 (9) *Historic site*. — “Historic site” means any site listed on
172 the United States national register of historic places, or listed by
173 a local historical landmarks commission, established under state
174 law, when such sites are owned by a city, a county or a non-
175 profit historical association and are open, from time to time, to
176 accommodate visitors.

177 (e) Any member of a governing body who willingly and
178 knowingly votes to or causes to be expended moneys generated
179 by the provisions of this section for purposes other than
180 specifically set forth in this section is guilty of a misdemeanor
181 and, upon conviction thereof, shall be fined not more than one
182 hundred dollars.

CHAPTER 126

(Com. Sub. for H. B. 2890 — By Delegate DeLong)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating generally to unlawful methods of hunting; and making it unlawful to hunt or conduct hunts for a fee where the hunter is not in the same physical location as the wildlife.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

***§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the Director, it is unlawful at any
2 time for any person to:

* **CLERK'S NOTE:** This section was also amended by S. B. 476 (Chapter 127), which passed prior to this act.

3 (1) Shoot at or to shoot any wild bird or animal unless it is
4 plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take or
6 attempt to take, any live wild animal or wild bird out of its den
7 or place of refuge except as may be authorized by rules
8 promulgated by the Director or by law;

9 (3) Make use of, or take advantage of, any artificial light in
10 hunting, locating, attracting, taking, trapping or killing any wild
11 bird or wild animal, or to attempt to do so, while having in his
12 or her possession or subject to his or her control, or for any
13 person accompanying him or her to have in his or her posses-
14 sion or subject to his or her control, any firearm, whether cased
15 or uncased, bow, arrow, or both, or other implement or device
16 suitable for taking, killing or trapping a wild bird or animal:
17 *Provided*, That it is lawful to hunt or take raccoon, opossum or
18 skunk by the use of artificial light subject to the restrictions set
19 forth in this subdivision: *Provided, however*, That it is lawful to
20 hunt or take coyotes by the use of amber- or red-colored
21 artificial light subject to the restrictions set forth in this subdivi-
22 sion. No person is guilty of a violation of this subdivision
23 merely because he or she looks for, looks at, attracts or makes
24 motionless a wild bird or wild animal with or by the use of an
25 artificial light, unless at the time he or she has in his or her
26 possession a firearm, whether cased or uncased, bow, arrow, or
27 both, or other implement or device suitable for taking, killing
28 or trapping a wild bird or wild animal, or unless the artificial
29 light (other than the head lamps of an automobile or other land
30 conveyance) is attached to, a part of, or used from within or
31 upon an automobile or other land conveyance.

32 Any person violating the provisions of this subdivision is
33 guilty of a misdemeanor and, upon conviction thereof, shall for
34 each offense be fined not less than one hundred dollars nor
35 more than five hundred dollars and shall be imprisoned in jail
36 for not less than ten days nor more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild animals or
38 wild birds from an airplane, or other airborne conveyance, an
39 automobile, or other land conveyance, or from a motor-driven
40 water conveyance, except as authorized by rules promulgated
41 by the Director;

42 (5) Take any beaver or muskrat by any means other than by
43 trap;

44 (6) Catch, capture, take or kill by seine, net, bait, trap or
45 snare or like device of any kind any wild turkey, ruffed grouse,
46 pheasant or quail;

47 (7) Destroy or attempt to destroy needlessly or willfully the
48 nest or eggs of any wild bird or have in his or her possession the
49 nest or eggs unless authorized to do so under rules promulgated
50 by or under a permit issued by the Director;

51 (8) Except as provided in section six of this article, carry an
52 uncased or loaded gun in any of the woods of this state except
53 during the open firearms hunting season for wild animals and
54 nonmigratory wild birds within any county of the state unless
55 he or she has in his or her possession a permit in writing issued
56 to him or her by the Director: *Provided*, That this section shall
57 not prohibit hunting or taking of unprotected species of wild
58 animals and wild birds and migratory wild birds, during the
59 open season, in the open fields, open water and open marshes
60 of the state;

61 (9) Have in his or her possession a loaded firearm or a
62 firearm from the magazine of which all shells and cartridges
63 have not been removed, in or on any vehicle or conveyance, or
64 its attachments, within the state, except as may otherwise be
65 provided by law or regulation. Except as hereinafter provided,
66 between five o'clock postmeridian of one day and seven
67 o'clock antemeridian, eastern standard time of the day follow-
68 ing, any unloaded firearm, being lawfully carried in accordance

69 with the foregoing provisions, shall be so carried only when in
70 a case or taken apart and securely wrapped. During the period
71 from the first day of July to the thirtieth day of September,
72 inclusive, of each year, the foregoing requirements relative to
73 carrying certain unloaded firearms are permissible only from
74 eight-thirty o'clock postmeridian to five o'clock antemeridian,
75 eastern standard time: *Provided*, That the time periods for
76 carrying unloaded and uncased firearms are extended for one
77 hour after the postmeridian times and one hour before the
78 antemeridian times established above if a hunter is preparing to
79 or in the process of transporting or transferring the firearms to
80 or from a hunting site, campsite, home or other place of abode;

81 (10) Hunt, catch, take, kill, trap, injure or pursue with
82 firearms or other implement by which wildlife may be taken
83 after the hour of five o'clock antemeridian on Sunday on
84 private land without the written consent of the landowner any
85 wild animals or wild birds except when a big game season
86 opens on a Monday, the Sunday prior to that opening day will
87 be closed for any taking of wild animals or birds after five
88 o'clock antemeridian on that Sunday: *Provided*, That traps
89 previously and legally set may be tended after the hour of five
90 o'clock antemeridian on Sunday and the person so doing may
91 carry only a twenty-two caliber firearm for the purpose of
92 humanely dispatching trapped animals. Any person violating
93 the provisions of this subdivision is guilty of a misdemeanor
94 and, upon conviction thereof, in addition to any fines that may
95 be imposed by this or other sections of this code, shall be
96 subject to a one hundred-dollar fine;

97 (11) Hunt with firearms or long bow while under the
98 influence of intoxicating liquor;

99 (12) Hunt, catch, take, kill, injure or pursue a wild animal
100 or bird with the use of a ferret;

101 (13) Buy raw furs, pelts or skins of fur-bearing animals
102 unless licensed to do so;

103 (14) Catch, take, kill or attempt to catch, take or kill any
104 fish at any time by any means other than by rod, line and hooks
105 with natural or artificial lures unless otherwise authorized by
106 law or rules issued by the Director: *Provided*, That snaring of
107 any species of suckers, carp, fallfish and creek chubs shall at all
108 times be lawful;

109 (15) Employ or hire, or induce or persuade, by the use of
110 money or other things of value, or by any means, any person to
111 hunt, take, catch or kill any wild animal or wild bird except
112 those species on which there is no closed season, or to fish for,
113 catch, take or kill any fish, amphibian or aquatic life which is
114 protected by the provisions of this chapter or rules of the
115 Director or the sale of which is prohibited;

116 (16) Hunt, catch, take, kill, capture, pursue, transport,
117 possess or use any migratory game or nongame birds included
118 in the terms of conventions between the United States and Great
119 Britain and between the United States and United Mexican
120 States for the protection of migratory birds and wild mammals
121 concluded, respectively, the sixteenth day of August, one
122 thousand nine hundred sixteen, and the seventh day of Febru-
123 ary, one thousand nine hundred thirty-six, except during the
124 time and in the manner and numbers prescribed by the Federal
125 Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*, and
126 regulations made thereunder;

127 (17) Kill, take, catch or have in his or her possession, living
128 or dead, any wild bird other than a game bird; or expose for sale
129 or transport within or without the state any bird except as
130 aforesaid. No part of the plumage, skin or body of any protected
131 bird shall be sold or had in possession for sale except mounted
132 or stuffed plumage, skin, bodies or heads of the birds legally
133 taken and stuffed or mounted, irrespective of whether the bird

134 was captured within or without this state, except the English or
135 European sparrow (*passer domesticus*), starling (*sturnus*
136 *vulgaris*) and cowbird (*molothrus ater*), which may not be
137 protected and the killing thereof at any time is lawful;

138 (18) Use dynamite or any like explosive or poisonous
139 mixture placed in any waters of the state for the purpose of
140 killing or taking fish. Any person violating the provisions of
141 this subdivision is guilty of a felony and, upon conviction
142 thereof, shall be fined not more than five hundred dollars or
143 imprisoned for not less than six months nor more than three
144 years, or both fined and imprisoned;

145 (19) Have a bow and gun, or have a gun and any arrow or
146 arrows, in the fields or woods at the same time;

147 (20) Have a crossbow in the woods or fields or use a
148 crossbow to hunt for, take or attempt to take any wildlife;

149 (21) Take or attempt to take turkey, bear, elk or deer with
150 any arrow unless the arrow is equipped with a point having at
151 least two sharp cutting edges measuring in excess of three
152 fourths of an inch wide;

153 (22) Take or attempt to take any wildlife with an arrow
154 having an explosive head or shaft, a poisoned arrow or an arrow
155 which would affect wildlife by any chemical action;

156 (23) Shoot an arrow across any public highway or from
157 aircraft, motor-driven watercraft, motor vehicle or other land
158 conveyance;

159 (24) Permit any dog owned by him or her or under his or
160 her control to chase, pursue or follow upon the track of any wild
161 animal or wild bird, either day or night, between the first day of
162 May and the fifteenth day of August next following: *Provided*,
163 That dogs may be trained on wild animals and wild birds,

164 except deer and wild turkeys, and field trials may be held or
165 conducted on the grounds or lands of the owner or by his or her
166 bona fide tenant or tenants or upon the grounds or lands of
167 another person with his or her written permission or on public
168 lands at any time: *Provided, however,* That nonresidents may
169 not train dogs in this state at any time except during the legal
170 small game hunting season: *Provided further,* That the person
171 training said dogs does not have firearms or other implements
172 in his or her possession during the closed season on wild
173 animals and wild birds, whereby wild animals or wild birds
174 could be taken or killed;

175 (25) Conduct or participate in a field trial, shoot-to-retrieve
176 field trial, water race or wild hunt hereafter referred to as trial:
177 *Provided,* That any person, group of persons, club or organiza-
178 tion may hold the trial at any time of the year upon obtaining a
179 permit as is provided in section fifty-six of this article. The
180 person responsible for obtaining the permit shall prepare and
181 keep an accurate record of the names and addresses of all
182 persons participating in said trial and make same readily
183 available for inspection by any conservation officer upon
184 request;

185 (26) Except as provided in section four of this article, hunt,
186 catch, take, kill or attempt to hunt, catch, take or kill any wild
187 animal, wild bird or wild fowl except during the open season
188 established by rule of the Director as authorized by subdivision
189 (6), section seven, article one of this chapter;

190 (27) Hunting on public lands on Sunday after five o'clock
191 antemeridian is prohibited; and

192 (28) Hunt, catch, take, kill, trap, injure or pursue with
193 firearms or other implement which wildlife can be taken, on
194 private lands on Sunday after the hour of five o'clock
195 antemeridian: *Provided,* That the provisions of this subdivision

196 do not apply in any county until the county commission of the
197 county holds an election on the question of whether the
198 provisions of this subdivision prohibiting hunting on Sunday
199 shall apply within the county and the voters approve the
200 allowance of hunting on Sunday in the county. The election is
201 determined by a vote of the resident voters of the county in
202 which the hunting on Sunday is proposed to be authorized. The
203 county commission of the county in which Sunday hunting is
204 proposed shall give notice to the public of the election by
205 publication of the notice as a Class II-0 legal advertisement in
206 compliance with the provisions of article three, chapter
207 fifty-nine of this code and the publication area for the publica-
208 tion shall be the county in which the election is to be held. The
209 date of the last publication of the notice shall fall on a date
210 within the period of the fourteen consecutive days next preced-
211 ing the election.

212 On the local option election ballot shall be printed the
213 following:

214 Shall hunting on Sunday be authorized in _____
215 County?

216 Yes No

217 (Place a cross mark in the square opposite your choice.)

218 Any local option election to approve or disapprove of the
219 proposed authorization of Sunday hunting within a county shall
220 be in accordance with procedures adopted by the commission.
221 The local option election may be held in conjunction with a
222 primary or general election, or at a special election. Approval
223 shall be by a majority of the voters casting votes on the question
224 of approval or disapproval of Sunday hunting at the election.

225 If a majority votes against allowing Sunday hunting, no
226 election on the issue may be held for a period of one hundred

227 four weeks. If a majority votes “yes”, no election reconsidering
228 the action may be held for a period of five years. A local option
229 election may thereafter be held if a written petition of qualified
230 voters residing within the county equal to at least five percent
231 of the number of persons who were registered to vote in the
232 next preceding general election is received by the county
233 commission of the county in which Sunday hunting is autho-
234 rized. The petition may be in any number of counterparts. The
235 election shall take place at the next primary or general election
236 scheduled more than ninety days following receipt by the
237 county commission of the petition required by this subsection:
238 *Provided*, That the issue may not be placed on the ballot until
239 all statutory notice requirements have been met. No local law
240 or regulation providing any penalty, disability, restriction,
241 regulation or prohibition of Sunday hunting may be enacted and
242 the provisions of this article preempt all regulations, rules,
243 ordinances and laws of any county or municipality in conflict
244 with this subdivision.

245 (29) Hunt or conduct hunts for a fee where the hunter is not
246 physically present in the same location as the wildlife being
247 hunted within West Virginia.

CHAPTER 127

(S. B. 476 — By Senators Facemyer, Bowman and Barnes)

[Passed March 22, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2005.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to use of red-colored artificial light when hunting coyotes.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

***§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.**

1 Except as authorized by the Director, it is unlawful at any
2 time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal unless it is
4 plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner take or
6 attempt to take, any live wild animal or wild bird out of its den
7 or place of refuge except as may be authorized by rules
8 promulgated by the Director or by law;

9 (3) Make use of, or take advantage of, any artificial light in
10 hunting, locating, attracting, taking, trapping or killing any
11 wild bird or wild animal, or to attempt to do so, while having
12 in his or her possession or subject to his or her control, or for
13 any person accompanying him or her to have in his or her
14 possession or subject to his or her control, any firearm, whether
15 cased or uncased, bow, arrow, or both, or other implement or
16 device suitable for taking, killing or trapping a wild bird or
17 animal: *Provided*, That it is lawful to hunt or take raccoon,
18 opossum or skunk by the use of artificial light subject to the
19 restrictions set forth in this subdivision: *Provided, however*,
20 That it is lawful to hunt or take coyotes by the use of amber- or
21 red-colored artificial light subject to the restrictions set forth in
22 this subdivision. No person is guilty of a violation of this

* **CLERK'S NOTE:** This section was also amended by H. B. 2890 (Chapter 126), which passed subsequent to this act.

23 subdivision merely because he or she looks for, looks at,
24 attracts or makes motionless a wild bird or wild animal with or
25 by the use of an artificial light, unless at the time he or she has
26 in his or her possession a firearm, whether cased or uncased,
27 bow, arrow, or both, or other implement or device suitable for
28 taking, killing or trapping a wild bird or wild animal, or unless
29 the artificial light (other than the head lamps of an automobile
30 or other land conveyance) is attached to, a part of, or used from
31 within or upon an automobile or other land conveyance.

32 Any person violating the provisions of this subdivision is
33 guilty of a misdemeanor and, upon conviction thereof, shall for
34 each offense be fined not less than one hundred dollars nor
35 more than five hundred dollars and shall be imprisoned in jail
36 for not less than ten days nor more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild animals or
38 wild birds from an airplane, or other airborne conveyance, an
39 automobile, or other land conveyance, or from a motor-driven
40 water conveyance, except as authorized by rules promulgated
41 by the Director;

42 (5) Take any beaver or muskrat by any means other than by
43 trap;

44 (6) Catch, capture, take or kill by seine, net, bait, trap or
45 snare or like device of any kind any wild turkey, ruffed grouse,
46 pheasant or quail;

47 (7) Destroy or attempt to destroy needlessly or willfully the
48 nest or eggs of any wild bird or have in his or her possession
49 the nest or eggs unless authorized to do so under rules promul-
50 gated by or under a permit issued by the Director;

51 (8) Except as provided in section six of this article, carry an
52 uncased or loaded gun in any of the woods of this state except
53 during the open firearms hunting season for wild animals and

54 nonmigratory wild birds within any county of the state unless
55 he or she has in his or her possession a permit in writing issued
56 to him or her by the Director: *Provided*, That this section shall
57 not prohibit hunting or taking of unprotected species of wild
58 animals and wild birds and migratory wild birds, during the
59 open season, in the open fields, open water and open marshes
60 of the state;

61 (9) Have in his or her possession a loaded firearm or a
62 firearm from the magazine of which all shells and cartridges
63 have not been removed, in or on any vehicle or conveyance, or
64 its attachments, within the state, except as may otherwise be
65 provided by law or regulation. Except as hereinafter provided,
66 between five o'clock postmeridian of one day and seven
67 o'clock antemeridian, eastern standard time of the day follow-
68 ing, any unloaded firearm, being lawfully carried in accordance
69 with the foregoing provisions, shall be so carried only when in
70 a case or taken apart and securely wrapped. During the period
71 from the first day of July to the thirtieth day of September,
72 inclusive, of each year, the foregoing requirements relative to
73 carrying certain unloaded firearms are permissible only from
74 eight-thirty o'clock postmeridian to five o'clock antemeridian,
75 eastern standard time: *Provided*, That the time periods for
76 carrying unloaded and uncased firearms are extended for one
77 hour after the postmeridian times and one hour before the
78 antemeridian times established above if a hunter is preparing
79 to or in the process of transporting or transferring the firearms
80 to or from a hunting site, campsite, home or other place of
81 abode;

82 (10) Hunt, catch, take, kill, trap, injure or pursue with
83 firearms or other implement by which wildlife may be taken
84 after the hour of five o'clock antemeridian on Sunday on
85 private land without the written consent of the landowner any
86 wild animals or wild birds except when a big game season
87 opens on a Monday, the Sunday prior to that opening day will

88 be closed for any taking of wild animals or birds after five
89 o'clock antemeridian on that Sunday: *Provided*, That traps
90 previously and legally set may be tended after the hour of five
91 o'clock antemeridian on Sunday and the person so doing may
92 carry only a twenty-two caliber firearm for the purpose of
93 humanely dispatching trapped animals. Any person violating
94 the provisions of this subdivision is guilty of a misdemeanor
95 and, upon conviction thereof, in addition to any fines that may
96 be imposed by this or other sections of this code, shall be
97 subject to a one hundred-dollar fine;

98 (11) Hunt with firearms or long bow while under the
99 influence of intoxicating liquor;

100 (12) Hunt, catch, take, kill, injure or pursue a wild animal
101 or bird with the use of a ferret;

102 (13) Buy raw furs, pelts or skins of fur-bearing animals
103 unless licensed to do so;

104 (14) Catch, take, kill or attempt to catch, take or kill any
105 fish at any time by any means other than by rod, line and hooks
106 with natural or artificial lures unless otherwise authorized by
107 law or rules issued by the Director: *Provided*, That snaring of
108 any species of suckers, carp, fallfish and creek chubs shall at all
109 times be lawful;

110 (15) Employ or hire, or induce or persuade, by the use of
111 money or other things of value, or by any means, any person to
112 hunt, take, catch or kill any wild animal or wild bird except
113 those species on which there is no closed season, or to fish for,
114 catch, take or kill any fish, amphibian or aquatic life which is
115 protected by the provisions of this chapter or rules of the
116 Director or the sale of which is prohibited;

117 (16) Hunt, catch, take, kill, capture, pursue, transport,
118 possess or use any migratory game or nongame birds included

119 in the terms of conventions between the United States and
120 Great Britain and between the United States and United
121 Mexican States for the protection of migratory birds and wild
122 mammals concluded, respectively, the sixteenth day of August,
123 one thousand nine hundred sixteen, and the seventh day of
124 February, one thousand nine hundred thirty-six, except during
125 the time and in the manner and numbers prescribed by the
126 Federal Migratory Bird Treaty Act, 16 U. S. C. §703, *et seq.*,
127 and regulations made thereunder;

128 (17) Kill, take, catch or have in his or her possession, living
129 or dead, any wild bird other than a game bird; or expose for
130 sale or transport within or without the state any bird except as
131 aforesaid. No part of the plumage, skin or body of any
132 protected bird shall be sold or had in possession for sale except
133 mounted or stuffed plumage, skin, bodies or heads of the birds
134 legally taken and stuffed or mounted, irrespective of whether
135 the bird was captured within or without this state, except the
136 English or European sparrow (*passer domesticus*), starling
137 (*sturnus vulgaris*) and cowbird (*molothrus ater*), which may not
138 be protected and the killing thereof at any time is lawful;

139 (18) Use dynamite or any like explosive or poisonous
140 mixture placed in any waters of the state for the purpose of
141 killing or taking fish. Any person violating the provisions of
142 this subdivision is guilty of a felony and, upon conviction
143 thereof, shall be fined not more than five hundred dollars or
144 imprisoned for not less than six months nor more than three
145 years, or both fined and imprisoned;

146 (19) Have a bow and gun, or have a gun and any arrow or
147 arrows, in the fields or woods at the same time;

148 (20) Have a crossbow in the woods or fields or use a
149 crossbow to hunt for, take or attempt to take any wildlife;

150 (21) Take or attempt to take turkey, bear, elk or deer with
151 any arrow unless the arrow is equipped with a point having at
152 least two sharp cutting edges measuring in excess of three
153 fourths of an inch wide;

154 (22) Take or attempt to take any wildlife with an arrow
155 having an explosive head or shaft, a poisoned arrow or an
156 arrow which would affect wildlife by any chemical action;

157 (23) Shoot an arrow across any public highway or from
158 aircraft, motor-driven watercraft, motor vehicle or other land
159 conveyance;

160 (24) Permit any dog owned by him or her or under his or
161 her control to chase, pursue or follow upon the track of any
162 wild animal or wild bird, either day or night, between the first
163 day of May and the fifteenth day of August next following:
164 *Provided*, That dogs may be trained on wild animals and wild
165 birds, except deer and wild turkeys, and field trials may be held
166 or conducted on the grounds or lands of the owner or by his or
167 her bona fide tenant or tenants or upon the grounds or lands of
168 another person with his or her written permission or on public
169 lands at any time: *Provided, however*, That nonresidents may
170 not train dogs in this state at any time except during the legal
171 small game hunting season: *Provided further*, That the person
172 training said dogs does not have firearms or other implements
173 in his or her possession during the closed season on wild
174 animals and wild birds, whereby wild animals or wild birds
175 could be taken or killed;

176 (25) Conduct or participate in a field trial, shoot-to-retrieve
177 field trial, water race or wild hunt hereafter referred to as trial:
178 *Provided*, That any person, group of persons, club or organiza-
179 tion may hold the trial at any time of the year upon obtaining
180 a permit as is provided in section fifty-six of this article. The
181 person responsible for obtaining the permit shall prepare and

182 keep an accurate record of the names and addresses of all
183 persons participating in said trial and make same readily
184 available for inspection by any conservation officer upon
185 request;

186 (26) Except as provided in section four of this article, hunt,
187 catch, take, kill or attempt to hunt, catch, take or kill any wild
188 animal, wild bird or wild fowl except during the open season
189 established by rule of the Director as authorized by subdivision
190 (6), section seven, article one of this chapter;

191 (27) Hunting on public lands on Sunday after five o'clock
192 antemeridian is prohibited; and

193 (28) Hunt, catch, take, kill, trap, injure or pursue with
194 firearms or other implement which wildlife can be taken, on
195 private lands on Sunday after the hour of five o'clock
196 antemeridian: *Provided*, That the provisions of this subdivi-
197 sion do not apply in any county until the county commission of
198 the county holds an election on the question of whether the
199 provisions of this subdivision prohibiting hunting on Sunday
200 shall apply within the county and the voters approve the
201 allowance of hunting on Sunday in the county. The election is
202 determined by a vote of the resident voters of the county in
203 which the hunting on Sunday is proposed to be authorized.
204 The county commission of the county in which Sunday hunting
205 is proposed shall give notice to the public of the election by
206 publication of the notice as a Class II-0 legal advertisement in
207 compliance with the provisions of article three, chapter
208 fifty-nine of this code and the publication area for the publica-
209 tion shall be the county in which the election is to be held. The
210 date of the last publication of the notice shall fall on a date
211 within the period of the fourteen consecutive days next
212 preceding the election.

213 On the local option election ballot shall be printed the
214 following:

215 Shall hunting on Sunday be authorized in _____
216 County?

217 Yes No

218 (Place a cross mark in the square opposite your choice.)

219 Any local option election to approve or disapprove of the
220 proposed authorization of Sunday hunting within a county
221 shall be in accordance with procedures adopted by the commis-
222 sion. The local option election may be held in conjunction
223 with a primary or general election, or at a special election.
224 Approval shall be by a majority of the voters casting votes on
225 the question of approval or disapproval of Sunday hunting at
226 the election.

227 If a majority votes against allowing Sunday hunting, no
228 election on the issue may be held for a period of one hundred
229 four weeks. If a majority votes "yes", no election reconsider-
230 ing the action may be held for a period of five years. A local
231 option election may thereafter be held if a written petition of
232 qualified voters residing within the county equal to at least five
233 percent of the number of persons who were registered to vote
234 in the next preceding general election is received by the county
235 commission of the county in which Sunday hunting is autho-
236 rized. The petition may be in any number of counterparts. The
237 election shall take place at the next primary or general election
238 scheduled more than ninety days following receipt by the
239 county commission of the petition required by this subsection:
240 *Provided*, That the issue may not be placed on the ballot until
241 all statutory notice requirements have been met. No local law
242 or regulation providing any penalty, disability, restriction,
243 regulation or prohibition of Sunday hunting may be enacted
244 and the provisions of this article preempt all regulations, rules,
245 ordinances and laws of any county or municipality in conflict
246 with this subdivision.

CHAPTER 128

(Com. Sub. for S. B. 575 — By Senators Bowman,
McKenzie, Kessler and Edgell)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §20-2-5g and §20-2-42w, all relating to authorizing crossbow hunting for certain disabled persons; providing crossbow specifications; and establishing permit requirements.

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 §20-2-5g and §20-2-42w, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5g. Use of a crossbow by certain physically disabled persons.

§20-2-42w. Class Y special crossbow hunting permit for certain disable persons.

§20-2-5g. Use of a crossbow by certain physically disabled persons.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, a person who possesses a valid Class Y permit in
3 accordance with section forty-two-w of this article may, during
4 the designated archery hunting season, hunt with a crossbow.

5 (b) Only crossbows meeting all of the following specifica-
6 tions may be used for hunting in West Virginia:

7 (1) The crossbow has a minimum draw weight of one
8 hundred twenty-five pounds;

9 (2) The crossbow has a working safety; and

10 (3) The crossbow is used with bolts and arrows not less
11 than eighteen inches in length with a broad head having at least
12 two sharp cutting edges, measuring at least 3/4 of an inch in
13 width.

§20-2-42w. Class Y special crossbow hunting permit for certain disabled persons.

1 (a) On or after the first day of January, two thousand six, a
2 Class Y permit shall be a special statewide hunting permit and
3 shall entitle the permittee to hunt all wildlife during established
4 archery seasons. An application shall be furnished by the
5 director and a Class Y permit allowing the holder to use a
6 crossbow, during the archery hunting seasons, to applicants
7 who meet the following requirements:

8 (1) He or she holds a Class Q permit;

9 (2) He or she has a permanent and substantial loss of
10 function in one or both hands while failing to meet the mini-
11 mum standards of the upper extremity pinch, grip and nine-hole
12 peg tests administered under the direction of a licensed physi-
13 cian; or

14 (3) A permanent and substantial loss of function in one or
15 both shoulders while failing to meet the standards of the
16 standard shoulder strength test, administered under the direction
17 of a licensed physician.

18 (b) The application form shall include a written statement
19 or report prepared by a physician, prepared no more than six
20 months preceding the application and verifying that the
21 applicant is physically disabled as described in this section. As

22 part of the application, the applicant shall authorize, by written
23 release, an examination of all medical records regarding his or
24 her qualifying disability. When completed, the permit form
25 constitutes a Class Y permit. The Class Y permit and a com-
26 pleted license application shall be submitted to the Division,
27 which will issue a wallet-sized card to the permittee. The card
28 and all other documents and identification required to be carried
29 by this article shall be in the permittee's possession when
30 hunting.

31 (c) A Class Y permit must be accompanied by a valid
32 statewide hunting license or the applicant must be exempt from
33 hunting licenses as provided in this chapter.

CHAPTER 129

**(Com. Sub. for S. B. 107 — By Senators Love,
Dempsey, Lanham, Barnes and Yoder)**

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §20-2-7 of the Code of West Virginia, 1931, as amended, relating to hunting with dogs; and providing that persons may not be guilty of hunting without permission, under certain circumstances, when the person's dog pursues an animal or wild bird onto another person's land without the person's direction or encouragement.

Be it enacted by the Legislature of West Virginia:

That §20-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.**§20-2-7. Hunting, trapping or fishing on lands of another; damages and compensation.**

1 (a) It is unlawful for any person to shoot, hunt, fish or trap
2 upon the fenced, enclosed or posted lands of another person; or
3 to peel trees or timber, build fires or do any other act in
4 connection with shooting, hunting, fishing or trapping on such
5 lands without written permission in his or her possession from
6 the owner, tenant or agent of the owner.

7 (b) Any person who hunts, traps or fishes on land without
8 the permission of the owner, tenant or agent of the owner is
9 guilty of a misdemeanor and liable to the owner or person
10 suffering damage for all costs and damages for: (1) Killing or
11 injuring any domestic animal or fowl; (2) cutting, destroying or
12 damaging any bars, gates or fence or any part of the property;
13 or (3) leaving open any bars or gates resulting in damage to the
14 property.

15 (c) The owner, tenant or agent of the owner may arrest a
16 person violating this section and immediately take him or her
17 before a magistrate. The owner, tenant or agent of the owner is
18 vested with the powers and rights of a conservation officer for
19 these purposes. The officers charged with the enforcement of
20 the provisions of this chapter shall enforce the provisions of this
21 section if requested to do so by the owner, tenant or agent of the
22 owner, but not otherwise.

23 (d) The provisions of subsections (b) and (c) of this section
24 related to criminal penalties and being subject to arrest are
25 inapplicable to a person whose dog, without the person's
26 direction or encouragement, travels onto the fenced, enclosed
27 or posted land of another in pursuit of an animal or wild bird:
28 *Provided*, That the pursuit does not result in the taking of game
29 from the fenced, enclosed or posted land and does not result in

- 30 the killing of domestic animals or fowl or other damage to or on
31 the fenced, enclosed or posted land.

CHAPTER 130

**(Com. Sub. for H. B. 3048 — By Mr. Speaker, Mr. Kiss, and
Delegates Michael, Beach and Tabb)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §20-2-39, §20-2-40, §20-2-40b, §20-2-41, §20-2-43, §20-2-44a, §20-2-45, §20-2-46b, §20-2-46c, §20-2-46d, §20-2-46f, §20-2-46g, §20-2-46i, §20-2-46j, §20-2-46k, §20-2-46l, §20-2-46m and §20-2-63 of the Code of West Virginia, 1931, as amended; to amend and reenact §20-2-30a, §20-2-33, §20-2-44 and §20-2-44b of said code; to amend said code by adding thereto twenty-four new sections, designated §20-2-33b, §20-2-42, §20-2-42a, §20-2-42b, §20-2-42c, §20-2-42d, §20-2-42e, §20-2-42f, §20-2-42g, §20-2-42h, §20-2-42i, §20-2-42j, §20-2-42k, §20-2-42l, §20-2-42m, §20-2-42n, §20-2-42o, §20-2-42p, §20-2-42q, §20-2-42r, §20-2-42s, §20-2-42t, §20-2-42u and §20-2-42v; and to amend and reenact §20-2B-6, §20-2B-7, §20-2B-8, §20-2B-9 and §20-2B-10 of said code, all relating to the restructuring of the hunting and fishing license system; increasing fees; providing an effective date; creating a system to index fees to the Consumer Price Index; and providing for requirements for certification of training.

Be it enacted by the Legislature of West Virginia:

That §20-2-39, §20-2-40, §20-2-40b, §20-2-41, §20-2-43, §20-2-44a, §20-2-45, §20-2-46b, §20-2-46c, §20-2-46d, §20-2-46f, §20-2-46g, §20-2-46i, §20-2-46j, §20-2-46k, §20-2-46l, §20-2-46m and §20-2-63 of the Code of West Virginia, 1931, as amended, be repealed; that §20-2-30a, §20-2-33, §20-2-44 and §20-2-44b of said code be amended and reenacted; that said code be amended by adding thereto twenty-four new sections, designated §20-2-33b, §20-2-42, §20-2-42a, §20-2-42b, §20-2-42c, §20-2-42d, §20-2-42e, §20-2-42f, §20-2-42g, §20-2-42h, §20-2-42i, §20-2-42j, §20-2-42k, §20-2-42l, §20-2-42m, §20-2-42n, §20-2-42o, §20-2-42p, §20-2-42q, §20-2-42r, §20-2-42s, §20-2-42t, §20-2-42u and §20-2-42v; and that §20-2B-6, §20-2B-7, §20-2B-8, §20-2B-9 and §20-2B-10 of said code be amended and reenacted, all to read as follows:

Article

2. Wildlife Resources.

2B. Wildlife Endowment Fund.

ARTICLE 2. WILDLIFE RESOURCES.

- §20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.
- §20-2-33. Authority of Director to designate agents to issue licenses; bonds; fees.
- §20-2-33b. Electronic application donation to fund the Coyote Management Program.
- §20-2-42. Effective date and indexing of license and stamp fees.
- §20-2-42a. Class A resident hunting and trapping license.
- §20-2-42b. Class B resident fishing license.
- §20-2-42c. Class C courtesy statewide hunting and fishing license.
- §20-2-42d. Class E nonresident hunting and trapping license.
- §20-2-42e. Class EE nonresident bear hunting license.
- §20-2-42f. Class F nonresident fishing license.
- §20-2-42g. Class H nonresident small game hunting license.
- §20-2-42h. Class J nonresident small game shooting preserve license.
- §20-2-42i. Class LL nonresident one-day fishing license.
- §20-2-42j. Class X resident hunting, fishing and trapping license.
- §20-2-42k. Class XJ resident junior and Class XXJ nonresident junior hunting, fishing and trapping license.
- §20-2-42l. Class A-1 small arms hunting stamp.
- §20-2-42m. Class I nonresident national forest hunting, trapping and fishing stamp.

- §20-2-42n. Class N resident and Class NN nonresident antlerlessdeer hunting stamp.
- §20-2-42o. Class O resident and Class OO nonresident trout fishing stamp.
- §20-2-42p. Class RG resident and Class RRG nonresident gun deer hunting stamp for an additional deer.
- §20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.
- §20-2-42r. Class RM resident and Class RRM nonresident muzzleloader deer hunting stamp for an additional deer.
- §20-2-42s. Class UU nonresident archery deer hunting stamp.
- §20-2-42t. Class VV nonresident muzzle-loading deer hunting stamp.
- §20-2-42u. Class WW nonresident turkey hunting stamp.
- §20-2-42v. Class BG resident big game stamp.
- §20-2-44. Free fishing days.
- §20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

1 (a) Notwithstanding any other provisions of this article, no
2 hunting license or stamp may be issued to any person who was
3 born on or after the first day of January, one thousand nine
4 hundred seventy-five, unless the person submits to the person
5 authorized to issue hunting licenses a certificate of training as
6 provided in this section or proof of completion of any course
7 which promotes as a major objective safety in the handling of
8 firearms and of bow and arrows and which course is approved
9 by the hunter education association or the Director, or provides
10 a State of West Virginia resident or nonresident hunting license
11 from the previous hunting season that displays a certification of
12 training, or attests that a hunter training course has been
13 completed when purchasing a license or stamp online.

14 (b) The Director shall establish a course in the safe han-
15 dling of firearms and of bows and arrows, such as the course
16 approved by the hunter education association. This course shall
17 be given at least once per year in each county in this state and
18 shall be taught by instructors certified by the Director. In

19 establishing and conducting this course, the Director may
20 cooperate with any reputable association or organization which
21 promotes as a major objective safety in the handling of firearms
22 and of bows and arrows: *Provided*, That any person holding a
23 Class A-L or AB-L lifetime resident license obtained prior to
24 his or her fifteenth birthday shall be required to obtain a
25 certificate of training as provided in this section before hunting
26 or trapping pursuant to said license. This course of instruction
27 shall be offered without charge, except for materials or ammu-
28 nition consumed. Upon satisfactory completion of the course,
29 each person instructed in the course shall be issued a certificate
30 of training for the purposes of complying with the requirements
31 of subsection (a) of this section. The certificate shall be in the
32 form prescribed by the Director and shall be valid for hunting
33 license application purposes.

34 (c) (1) Upon satisfactory completion of this course, any
35 person whose hunting license has been revoked for a violation
36 of the provisions of this chapter may petition the Director for a
37 reduction of his or her revocation time. However, under no
38 circumstances may the time be reduced to less than one year.

39 (2) Successful completion of this course shall be required
40 to consider the reinstatement of a hunting license of any person
41 whose license has been revoked due to a conviction for negli-
42 gent shooting of a human being or of livestock under the
43 provisions of section fifty-seven of this article, and who
44 petitions the Director for an early reinstatement of his or her
45 hunting privileges. Such a petitioner shall also comply with the
46 other requirements for consideration of reinstatement contained
47 in section thirty-eight of this article.

48 (d) It is unlawful for any person to falsify, alter, forge,
49 counterfeit or utter a certificate of training. Any person who
50 violates the provisions of this subsection is guilty of a misde-
51 meanor and, upon conviction thereof, shall be fined not less

52 than five hundred dollars nor more than one thousand dollars,
53 or confined in jail for a period not to exceed one year, or both
54 fined and imprisoned.

55 (e) Nothing herein contained shall mandate that any county
56 school district in the state be responsible for implementing
57 hunter safety education programs.

**§20-2-33. Authority of Director to designate agents to issue
licenses; bonds; fees.**

1 (a) The Director may appoint, in addition to the clerk of the
2 county commission, agents to issue licenses under the provi-
3 sions of this article to serve the convenience of the public. Each
4 person appointed shall, before issuing any license, file with the
5 Director a bond payable to the State of West Virginia, in the
6 amount to be fixed by the Director, conditioned upon the
7 faithful performance of his or her obligation to issue licenses
8 only in conformity with the provisions of this article and to
9 account for all license fees received by him or her. The form of
10 the bond shall be prescribed by the Attorney General. No
11 person, other than those designated as issuing agents by the
12 Director, may sell licenses or buy licenses for the purpose of
13 resale.

14 (b) Except when a license is purchased from a state official,
15 every person making application for a license shall pay, in
16 addition to the license fee prescribed in this article, an addi-
17 tional fee of three dollars to any county official issuing the
18 license and all fees collected by county officials must be paid
19 by them into the general fund of the county treasury or, in the
20 case of an agent issuing the license, an additional fee of three
21 dollars as compensation: *Provided*, That only one issuing fee of
22 three dollars may be collected by county officials or authorized
23 agents, respectively, for issuing two or more licenses at the
24 same time for use by the same person or for issuing combina-

25 tion resident statewide hunting, trapping and fishing licenses:
26 *Provided, however,* That a person with a lifetime license or a
27 person who has paid the original additional fee of three dollars
28 to a county official or issuing agent for a license shall only be
29 charged an additional fee of one dollar as additional compensa-
30 tion when subsequently purchasing an additional license from
31 a county official or issuing agent: *Provided further,* That
32 licenses may be issued electronically in a manner prescribed by
33 the Director and persons purchasing electronically issued
34 licenses may be assessed, in addition to the license fee pre-
35 scribed in this article, an electronic issuance fee to be pre-
36 scribed by the Director: *And provided further,* That, notwith-
37 standing any provision of this code to the contrary, an elec-
38 tronic issuance fee of at least two dollars shall be assessed on
39 each Go Wild transaction. The electronic issuance fee shall be
40 dedicated to the administration and maintenance of Go Wild.
41 The Director may propose rules for legislative approval in
42 accordance with article three, chapter twenty-nine-a of this code
43 increasing the license issuing fees authorized by this section.

44 (c) In lieu of the license issuance fee prescribed in subsec-
45 tion (b) of this section, the Director shall propose rules for
46 legislative approval in accordance with the provisions of article
47 three, chapter twenty-nine-a of this code governing the applica-
48 tion for and issuance of licenses by telephone and other
49 electronic methods.

50 (d) The Director may propose rules for legislative approval
51 in accordance with the provisions of article three, chapter
52 twenty-nine-a of this code governing the management of
53 issuing agents.

**§20-2-33b. Electronic application donation to fund the Coyote
Management Program.**

1 (a) (1) Effective the first day of January, two thousand six,
2 every application for a hunting or fishing electronic license

3 shall include a solicitation for a voluntary donation to the
4 division's established Coyote Management Program.

5 (2) The license applicant will be offered an opportunity to
6 designate a donation in the amount of two dollars for the
7 Coyote Management Program.

8 (b) There is hereby created a special revenue account,
9 designated the "Coyote Management Fund" into which all
10 donations derived under this section shall be deposited. Moneys
11 in this account shall be expended solely for the purposes set
12 forth in subsection (c) of this section. Funds paid into this
13 account may also be derived from the following sources: (1) All
14 interest or return on investment accruing to this account; (2)
15 Any gifts, grants, bequests, transfers, appropriations or other
16 donations which may be received from any governmental entity
17 or unit or any person, firm, foundation, or corporation; and (3)
18 any appropriations by the Legislature which may be made for
19 the purposes of this section. Any balance including accrued
20 interest and other earnings at the end of any fiscal year shall not
21 revert to the general fund but shall remain in the fund for the
22 purposes set forth in this section.

23 (c) The moneys in the fund shall be paid out, at the sole
24 discretion and direction of the director, to address coyote
25 management issues.

**§20-2-42. Effective date and indexing of license and stamp
fees.**

1 The license and stamp fees in article two and two-b of this
2 chapter as amended during the regular session of the 2005
3 regular session of the Legislature shall become effective on the
4 first day of January, two thousand six. The Director may from
5 time to time propose rules for legislative approval in accor-
6 dance with article three, chapter twenty-nine-a of this code,
7 changing any license or stamp fee set forth in this article or in

8 article two-b. All increases in license and stamp fees in this
9 article which are set forth in rule shall be computed in a manner
10 that results in the increase being indexed to an increase in the
11 Consumer Price Index (All Items) published by the United
12 States Department of Labor rounded down to the nearest dollar:
13 *Provided*, That no increase in fee resulting from increases in the
14 Consumer Price Index (All Items) may be made after the first
15 day of January, two thousand eleven.

§20-2-42a. Class A resident hunting and trapping license.

1 A Class A license is a resident hunting and trapping license
2 and entitles the licensee to hunt and trap all legal species of
3 wild animals and wild birds in all counties of the state, except
4 that the licensee may not hunt deer during the deer archery and
5 muzzleloader seasons, or black bear, wild turkey or wild boar
6 during the respective seasons, and except as prohibited by rules
7 of the Director or Natural Resources Commission and when
8 additional licenses, stamps or permits are required. It shall be
9 issued only to residents or aliens lawfully residing in the United
10 States who have been domiciled residents of West Virginia for
11 a period of thirty consecutive days or more immediately prior
12 to the date of their application for a license. The fee for the
13 license is eighteen dollars. This is a base license and does not
14 require the purchase of a prerequisite license to participate in
15 the activities specified in this section, except as noted.

§20-2-42b. Class B resident fishing license.

1 A Class B license is a resident fishing license and entitles
2 the licensee to fish for all legal fish except trout and to take
3 frogs in all counties of the state, except as prohibited by rules
4 of the Director or Natural Resources Commission and when
5 additional licenses, stamps or permits are required. It shall be
6 issued only to residents or aliens lawfully residing in the United
7 States who have been domiciled residents of West Virginia for
8 a period of thirty consecutive days or more immediately prior

9 to the date of their application for a license. The fee for the
10 license is eighteen dollars. To fish for trout, a Class B license
11 holder must purchase and carry a valid Class O stamp or Class
12 O-L license. This is a base license and does not require the
13 purchase of a prerequisite license to participate in the activities
14 specified in this section, except as noted.

§20-2-42c. Class C courtesy statewide hunting and fishing license.

1 A Class C license is a courtesy hunting and fishing license
2 and entitles the licensee to hunt and fish in all counties of this
3 state. It may be issued by the Director upon application made
4 to him or her and without fee to:

5 (1) Members and agents of the United States Fish and
6 Wildlife Service;

7 (2) Members of State Commissions of other states extend-
8 ing similar courtesies;

9 (3) Diplomatic and consular representatives of foreign
10 countries;

11 (4) Persons engaged in scientific wildlife research;

12 (5) Nonresident outdoor writers and other nonresidents
13 engaged in promoting an interest in the Natural Resources of
14 the State of West Virginia.

15 Not more than one hundred courtesy licenses shall be
16 issued in one year. This is a base license and does not require
17 the purchase of a prerequisite license to participate in the
18 activities specified in this section, except as noted.

§20-2-42d. Class E nonresident hunting and trapping license.

1 A Class E license is a nonresident hunting and trapping
2 license and entitles the licensee to hunt and trap all legal species

3 of wild animals and wild birds in all counties of the state except
4 as prohibited by rules of the Director or Natural Resources
5 Commission and except when other licenses, stamps or permits
6 are required. The fee for the license is one hundred ten dollars.
7 This is a base license and does not require the purchase of a
8 prerequisite license to participate in the activities specified in
9 this section, except as noted.

§20-2-42e. Class EE nonresident bear hunting license.

1 A Class EE license is a nonresident bear hunting license
2 and entitles the licensee to hunt bear in all counties of the state,
3 except as prohibited by rules of the Director or Natural Re-
4 sources Commission and except when additional licenses,
5 stamps or permits are required. The fee for the license is one
6 hundred fifty dollars. This is a base license and does not require
7 the purchase of a prerequisite license to participate in the
8 activities specified in this section, except as noted.

§20-2-42f. Class F nonresident fishing license.

1 A Class F license is a nonresident fishing license and
2 entitles the licensee to fish for all legal fish except trout and to
3 take frogs, in all counties of the state except as prohibited by
4 rules of the Director or Natural Resources Commission and
5 except when additional licenses, stamps or permits are required.
6 The fee for the license is thirty-five dollars. To fish for trout, a
7 Class F license holder must purchase and carry a valid Class
8 OO trout stamp. This is a base license and does not require the
9 purchase of a prerequisite license to participate in the activities
10 specified in this section, except as noted.

§20-2-42g. Class H nonresident small game hunting license.

1 A Class H license is a nonresident small game hunting
2 license and entitles the licensee to hunt small game in all
3 counties of the state, except as prohibited by rules of the

4 Director or Natural Resources Commission and except when
5 additional licenses, stamps or permits are required, for a period
6 of six consecutive hunting days chosen by the licensee, exclud-
7 ing Sunday in counties closed to Sunday hunting. The fee for
8 the license is twenty-five dollars. This is a base license and does
9 not require the purchase of a prerequisite license to participate
10 in the activities specified in this section, except as noted.

§20-2-42h. Class J nonresident small game shooting preserve license.

1 A Class J license is a nonresident small game shooting
2 preserve license and entitles the licensee to hunt small game on
3 designated shooting preserves, except as prohibited by rules of
4 the Director or Natural Resources Commission and except
5 when additional licenses, stamps or permits are required, for a
6 period of six consecutive hunting days chosen by the licensee,
7 excluding Sunday in counties closed to Sunday hunting. The fee
8 for the license is ten dollars. This is a base license and does not
9 require the purchase of a prerequisite license to participate in
10 the activities specified in this section, except as noted.

§20-2-42i. Class LL nonresident one-day fishing license.

1 A Class LL license is a nonresident fishing license and
2 entitles the licensee to fish for all legal fish except trout and to
3 take frogs in all counties of the state for the calendar date
4 chosen by the buyer and which will be specified on the license,
5 except as prohibited by rules of the Director or Natural Re-
6 sources Commission and except when additional licenses,
7 stamps or permits are required. To fish for trout, a Class LL
8 licensee must purchase and carry a valid Class OO trout stamp.
9 The fee for the license is three dollars. This is a base license and
10 does not require the purchase of a prerequisite license to
11 participate in the activities specified in this section, except as
12 noted.

§20-2-42j. Class X resident hunting, fishing and trapping license.

1 A Class X license is a resident hunting, fishing and trapping
2 license and entitles the licensee to hunt and trap for all legal
3 species of wild animals and wild birds, to fish for all legal
4 species of fish except trout and to take frogs in all counties of
5 the state, except as prohibited by the rules of the Director or
6 Natural Resources Commission and when additional licenses,
7 stamps or permits are required. No additional fees shall be
8 required of Class X licensees for a Class CS stamp. To fish for
9 trout, a Class X licensee must purchase and carry a valid Class
10 O stamp or Class O-L license. The Class X license shall be
11 issued only to residents or aliens lawfully residing in the United
12 States who have been domiciled residents of West Virginia for
13 a period of thirty consecutive days or more immediately prior
14 to the date of their application for a license. The fee for the
15 license is thirty-three dollars. The portion of the Class X license
16 fee equal to the annual fee for the Class CS stamp shall be
17 designated as conservation stamp revenue and expended
18 pursuant to section nine, article two-b of this code. This is a
19 base license and does not require the purchase of a prerequisite
20 license to participate in the activities specified in this section,
21 except as noted.

§20-2-42k. Class XJ resident junior and Class XXJ nonresident junior hunting, fishing and trapping license.

1 A Class XJ license is a resident junior hunting, fishing and
2 trapping license and a Class XXJ license is a nonresident junior
3 hunting, fishing and trapping license. These licenses entitle the
4 licensee to hunt and trap for all legal species of wild animals
5 and wild birds, to fish for all legal species of fish except trout
6 and to take frogs in all counties of the state, except as prohib-
7 ited by the rules of the Director or Natural Resources Commis-
8 sion and when additional licenses, stamps and permits are
9 required. No additional fees are required of Class XJ licensees
10 for a Class CS stamp. No additional fees are required of Class

11 XXJ licensees for Class I, UU, VV or WW stamps. To fish for
12 trout, Class XJ or XXJ licensees must purchase and carry a
13 valid Class O or OO stamp or O-L license. The Class XJ license
14 may be issued only to a resident who has not reached his or her
15 eighteenth birthday and is otherwise required by section twenty-
16 seven of this article to purchase a license. The Class XXJ
17 license may be issued to a nonresident who has not reached his
18 or her eighteenth birthday and is at least eight years old and is
19 otherwise required by section twenty-seven of this article to
20 purchase a license. The fee for the Class XJ license is fifteen
21 dollars. The portion of the Class XJ license fee equal to the
22 annual fee for the Class CS stamp shall be designated as
23 conservation stamp revenue and expended pursuant to section
24 nine of article two-b. The fee for the Class XXJ license is
25 fifteen dollars. In addition to buying a Class XXJ license, a
26 nonresident must purchase a Class CS/LE stamp as required in
27 section ten of article two-b. This is a base license and does not
28 require the purchase of a prerequisite license to participate in
29 the activities specified in this section, except as noted.

§20-2-42l. Class A-1 small arms hunting stamp.

1 Notwithstanding the provisions of section two, article
2 seven, chapter sixty-one of this code, a Class A-1 stamp is a
3 small arms hunting stamp. To be eligible to get a Class A-1
4 stamp, a person must be legally able to possess a firearm. If a
5 person is otherwise qualified, a Class A-1 stamp may be issued
6 to a person twenty-one years of age or older who holds a valid
7 resident or nonresident hunting license, or to a person who is a
8 resident sixty-five years of age or older, but a Class A-1 stamp
9 shall never be issued to a person who has been convicted of a
10 misdemeanor associated with the use of firearms or dangerous
11 weapons or who has been convicted of a felony. A Class A-1
12 stamp entitles the licensee to hunt, as otherwise permitted by
13 the provisions of this chapter, but only during small game and
14 big game seasons as established annually by the Director, with
15 either a revolver or pistol which has a barrel at least four inches

16 in length. Unless otherwise permitted by the Code of West
17 Virginia, a Class A-1 stamp entitles the licensee to carry or
18 have in his or her possession only one revolver or pistol when
19 going to and from his or her home or residence and a place of
20 hunting and while hunting: *Provided*, That the Class A-1 stamp
21 may not be valid unless the licensee has in his or her possession
22 a valid resident or nonresident hunting license or is a resident
23 sixty-five years of age or older: *Provided, however*, That at all
24 times, when not actually hunting, the revolver or pistol shall be
25 unloaded. While hunting, the licensee shall carry the revolver
26 or pistol in an unconcealed and easily visible place. The fee for
27 the stamp is eight dollars. A lifetime Class A-1 stamp may be
28 issued to anyone otherwise qualified and holding a valid Class
29 A-L or AB-L license or to a resident sixty-five years of age or
30 older. The lifetime Class A-1 stamp will be issued in a form
31 prescribed by the Director. The fee for a lifetime Class A-1
32 stamp is seventy-five dollars. All fees collected for the issuance
33 of the Class A-1 and lifetime Class A-1 stamps shall be depos-
34 ited in the State Treasury and credited to the law-enforcement
35 section of the Division of Natural Resources. The fees collected
36 shall be paid out of the State Treasury on order of the Director
37 and used solely for law-enforcement purposes. Any person
38 convicted of a misdemeanor associated with the use of firearms
39 or dangerous weapons or convicted of a felony, or any person
40 who becomes legally unable to possess a firearm shall immedi-
41 ately surrender the stamp to the Division of Natural Resources.
42 A holder of a Class A-1 or lifetime Class A-1 stamp is required
43 to purchase the appropriate base license before participating in
44 the activities specified in this section, except as noted.

**§20-2-42m. Class I nonresident national forest hunting, trapping
and fishing stamp.**

1 A Class I stamp is a nonresident national forest hunting,
2 trapping and fishing stamp and entitles the licensee, when
3 within national forest land in West Virginia, to hunt legal
4 species in season; to trap fur-bearing animals in season; and to

5 fish in the waters therein. The stamp shall be issued only to a
6 nonresident holding a Class E, EE, F, H or LL license. The fee
7 for the stamp is two dollars. This stamp requires that the
8 licensee purchase the appropriate base license before participat-
9 ing in the activities specified in this section, except as noted.

**§20-2-42n. Class N resident and Class NN nonresident antlerless
deer hunting stamp.**

1 A Class N stamp is a resident deer hunting stamp for
2 antlerless deer. A Class NN stamp is a nonresident deer hunting
3 stamp for antlerless deer. These stamps entitle the licensee to
4 hunt and take antlerless deer of either sex during the Class N
5 season. The fee for a Class N stamp is ten dollars and the fee
6 for a Class NN stamp is twenty-five dollars. Class N and NN
7 stamps may be issued only for the purpose of removing
8 antlerless deer when the Director determines it essential for
9 proper management of the wildlife resources. The Director may
10 promulgate rules governing the issuance and use of the Class N
11 and NN stamps as deemed necessary to limit, on a fair and
12 equitable basis, the number of persons who may hunt for
13 antlerless deer in a county, or part of a county. When the
14 Director determines it essential that a Class N or NN season be
15 held in a particular county or part of a county, that season shall
16 be set by the Natural Resources Commission as provided in
17 section seventeen, article one of this chapter. Bona fide resident
18 landowners or their resident children, or resident parents, bona
19 fide resident tenants of such land and bona fide resident
20 stockholders of resident corporations which are formed for the
21 primary purpose of hunting or fishing and which are the fee
22 simple owners of no less than one thousand acres of land upon
23 which the antlerless deer may be hunted are not required to
24 have a Class N stamp in their possession while hunting
25 antlerless deer on their own land during the Class N season. A
26 resident hunter, including those not required to purchase a
27 license pursuant to section twenty-seven of this article, must

28 purchase and carry a valid Class N stamp. A nonresident hunter
29 must purchase and carry a valid Class NN stamp. These stamps
30 require that the licensee purchase the appropriate base license
31 before participating in the activities specified in this section,
32 except as noted.

**§20-2-42o. Class O resident and Class OO nonresident trout
fishing stamp.**

1 A Class O stamp is a resident trout fishing stamp. A Class
2 OO stamp is a nonresident trout fishing stamp. These stamps
3 entitle the licensee to fish for trout in all counties of the state,
4 except as prohibited by rules of the Director or Natural Re-
5 sources Commission. The fee for a Class O stamp is ten dollars
6 and the fee for a Class OO stamp is fifteen dollars. The revenue
7 derived from the sale of these stamps shall be deposited in the
8 State Treasury and credited to the Division of Natural Re-
9 sources and shall be used and paid out, upon order of the
10 Director, for state trout program expenses. These stamps, issued
11 in a form prescribed by the Director, shall be in addition to a
12 Class AB-L, B, B-L, F, LL, X, XJ or XXJ license or Class Q
13 permit. These stamps require that the licensee purchase the
14 appropriate base license before participating in the activities
15 specified in this section, except as noted.

**§20-2-42p. Class RG resident and Class RRG nonresident gun
deer hunting stamp for an additional deer.**

1 The Director has the authority to issue a Class RG resident
2 and a Class RRG nonresident gun deer hunting stamp when
3 deemed essential for the proper management of the wildlife
4 resources. These stamps allow the licensee to hunt and take an
5 additional deer as designated by the Director. The fee for a
6 Class RG stamp is twenty dollars and the fee for a Class RRG
7 stamp is forty dollars. The Director may promulgate rules in
8 accordance with article three, chapter twenty-nine-a of this code

9 governing the issuance and use of these stamps. These stamps
10 require that the licensee purchase the appropriate base license
11 before participating in the activities specified in this section,
12 except as noted.

**§20-2-42q. Class RB resident and Class RRB nonresident archery
deer hunting stamp for an additional deer.**

1 The Director has the authority to issue a Class RB resident
2 and a Class RRB nonresident archery deer hunting stamp when
3 deemed essential for the proper management of the wildlife
4 resources. This stamp allows the licensee to hunt and take an
5 additional deer as designated by the Director. The fee for a
6 Class RB stamp is twenty dollars and the fee for a Class RRB
7 stamp is thirty-five dollars. The Director may promulgate rules
8 in accordance with article three, chapter twenty-nine-a of this
9 code governing the issuance and use of these stamps. These
10 stamps require that the licensee purchase the appropriate base
11 license before participating in the activities specified in this
12 section, except as noted.

**§20-2-42r. Class RM resident and Class RRM nonresident
muzzle-loader deer hunting stamp for an addi-
tional deer.**

1 The Director shall have the authority to issue a Class RM
2 resident and a Class RRM nonresident muzzle-loader deer
3 hunting stamp when deemed essential for the proper manage-
4 ment of the wildlife resources. These stamps allow the licensee
5 to hunt and take an additional deer as designated by the
6 Director. The fee for a Class RM stamp is fifteen dollars and
7 the fee for a Class RRM stamp is thirty-five dollars. The
8 Director may promulgate rules in accordance with article three,
9 chapter twenty-nine-a of this code governing the issuance and
10 use of these stamps. These stamps require that the licensee
11 purchase the appropriate base license before participating in the
12 activities specified in this section, except as noted.

§20-2-42s. Class UU nonresident archery deer hunting stamp.

1 A Class UU stamp is a nonresident archery deer hunting
2 stamp and entitles the licensee to hunt and take deer with a bow
3 during the archery deer season in all counties of the state,
4 except as prohibited by the rules of the Director or Natural
5 Resources Commission. The fee for a Class UU stamp is thirty
6 dollars. The stamp, issued in a form prescribed by the Director,
7 shall be in addition to a Class E license. This stamp requires
8 that the licensee purchase the appropriate base license before
9 participating in the activities specified in this section, except as
10 noted.

§20-2-42t. Class VV nonresident muzzle-loading deer hunting stamp.

1 A Class VV stamp is a nonresident muzzle-loading deer
2 hunting stamp and entitles the licensee to hunt and take deer
3 with a muzzle-loader during muzzle-loading deer seasons in all
4 counties of the state, or parts thereof, excluding Logan,
5 McDowell, Mingo and Wyoming counties, as set by the Natural
6 Resources Commission in accordance with section seventeen,
7 article one of this chapter. The Director may promulgate rules
8 in accordance with article three, chapter twenty-nine-a of this
9 code governing the issuance and use of this stamp. The stamp,
10 issued in a form prescribed by the Director, shall be in addition
11 to a Class E license. The fee for a Class VV stamp is thirty
12 dollars. This stamp requires that the licensee purchase the
13 appropriate base license before participating in the activities
14 specified in this section, except as noted.

§20-2-42u. Class WW nonresident turkey hunting stamp.

1 A Class WW stamp is a nonresident turkey hunting stamp
2 and entitles the licensee to hunt and take turkey during any
3 turkey hunting season, except as prohibited by the rules of the
4 Director or Natural Resources Commission. The fee for a Class

5 WW stamp is thirty dollars. The stamp, issued in a form
6 prescribed by the Director, shall be in addition to a Class E
7 license. This stamp requires that the licensee purchase the
8 appropriate base license before participating in the activities
9 specified in this section, except as noted.

§20-2-42v. Class BG resident big game stamp.

1 A Class BG stamp is a resident big game stamp and entitles
2 the Class A and Class Q licensee to hunt deer during the deer
3 archery and muzzle-loader seasons, and bear, wild turkey and
4 wild boar during the respective seasons, except as prohibited by
5 rules of the Director or Natural Resources Commission. The fee
6 for the stamp is ten dollars. The stamp, issued in a form
7 prescribed by the Director, shall be in addition to a Class A
8 license or Class Q permit. This stamp requires that the licensee
9 purchase the appropriate base license before participating in the
10 activities specified in this section, except as noted.

§20-2-44. Free fishing days.

1 The Director may designate up to two days each year as
2 free sport fishing days. On a designated free fishing day, an
3 individual is entitled to fish for all legal fish in all counties of
4 the state without having a valid West Virginia fishing license
5 and without the payment of any license fee, subject to the same
6 privileges and restrictions applicable to a holder of any such
7 license.

**§20-2-44b. Bear damage stamp; proceeds to be paid into bear
damage fund; purposes, etc.**

1 To hunt bear in this state, a licensed hunter shall have, in
2 addition to a Class A, A-L, AB-L, X or XJ, in the case of a
3 resident, or a Class C or EE, in the case of a nonresident, a bear
4 damage stamp issued by the Division of Natural Resources. The
5 fee for the stamp is ten dollars. All proceeds from the sale of

6 stamps shall be paid into the bear damage fund which shall be
7 maintained by the Division of Natural Resources for paying
8 claims of property owners for damages to real and personal
9 property caused by acts of bear and to cover the expense of
10 black bear research programs within the state. This stamp
11 requires that the licensee purchase the appropriate base license
12 before participating in the activities specified in this section,
13 except as noted.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-6. Expenditure of funds for specific and general purposes.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

§20-2B-8. Privileges of lifetime licensees.

§20-2B-9. Class CS resident conservation stamp; purposes, etc.

§20-2B-10. Class CS/LE nonresident conservation law-enforcement and sports
education stamp.

§20-2B-6. Expenditure of funds for specific and general purposes.

1 In accordance with the intent of sections thirty-four and
2 forty-two-o, article two of this chapter and pursuant to sections
3 three and four of this article, income accruing from the invest-
4 ments of the wildlife endowment fund shall be distributed in the
5 following manner:

6 (1) Income accruing from the investment of moneys
7 resulting from the sale of Class O-L licenses shall be distributed
8 and disbursed in the same manner as revenues accruing from
9 the sale of Class O licenses as provided in section forty-two-o,
10 article two of this chapter.

11 (2) Income accruing from the investment of any portion of
12 the principal of the wildlife endowment fund which, at the time
13 of its deposit into the fund, is specifically designated for the
14 activities of a particular section within the Division, shall
15 accrue solely to that section within the Division; and

16 (3) All other income accruing from the investments of the
17 wildlife endowment fund shall be distributed within the
18 Division in the same manner as provided in section thirty-four,
19 article two of this chapter.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

1 (a) Pursuant to section three of this article, the Director may
2 issue the following lifetime hunting, fishing and trapping
3 licenses and for the lifetime of the licensee, the lifetime licenses
4 serve in lieu of the equivalent annual license: Lifetime resident
5 statewide hunting and trapping license; lifetime resident
6 combination statewide hunting, fishing and trapping license;
7 lifetime statewide fishing license; and lifetime resident trout
8 fishing license: *Provided*, That a full-time nonresident student
9 who attends an in-state college or university is not eligible to
10 purchase any of these lifetime licenses.

11 (b) The Director shall propose a rule for legislative ap-
12 proval in accordance with article three, chapter twenty-nine-a
13 of this code, setting the fees for the lifetime licenses. The rule
14 shall provide that the fee for any resident who has not reached
15 his or her second birthday shall be one half of the adult fee set
16 under the rule. The fees for lifetime licenses shall be twenty-
17 three times the fee for the equivalent annual licenses or stamps.

§20-2B-8. Privileges of lifetime licensees.

1 Pursuant to section seven of this article, lifetime licensees
2 shall be entitled to the same privileges and subject to the same
3 restrictions as licensees possessing the equivalent annual
4 license with the following exceptions:

5 (1) Class A-L, AB-L, B-L and O-L licenses shall be valid
6 for the lifetime of the licensee;

7 (2) A Class O-L lifetime resident trout fishing license shall
8 be issued only to residents of the state and shall be valid only
9 when accompanied by a Class AB-L, B, B-L, X or XJ license;
10 and

11 (3) No additional fee shall be required of Class A-L, AB-L
12 or B-L licensees for the conservation stamp required by section
13 nine of this article. No additional fee shall be required of Class
14 A-L or AB-L licensees for the Class BG stamp required by
15 section forty-two-v, article two of this chapter.

§20-2B-9. Class CS resident conservation stamp; purposes, etc.

1 A resident hunter, angler or trapper licensed to hunt, fish or
2 trap in this state shall have, in addition to a Class A or B
3 license, a Class CS conservation stamp. The fee for the stamp
4 is five dollars.

5 The revenue derived from the sale of conservation stamps
6 shall be deposited in the State Treasury and shall be credited to
7 the Division of Natural Resources. The revenue shall be used
8 and paid out, upon order of the Director, for capital improve-
9 ments and land purchases or leases benefitting wildlife except
10 that at the discretion of the Director, a maximum of twenty
11 percent of the revenue may be used for the operation and
12 maintenance of capital improvements and lands: *Provided*, That
13 none of this revenue shall be expended for the purchase of
14 wetlands, or for land to be flooded so as to create wetlands, to
15 attract migratory waterfowl within sixty air miles of any
16 established poultry industry: *Provided, however*, That no
17 expenditures of the revenue derived from the sale of the
18 conservation stamps shall be made for recreational facilities or
19 activities that are used by or for the benefit of the general public
20 rather than by or for purchasers of hunting, fishing or trapping
21 licenses. Any unexpended moneys derived from the sale of
22 conservation stamps shall be carried forward to the next fiscal
23 year.

§20-2B-10. Class CS/LE nonresident conservation law-enforcement and sports education stamp.

1 (a) Any nonresident hunter, angler or trapper licensed to
2 hunt, fish or trap in this state, in addition to a Class E, EE, F, H,
3 LL or XXJ license, shall have a Class CS/LE nonresident
4 conservation, law-enforcement and sports education stamp.
5 The fee for the stamp is twelve dollars.

6 (b) The revenue derived from the sale of Class CS/LE
7 stamps shall be deposited in the State Treasury and shall be
8 credited to the Division of Natural Resources. Fifty percent of
9 the revenue shall be used and paid out, upon order of the
10 Director, for the law-enforcement section's expenses relating to
11 the general enforcement of state laws pertaining to the conser-
12 vation of fish and wildlife and law-enforcement education
13 programs for hunters, anglers and trappers: *Provided*, That no
14 expenditures of the revenue derived from the sale of the Class
15 CS/LE stamp shall be made for law-enforcement purposes not
16 directly related to the wildlife resources of the state or for the
17 educational programs set forth in this subsection. Fifty percent
18 of the revenue shall be used and paid out for capital improve-
19 ments and land purchases or leases benefiting wildlife except
20 that at the discretion of the Director, a maximum of twenty
21 percent of the revenue may be used for the operation and
22 maintenance of the capital improvements and lands: *Provided*,
23 *however*, That no expenditures of the revenue derived from the
24 sale of the conservation stamps shall be made for recreational
25 facilities that are used by or for the benefit of the general public
26 rather than by or for purchasers of hunting, fishing or trapping
27 licenses. Any unexpended moneys derived from the sale of
28 Class CS/LE stamps shall be carried forward to the next fiscal
29 year.

CHAPTER 131

(Com. Sub. for S. B. No. 561 — By Senators Plymale and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005]

AN ACT to amend and reenact section 7, chapter 26 of the Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 175, Acts of the Legislature, regular session, 1991, relating to Greater Huntington Park and Recreation District; authorizing the District to impose fees and issue revenue bonds; requiring an election on the imposition of fees and issuance of revenue bonds; notice and election requirements; and authorizing the new fees to secure and pay the revenue bonds.

Be it enacted by the Legislature of West Virginia:

That section 7, chapter 26, Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 175, Acts of the Legislature, regular session, 1991, be amended and reenacted to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§7. Financing and financial powers.

- 1 The park district shall have the following powers to:
- 2 (1) Make charges to the public for services offered or goods
- 3 sold by the park district.
- 4 (a) Charges for services may be in the form of, but not
- 5 limited to: Admission and entrance fees; exclusive use and

6 rental fees; user fees; license and permit fees; equipment rental;
7 program maintenance fees; instructor fees; special accommoda-
8 tion fees; amusement fees; restricted membership fees; and
9 cemetery service fees.

10 (b) Charges for goods sold may be in the forms of, but not
11 limited to: Beverages and foods; novelties and gifts; clothing;
12 athletic equipment and supplies; cemetery plots, crypts,
13 monuments, memorials, markers, vaults and any other forms of
14 merchandise sold in connection with the burial of the dead; and
15 other items that may pertain to the operation and maintenance
16 of the park district.

17 (2) Impose upon the users of the park system reasonable
18 service fees in addition to the service fees authorized by
19 paragraph (a), subdivision (1) of this section. As used in this
20 section, "users" means any persons to whom the park system is
21 made available.

22 (a) The board of directors of the park district may adopt one
23 or more resolutions establishing the amount and manner of
24 collection of the fees and providing for reasonable penalties for
25 failure to pay service fees. No resolution imposing a service fee
26 is effective until it is ratified by a majority of the legal votes
27 cast by the qualified voters of the district at a primary or
28 general election.

29 (b) In addition to meeting the ballot and election require-
30 ments set forth in subdivision (3) of this section, the ballot
31 question must set forth the service fee, the manner in which it
32 will be imposed and the general use to which the proceeds of
33 the service fee shall be put. From time to time, the board may
34 submit additional resolutions imposing additional service fees
35 to the district's electors for approval pursuant to this section.

36 (3) Issue revenue bonds or refunding revenue bonds for the
37 district, in the manner prescribed by the applicable provisions

38 of sections seven, ten, twelve and sixteen, article sixteen,
39 chapter eight of the Code of West Virginia, 1931, as amended.
40 No revenue bonds, except for refunding revenue bonds, may be
41 issued under this section until all questions connected with the
42 bonds are first submitted to a vote of the qualified electors of
43 the district for which the bonds are to be issued, and receive a
44 majority of all the votes cast for and against the issuance. The
45 ballot question must set forth:

46 (a) The necessity for issuing the bonds;

47 (b) Purpose or purposes for which the proceeds of bonds are
48 to be expended;

49 (c) Total indebtedness, bonded or otherwise;

50 (d) Amount of the proposed bond issue;

51 (e) Maximum term of bonds and series;

52 (f) Maximum rate of interest;

53 (g) Date of election;

54 (h) That the park district is authorized to collect fees to
55 provide funds for the payment of the interest upon the bonds
56 and the principal at maturity, and the approximate amount of
57 fees necessary for this purpose.

58 (i) Notice of any election shall be given by publication,
59 within fourteen consecutive days next preceding the date of the
60 election, of the resolution imposing the service fee as a Class II
61 legal advertisement in compliance with the provisions of article
62 three, chapter fifty-nine of this code and the publication area for
63 publication shall be the district. All of the provisions of the
64 general election laws of this State concerning primary or
65 general elections, when not in conflict with the provisions of

66 this section, shall apply to elections hereunder, insofar as
67 practicable.

68 (4) Annually levy on each one hundred dollars of the
69 assessed valuation of the property taxable in said park district,
70 within the corporate boundaries of the city of Huntington
71 according to the last assessment thereof for state and county
72 purposes, as follows:

73 On Class I property, one and one-half cents; on Class II
74 property, three cents; on Class IV property, six cents. The park
75 district may levy a lesser amount, in which case the above
76 levies shall be reduced proportionately. These levies shall be
77 made at the time and in the manner provided by article eight,
78 chapter eleven of the Code of West Virginia, one thousand nine
79 hundred thirty—one, as amended; except that the levies shall be
80 included in the maximum rates for the city of Huntington as
81 established by law.

82 After the park district has made the levy, it shall certify to
83 the finance director of the city of Huntington the amount of the
84 said levy, and the finance director shall thereupon extend the
85 levy upon the tax tickets, and all levies made by the park
86 district shall be collected by the finance director who shall
87 occupy a fiduciary relationship with the park district, and then
88 such levy funds shall be paid to the park district upon written
89 order of the park district signed by the president of the park
90 district and countersigned by the secretary of the park district.

91 Levies for support, maintenance and operation.

92 (5) In order to ensure adequate support for the maintenance
93 and operation of the park district, the following governing
94 authorities shall, upon written request by the park district, levy
95 annually as follows within the respective taxing districts of the
96 governing authorities, on each one hundred dollars of assessed
97 valuation of the property taxable in the area served by it

98 according to the last assessment for state and county purposes,
99 amounts not exceeding the following amounts for fiscal year
100 beginning the first day of July, one thousand nine hundred
101 eighty-three:

102 (a) The county commission of Cabell County, for the first
103 year of the act and annually thereafter: Class I, .433 cents; Class
104 II, .866 cents; Class III and Class IV, 1.73 cents.

105 (b) The county commission of Wayne County, for the first
106 year of the act and annually thereafter: Class I, .0066 cents;
107 Class II, .0132 cents; Class III and Class IV, .0266 cents.

108 (c) The board of education of the county of Cabell shall
109 provide funds available to the board through special and excess
110 levies for the first year of the act and annually thereafter: Class
111 I, .433 cents; Class II, .866 cents; Class III and Class IV, 1.73
112 cents.

113 (d) The city of Huntington, for the first year of the act and
114 annually thereafter: Class I, one and three-tenths cents; Class II,
115 two and six-tenths cents; Class III and Class IV, five and two-
116 tenths cents.

117 (e) The town of Milton, for the first year of the act and
118 annually thereafter: Class I, one and three-tenths cents; Class II,
119 two and six-tenths cents; Class III and Class IV, five and two-
120 tenths cents.

121 In addition to the aforesaid amounts which, upon written
122 request by said board, the governing authorities shall levy, each
123 such governing authority may support the park district with any
124 other general or special revenues or excess levies. All income
125 realized by the operation of the park district from any sources
126 other than the above levies shall be used by the board of
127 directors for support of the park district.

128 All money collected or appropriated by the foregoing
129 governing authorities for park district purposes shall be
130 deposited in a special account of the park district and shall be
131 disbursed by that board for the purpose of operating such park
132 district.

133 (6) Assess the cost of improvements to or construction of
134 streets, sidewalks, sewers, curbs, alleys, public ways or
135 easements, or portions thereof, upon the abutting property
136 owners whose property lies within the park district. Such
137 assessments shall require approval of a majority of the commis-
138 sioners present and voting and shall be commenced and
139 conducted in such manner as is prescribed by article eighteen,
140 chapter eight of the Code of West Virginia, one thousand nine
141 hundred thirty-one, as amended.

142 (7) The municipalities of Huntington and Milton and the
143 counties of Cabell and Wayne are hereby empowered, and
144 authorized to issue, in the manner prescribed by law, revenue
145 bonds or general obligation bonds for the purpose of raising
146 funds to establish, construct, improve, extend, develop, main-
147 tain or operate a system of public parks and recreational
148 facilities for the city or counties, or to refund any bonds of the
149 city or counties, the proceeds of which were expended in the
150 establishing, constructing, improving, extending, developing,
151 maintaining or operating of such public park and recreation
152 system or any part thereof. Any bonds issued for any of the
153 purposes stated in this section shall contain in the title or
154 subtitle thereto the words "public park and recreation bonds",
155 in order to identify the same, and shall be of such form,
156 denomination and maturity and shall bear such rate of interest
157 as shall be fixed by ordinance of the governing body of the city
158 or counties. The governing body may provide for the issuance
159 of bonds for other lawful purposes of the city or counties in the
160 same ordinance in which provision shall be made for the
161 issuance of bonds under the provisions of this section. The park

162 district shall pay all of the costs and expenses of any election
163 which shall be held to authorize the issuance of public park and
164 recreation bonds only. The costs and expenses of holding an
165 election to authorize the issuance of public park and recreation
166 bonds and bonds for other city or county purposes shall be paid
167 by the park district and the city or counties respectively, in the
168 proportion that the public park and recreation bonds bear to the
169 total amount of bonds authorized.

170 Whenever the governing body of the city or counties and
171 the requisite majority of the legal votes cast at the election
172 thereon shall authorize in the manner prescribed by law, the
173 issuance of bonds for the purpose of establishing, constructing,
174 improving, extending, developing, maintaining or operating, or
175 any combination of the foregoing, a system of public parks and
176 recreational facilities for the city or counties or for refunding
177 any outstanding bonds, the proceeds of which were applied to
178 any of said purposes, said bonds shall be issued and delivered
179 to the park district to be by it sold in the manner prescribed by
180 law and the proceeds thereof shall be paid into the treasury of
181 the park district and the same shall be applied and utilized by
182 the park district for the purposes prescribed by the ordinance
183 authorizing the issuance of such bonds. In any ordinance for
184 the issuance of bonds for such purposes, it shall be a sufficient
185 statement of the purposes for creating the debt to specify that
186 the same is for the purpose of establishing, constructing,
187 improving, extending, developing, maintaining or operating, or
188 any combination of the foregoing, a public park and recreation
189 system for the city or counties, without specifying the particular
190 establishment, construction, improvement, extension, develop-
191 ment, maintenance or operation contemplated; but an ordinance
192 for refunding bonds shall designate the issue and the number of
193 bonds which it is proposed to refund.

194 (8) Sue and be sued; make contracts and guarantees; incur
195 liabilities; borrow or lend money for any time period deemed

196 advisable by the commission, sell, mortgage, lease, exchange,
197 transfer or otherwise dispose of its property; or pledge its
198 property as collateral or security for any time period deemed
199 advisable by the commission.

200 (9) Create trusts of such kind as will expedite the efficient
201 management of the property and other assets owned or con-
202 trolled by the park district. The trustee, whether individual or
203 corporate, in any such trust shall have a fiduciary relationship
204 with the park district and may be removed by the park district
205 for good cause shown or for a breach of the fiduciary relation-
206 ship with the park district.

CHAPTER 132

**(Com. Sub. for H. B. 2128 — By Delegates Perry,
Pino, Leach and Michael)**

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-29, relating to authorizing the Executive Director of the Regional Jail and Correctional Facility Authority to establish an inmate furlough program and providing civil immunity.

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 §31-20-29, to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-29. Furlough program.

1 (a) The Executive Director, or his or her designee, is
2 authorized to establish under legislative rules promulgated by
3 the Executive Director pursuant to article three, chapter twenty-
4 nine-a of this code a furlough program for inmates under the
5 Authority's control and custody in accordance with the follow-
6 ing provisions:

7 (1) The program may include, but is not limited to,
8 granting furloughs or special escorts for specified inmates
9 under the Authority's control and custody to attend funerals or
10 make hospital visits to terminally ill family members.

11 (2) The Executive Director shall establish criteria to be used
12 in determining which inmates are not likely to jeopardize public
13 safety and should be granted a furlough or a special escort
14 through this program.

15 (3) The Executive Director is authorized to establish any
16 other guidelines he or she considers necessary to administer the
17 program and to ensure public safety, including, but not limited
18 to:

19 (A) Guidelines relating to eligibility for consideration,
20 restrictions, conditions and procedures; and

21 (B) The family relationship an inmate must have with the
22 deceased or terminally ill individual in order to qualify for
23 consideration for a furlough.

24 (b)(1) The Regional Jail and Correctional Facility Author-
25 ity, its members, Executive Director and employees of the
26 Authority are immune from suit and liability, either personally
27 or in their official capacity, for any claim for damage to or loss

28 of property or personal injury or other civil liability caused or
29 arising out of any actual or alleged act of an inmate while on a
30 furlough granted under this section.

31 (2) The immunity from suit and liability provided in this
32 subsection does not extend to liability for any damage, loss,
33 injury or liability caused by the intentional or willful and
34 wanton misconduct of any person identified in subdivision (1)
35 of this subsection.

CHAPTER 133

**(Com. Sub. for H. B. 2878 — By Delegates H. White,
Ron Thompson, Hrutkay, Perry, Azinger and G. White)**

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §23-1-1b of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 of said code; and to amend said code by adding thereto a new section, designated §33-41-8a, all relating to insurance fraud; authorizing the Insurance Commissioner to assign the Workers' Compensation Fraud and Abuse Unit to investigate insurance fraud; permitting the Insurance Commissioner's Fraud Unit to investigate Workers' Compensation fraud and the forgery of insurance documents; designating the Fraud Unit a criminal justice agency for purposes of access to information; and requiring fingerprinting and background checks of applicants for employment with the Fraud Unit.

Be it enacted by the Legislature of West Virginia:

That §23-1-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8a, all to read as follows:

Chapter

23. Workers' Compensation.

33. Insurance.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1b. Executive Director; qualifications; oath; seal; removal; powers and duties.

1 (a) The Executive Director shall be hired by the board of
2 managers for a term not to exceed five years and may be
3 retained based on overall performance for additional terms:
4 *Provided*, That the Executive Director of the Division of
5 Workers' Compensation on the date of the enactment of this
6 section in the year two thousand three shall serve as the initial
7 Executive Director of the commission and shall receive the
8 same salary and benefits as received as the Executive Director
9 of the Division of Workers' Compensation through and until
10 the board of managers establishes his or her salary and benefits
11 as the Executive Director of the Commission. The position of
12 Executive Director shall be full-time employment. Except for
13 the initial Executive Director, candidates for the position of
14 Executive Director shall have a minimum of a bachelor of arts
15 or science degree from an accredited four-year college or
16 university in one or more of the following disciplines: Finance;
17 economics; insurance administration; law; public administra-
18 tion; accounting; or business administration. Candidates for the
19 position of Executive Director will be considered based on their
20 demonstrated education, knowledge and a minimum of ten
21 years' experience in the areas of workers' compensation,

22 insurance company management, administrative and manage-
23 ment experience with an organization comparable in size to the
24 Workers' Compensation Commission or any relevant experi-
25 ence which demonstrates an ability to effectively accomplish
26 the purposes of this chapter.

27 (b) The Executive Director shall not be a candidate for or
28 hold any other public office or trust, nor shall he or she be a
29 member of a political committee. If he or she becomes a
30 candidate for a public office or becomes a member of a political
31 committee, his or her office as Executive Director shall be
32 immediately vacated.

33 (c) The Executive Director, before entering upon the duties
34 of his or her office, shall take and subscribe to the oath pre-
35 scribed by section five, article IV of the State Constitution. The
36 oath shall be filed with the Secretary of State.

37 (d) The Executive Director shall have an official seal for
38 the authentication of orders and proceedings, upon which seal
39 shall be engraved the words "West Virginia Workers' Compens-
40 ation Commission" and any other design prescribed by the
41 board of managers. The courts in this state shall take judicial
42 notice of the seal of the commission and in all cases copies of
43 orders, proceedings or records in the office of the West Virginia
44 Workers' Compensation Commission are equal to the original
45 in evidence.

46 (e) The Executive Director shall not be a member of the
47 board of managers.

48 (f) The Executive Director shall serve until the expiration
49 of his or her term, resignation or until removed by a two-thirds
50 vote of the full board of managers. The board of managers and
51 the Executive Director may, by agreement, terminate the term
52 of employment at any time.

53 (g) The Executive Director shall have overall management
54 responsibility and administrative control and supervision within
55 the Workers' Compensation commission and has the power and
56 duty to:

57 (1) Establish, with the approval of the board of managers,
58 the overall administrative policy of the Commission for the
59 purposes of this chapter;

60 (2) Employ, direct and supervise all employees required in
61 the connection with the performance of the duties assigned to
62 the Commission by this chapter and fix the compensation of the
63 employees in accordance with the provisions of article six,
64 chapter twenty-nine of this code: *Provided*, That the Executive
65 Director shall identify which members of the staff of the
66 Workers' Compensation Commission shall be exempted from
67 the salary schedules or pay plan adopted by the state personnel
68 board and further identify such staff members by job classifica-
69 tion or designation, together with the salary or salary ranges for
70 each such job classification or designation and shall file this
71 information with the Director of the Division of Personnel no
72 later than the thirty-first day of December, two thousand three,
73 and thereafter as changes are made or at least annually: *Pro-*
74 *vided, however*, That, effective the first day of July, two
75 thousand six, if the Commission has not been terminated or
76 otherwise discontinued, all employees of the Commission shall
77 be exempt and otherwise not under the jurisdiction of the
78 provisions of the statutes, rules and regulations of the classified
79 service set forth in article six, chapter twenty-nine of this code
80 and article six-a of said chapter and are afforded no protections,
81 rights or access to procedures set forth in said provision. All
82 commission employees shall be employees at will unless his or
83 her employment status is altered by an express, written employ-
84 ment contract executed on behalf of the Commission and the
85 employee. The Commission and its employees shall be exempt
86 and otherwise not under the jurisdiction of the state personnel

87 board, the Department of Personnel, or any other successor
88 agency, and their statutes, rules and regulations;

89 (3) Reorganize the work of the Commission, its divisions,
90 sections and offices to the extent necessary to achieve the most
91 efficient performance of its functions. All persons employed by
92 the Workers' Compensation Division in positions that were
93 formerly supervised and directed by the Commissioner of the
94 Bureau of Employment Programs under chapter twenty-one-a
95 of this code are hereby assigned and transferred in their
96 respective classifications to the Workers' Compensation
97 Commission effective the first day of October, two thousand
98 three. Further, the Executive Director may select persons that
99 are employed by the Bureau of Employment Programs on the
100 effective date of the enactment of this section in the year two
101 thousand three to be assigned and transferred to the Workers'
102 Compensation Commission in their respective classifications,
103 such assignment and transfer to take effect no later than the
104 thirty-first day of December, two thousand three. Employees in
105 the classified service who have gained permanent status as of
106 the effective date of this article will not be subject to further
107 qualifying examination in their respective classifications by
108 reason of any transfer required by the provisions of this
109 subdivision. Due to the emergency currently existing at the
110 Commission and the urgent need to develop fast, efficient
111 claims processing, management and administration, the
112 Executive Director is hereby granted authority to reorganize
113 internal functions and operations and to delegate, assign,
114 transfer, combine, establish, eliminate and consolidate responsi-
115 bilities and duties to and among the positions transferred under
116 the authority of this subdivision. The Division of Personnel
117 shall cooperate fully by assisting in all personnel activities
118 necessary to expedite all changes for the Commission. The
119 Executive Director is hereby granted authority to reorganize
120 internal functions and operations and to delegate, assign,
121 transfer, combine, establish, eliminate and consolidate responsi-

122 bilities and duties to and among the positions transferred under
123 the authority of this subdivision. The Division of Personnel
124 shall cooperate fully by assisting in all personnel activities
125 necessary to expedite all changes for the Commission and shall
126 otherwise continue to provide all necessary administrative
127 support to the Commission in connection with the ommission's
128 personnel needs until the company established in article two-c
129 of this chapter becomes operational. Nothing contained in this
130 subdivision shall be construed to either abridge the rights of
131 employees within the classified service of the state to the
132 procedures and protections set forth in article six, chapter
133 twenty-nine of this code or to preclude the reclassification or
134 reallocation of positions in accordance with procedures set forth
135 in said article;

136 (4) Exempt no more than twenty-five of any of the newly
137 created positions from the classified service of the state, the
138 employees of which positions shall serve at the will and
139 pleasure of the Executive Director. The Executive Director
140 shall report all exemptions made under this subdivision to the
141 Director of the Division of Personnel no later than the first day
142 of January, two thousand four, and thereafter as the Executive
143 Director determines to be necessary;

144 (5) With the advice and approval of the board of managers,
145 propose operating guidelines and policies to standardize
146 administration, expedite commission business and promote the
147 efficiency of the services provided by the Commission;

148 (6) Prepare and submit to the board of managers informa-
149 tion the board requires for classifications of occupations or
150 industries; the basis for premium rates, taxes, surcharges and
151 assessment for administrative charges, for assessments related
152 to loss experience, for assessments of prospective risk exposure,
153 for assessments of deficit management and deficit reduction
154 costs incurred, for other deficit management and deficit

155 reduction assessments, for rules and systems of rating, rate
156 revisions and merit rating for employers covered by this
157 chapter; and information regarding the extent, degree and
158 amount of subsidization between the classifications. The
159 Executive Director shall obtain, prepare and submit any other
160 information the board of managers requires for the prompt and
161 efficient discharge of its duties;

162 (7) Keep accurate and complete accounts and records
163 necessary to the collection, administration and distribution of
164 the workers' compensation funds;

165 8) Sign and execute in the name of the state, by "The
166 Workers' Compensation Commission", any contract or agree-
167 ment;

168 (9) Make recommendations and an annual report to the
169 Governor concerning the condition, operation and functioning
170 of the Commission;

171 (10) Invoke any legal or special remedy for the enforcement
172 of orders or the provisions of this chapter;

173 (11) Prepare and submit for approval to the board of
174 managers a budget for each fiscal year, including estimates of
175 the costs and necessary expenditures of the Commission in the
176 discharge of all duties imposed by this chapter as well as the
177 costs of furnishing office space to the officers and employees
178 of the Commission;

179 (12) Ensure that all employees of the Commission follow
180 the orders, operating guidelines and policies of the Commission
181 as they relate to the Commission's overall policymaking,
182 management and adjudicatory duties under this chapter;

183 (13) Delegate all powers and duties vested in the Executive
184 Director to his or her appointees and employees; but the
185 Executive Director is responsible for their acts;

186 (14) Provide at Commission expense a program of continu-
187 ing professional, technical and specialized instruction for the
188 personnel of the Commission. The Executive Director shall
189 consult with and report at least annually to the Legislative
190 Oversight Commission on Workforce Investment for Economic
191 Development to obtain the most appropriate training using all
192 available resources;

193 (15) (A) Contract or employ counsel to perform all legal
194 services for the Commission including, but not limited to,
195 representing the Executive Director, board of managers and
196 Commission in any administrative proceeding and in any state
197 or federal court. Additionally, the Commission may, but shall
198 not be required to, call upon the Attorney General for legal
199 assistance and representation as provided by law. The Attorney
200 General shall not approve or exercise authority over in-house
201 counsel or contract counsel hired pursuant to this section;

202 (B) In addition to the authority granted by this section to the
203 Executive Director and notwithstanding any provision to the
204 contrary elsewhere in this code, use any attorney regularly
205 employed by the Commission or the Office of the Attorney
206 General to represent the Commission, the Executive Director or
207 the board of managers in any matter arising from the perfor-
208 mance of its duties or the execution of its powers under this
209 chapter. In addition, the Executive Director, with the approval
210 of the board of managers, may retain counsel for any purpose
211 in the administration of this chapter relating to the collection of
212 any amounts due from employers to the Commission: *Provided,*
213 That the allocation of resources for the purpose of any collec-
214 tions shall be pursuant to the plan developed by the board of
215 managers. The board of managers shall solicit proposals from
216 counsel who are interested in representing the Commission
217 under the terms of this subdivision. Thereafter, the board of
218 managers shall select any attorneys it determines necessary to
219 pursue the collection objectives of this subdivision:

220 (i) Payment to retained counsel may either be hourly or by
221 other fixed fee, or as determined by the court or administrative
222 law judge as provided in this section. A contingency fee
223 payable from the amount recovered by judgment or settlement
224 for the Commission is only permitted, to the extent not prohib-
225 ited by federal law, when the assets of a defendant or respon-
226 dent are depleted so that a full recovery plus attorneys' fees is
227 not possible;

228 (ii) In the event that any collections action, other than a
229 collections action against a claimant, initiated either by retained
230 counsel or other counsel on behalf of the Commission results in
231 a judgment or settlement in favor of the Commission, the court
232 or, if there was no judicial component to the action, the
233 administrative law judge, shall determine the amount of
234 attorneys' fees that shall be paid by the defendants or respon-
235 dents to the retained or other counsel representing the Commis-
236 sion. If the court is to determine the amount of attorneys' fees,
237 it shall include in its determination the amount of fee that
238 should be paid for the representation of the Commission in
239 pursuing the administrative component, if any, of the action.
240 The amount so paid shall be fixed by the court or the adminis-
241 trative law judge in an amount no less than twenty percent of its
242 recovery. Any additional amount of attorneys' fees shall be
243 determined by use of the following factors:

244 (I) The counsel's normal hourly rate or, if the counsel is an
245 employee of the Commission or is an employee of the Office of
246 the Attorney General, an hourly rate the court or the adminis-
247 trative law judge determines to be customary based upon the
248 attorney's experience and skill level;

249 (II) The number of hours actually expended on the action;

250 (III) The complexity of the issues involved in the action;

251 (IV) The degree of risk involved in the case with regard to
252 the probability of success or failure;

253 (V) The overhead costs incurred by counsel with regard to
254 the use of paralegals and other office staff, experts and investi-
255 gators; and

256 (VI) The public purpose served or public objective achieved
257 by the attorney in obtaining the judgment or settlement on
258 behalf of the Commission;

259 (iii) Notwithstanding the provisions of paragraph (B) of this
260 subdivision, if the Commission and the defendants or respon-
261 dents to any administrative or judicial action settle the action,
262 the parties may negotiate a separate settlement of attorneys'
263 fees to be paid by the defendants or respondents above and
264 beyond the amount recovered by the Commission. In the event
265 that a settlement of attorneys' fees is made, it must be submit-
266 ted to the court or administrative law judge for approval;

267 (iv) Any attorney regularly employed by the Commission
268 or by the Office of the Attorney General may not receive any
269 remuneration for his or her services other than the attorney's
270 regular salary. Any attorneys' fees awarded for an employed
271 attorney are payable to the Commission;

272 (16) Propose rules for promulgation by the board of
273 managers under which agencies of this state shall revoke or
274 refuse to grant, issue or renew any contract, license, permit,
275 certificate or other authority to conduct a trade, profession or
276 business to or with any employing unit whose account is in
277 default with the Commission with regard to the administration
278 of this chapter. The term "agency" includes any unit of state
279 government such as officers, agencies, divisions, departments,
280 boards, commissions, authorities or public corporations. An
281 employing unit is not in default if it has entered into a repay-

282 ment agreement with the Commission and remains in compli-
283 ance with its obligations under the repayment agreements;

284 (A) The rules shall provide that, before granting, issuing or
285 renewing any contract, license, permit, certificate or other
286 authority to conduct a trade, profession or business to or with
287 any employing unit, the designated agencies shall review a list
288 or lists provided by the Commission of employers that are in
289 default. If the employing unit's name is not on the list, the
290 agency, unless it has actual knowledge that the employing unit
291 is in default with the Commission, may grant, issue or renew
292 the contract, license, permit, certificate or other authority to
293 conduct a trade, profession or business. The list may be
294 provided to the agency in the form of a computerized database
295 or databases that the agency can access. Any objections to the
296 refusal to issue or renew shall be reviewed under the appropri-
297 ate provisions of this chapter. The prohibition against granting,
298 issuing or renewing any contract, license, permit, certificate or
299 other authority under this subdivision shall remain in full force
300 and effect as promulgated under section six, article two, chapter
301 twenty-one-a of this code until the rules required by this
302 subsection are promulgated and in effect;

303 (B) The rules shall also provide a procedure allowing any
304 agency or interested person, after being covered under the rules
305 for at least one year, to petition the Commission to be exempt
306 from the provisions of the rules;

307 (17) Deposit to the credit of the appropriate special revenue
308 account or fund, notwithstanding any other provision of this
309 code and to the extent allowed by federal law, all amounts of
310 delinquent payments or overpayments, interest and penalties
311 thereon and attorneys' fees and costs collected under the
312 provisions of this chapter. The amounts collected shall not be
313 treated by the Auditor or Treasurer as part of the general
314 revenue of the state;

315 (18) Recommend for approval of the board of managers
316 rules for the administration of claims management by self-
317 insured employers and third-party administrators including
318 regulation and sanctions for the rejection of claims and for
319 maintaining claim records and ensuring access to all claim
320 records by interested claimants, claimant representatives, the
321 Commission and the Office of Judges;

322 (19) Recommend for approval of the board of managers,
323 rules to eliminate the ability of an employer to avoid an
324 experience modification factor by virtue of a reorganization of
325 a business;

326 (20) Submit for approval of the board of managers rules
327 setting forth procedures for auditing and investigating employ-
328 ers, including employer premium audits and including auditing
329 and investigating programs of self-insured employers and third-
330 party administrators, employees, health care providers and
331 medical and vocational rehabilitation service providers;

332 (21) Regularly audit and monitor programs established by
333 self-insured or third-party administrators under this chapter to
334 ensure compliance with the Commission's rules and the law;

335 (22) Facilitate the transfer of the fraud investigation and
336 prosecution unit, along with the assets necessary to support the
337 functions being performed, to the Insurance Commissioner.
338 This transfer shall be completed by the first day of July, two
339 thousand five. This unit has the responsibility and authority for
340 investigating and controlling fraud of the Workers' Compensa-
341 tion system of the State of West Virginia and shall perform
342 such other duties as may be assigned to it by the Insurance
343 Commissioner. The fraud unit shall be under the supervision of
344 an inspector general, who shall be appointed by the Insurance
345 Commissioner. Nothing in this section shall preclude the
346 Commission or, when applicable, the company created in article

347 two-c of this chapter and other private carriers, from independ-
348 ently investigating and controlling abuse and exercising the
349 powers granted to the Commission to address and eliminate
350 abuse under this chapter. The Executive Director may select
351 persons that are assigned to the fraud and abuse unit on the
352 effective date of the enactment of this section to be assigned
353 and remain employees of the Workers' Compensation Commis-
354 sion. The Commission shall determine its fiscal year two
355 thousand six budget for the fraud investigation and prosecution
356 unit and shall make advanced quarterly payments to the
357 Insurance Commissioner during fiscal year two thousand six for
358 the actual operational expenses incurred as a direct result of this
359 transfer: *Provided*, That the payments and expenses shall be
360 reconciled prior to the final fiscal year transfer and any unex-
361 pended amount shall be deducted from the final quarter's
362 payment. This reimbursement methodology shall repeat for
363 fiscal year two thousand seven. Any amounts transferred under
364 this section to the Insurance Commissioner shall be appropri-
365 ated by the Legislature. The Commission's inspector general
366 shall serve as the initial inspector general for the insurance
367 commissioner;

368 (A) The inspector general shall, with the consent and advice
369 of the Executive Director, employ all personnel as necessary for
370 the institution, development and finalization of procedures and
371 investigations which serve to ensure that only necessary and
372 proper workers' compensation benefits and expenses are paid
373 to or on behalf of injured employees and to insure employers
374 subscribe to and pay the proper premium to the West Virginia
375 Workers' Compensation Commission. Qualification, compensa-
376 tion and personnel practice relating to the employees of the
377 fraud and abuse unit, including that of the position of inspector
378 general, shall be governed by the provisions of the statutes and
379 rules of the classified service pursuant to article six, chapter
380 twenty-nine of this code. The inspector general shall supervise

381 all personnel, which collectively shall be referred to in this
382 chapter as the fraud and abuse unit;

383 (B) The fraud and abuse unit shall have the following
384 powers and duties:

385 (i) The fraud and abuse unit shall propose for promulgation
386 by the board of managers rules for determining the existence of
387 fraud and abuse as it relates to the Workers' Compensation
388 System in West Virginia;

389 (ii) The fraud and abuse unit will be responsible for the
390 initiation, development, review and proposal for promulgation
391 by the board of managers of rules regarding the existence of
392 fraud and abuse as it relates to the Workers' Compensation
393 System in West Virginia;

394 (iii) The fraud and abuse unit will take action to identify
395 and prevent and discourage any and all fraud and abuse;

396 (iv) The fraud and abuse unit, in cases of criminal fraud,
397 has the authority to review and prosecute those cases for
398 violations of sections twenty-four-e, twenty-four-f, twenty-four-
399 g and twenty-four-h, article three, chapter sixty-one of this
400 code, as well as any other criminal statutes that may be applica-
401 ble. In addition the fraud and abuse unit not only has the
402 authority to prosecute and refer cases involving criminal fraud
403 to appropriate state authorities for prosecution, but it also has
404 the authority, and is encouraged, to cooperate with the appropri-
405 ate federal authorities for review and possible prosecution, by
406 either state or federal agencies, of cases involving criminal
407 fraud concerning the Workers' Compensation System in West
408 Virginia;

409 (v) The fraud and abuse unit, in cases which do not meet
410 the definition of criminal fraud, but would meet a reasonable
411 person's definition of an abuse of the Workers' Compensation

412 System, shall take the appropriate action to discourage and
413 prevent such abuse. Furthermore, the fraud and abuse unit shall
414 assist the Commission to develop evidence of fraud or abuse
415 which can be used pursuant to the provisions of this chapter to
416 suspend, and where appropriate, terminate, a claimant's
417 benefits. In addition, evidence developed pursuant to these
418 provisions can be used in hearings before the office of judges
419 on protests to Commission decisions terminating, or not
420 terminating, temporary total disability benefits; and

421 (vi) The fraud and abuse unit is expressly authorized to
422 initiate investigations and participate in the development of, and
423 if necessary, the prosecution of any health care provider,
424 including a provider of rehabilitation services, alleged to have
425 violated the provisions of section three-c, article four of this
426 chapter;

427 (C) Specific personnel, designated by the inspector general,
428 shall be permitted to operate vehicles owned or leased for the
429 state displaying Class A registration plates;

430 (D) Notwithstanding any provision of this code to the
431 contrary, specific personnel designated by the inspector general
432 may carry handguns in the course of their official duties after
433 meeting specialized qualifications established by the Gover-
434 nor's Committee on Crime, Delinquency and Correction, which
435 qualifications shall include the successful completion of
436 handgun training provided to law-enforcement officers by the
437 West Virginia State Police: *Provided*, That nothing in this
438 subsection shall be construed to include the personnel so
439 designated by the inspector general to carry handguns within
440 the meaning of the term law-enforcement official as defined in
441 section one, article twenty-nine, chapter thirty of this code;

442 (E) The fraud and abuse unit is not subject to any require-
443 ment of article nine-a, chapter six of this code and the investi-
444 gations conducted by the fraud and abuse unit and the materials

445 placed in the files of the unit as a result of any such investiga-
446 tion are exempt from public disclosure under the provisions of
447 chapter twenty-nine-b of this code;

448 (F) In the event that a final judicial decision adjudges that
449 the statewide prosecutorial powers vested by this subdivision in
450 the fraud and abuse unit may only be exercised by a public
451 official other than an employee of the fraud and abuse unit, then
452 to that extent the provisions of this subdivision vesting state-
453 wide prosecutorial power shall thenceforth be of no force and
454 effect, the remaining provisions of this subdivision shall
455 continue in full force and effect and prosecutions hereunder
456 may only be exercised by the prosecuting attorneys of this state
457 and their assistants or special assistant prosecuting attorneys
458 appointed as provided by law;

459 (23) Enter into interagency agreements to assist in exchange-
460 ing information and fulfilling the default provisions of this
461 chapter;

462 (24) Notwithstanding any provision of this code to the
463 contrary, the Executive Director, under emergency authoriza-
464 tion:

465 (A) May expend up to fifty thousand dollars for purchases
466 of and may contract for goods and services without securing
467 competitive bids. This emergency spending authority expires on
468 the first day of July, two thousand five; and

469 (B) May expend such sums as the Executive Director
470 determines are necessary for professional services, contracts for
471 the purchase of an automated claims administration system and
472 associated computer hardware and software in the administra-
473 tion of claims for benefits made under provisions of this chapter
474 and contracts for technical services and related services
475 necessary to develop, implement and maintain the system and
476 associated computer hardware and software. The provisions of

477 article three, chapter five-a of this code relating to the purchas-
478 ing division of the Department of Administration shall not
479 apply to these contracts. The Director shall award the contract
480 or contracts on a competitive basis. This emergency spending
481 authority expires on the thirty-first day of December, two
482 thousand six;

483 (25) Establish an employer violator system to identify
484 individuals and employers who are in default or are delinquent
485 on any premium, assessment, surcharge, tax or penalty owed to
486 the Commission. The employer violator system shall prohibit
487 violators who own, control or have a ten percent or more
488 ownership interest, or other ownership interest as may be
489 defined by the Commission, in any company from obtaining or
490 maintaining any license, certificate or permit issued by the state
491 until the violator has paid all moneys owed to the Commission
492 or has entered into and remains in compliance with a repayment
493 agreement;

494 (26) Propose the designation of health care providers to
495 make decisions for the Commission regarding appropriateness
496 of medical services;

497 (27) Study the correlation between premium tax merit
498 rating for employers and the safety performance of employers.
499 This study shall be completed prior to the first day of July, two
500 thousand four, and the results thereof provided to the board of
501 managers;

502 (28) Upon termination of the Commission, accomplish the
503 transfer to the Insurance Commissioner established in article
504 two-c of this chapter, the Insurance Commissioner, and any
505 other applicable state agency or department, of the functions
506 necessary for the regulation of the Workers' Compensation
507 insurance industry, including, but not limited to, the following
508 Commission functions: rate making, self-insurance, office of

509 judges and board of review. The Executive Director may select
510 persons that are assigned to these functions on the effective date
511 of the enactment of this section to be assigned and become
512 employees of the company as established in article two-c of this
513 chapter. The Executive Director may, in consultation with the
514 Insurance Commissioner, select persons that are assigned to the
515 Insurance Commissioner. The commission shall determine its
516 fiscal year two thousand six budget for each of these functions,
517 reduce the budget amount attributable to self-insured employers
518 for these functions and shall make advanced quarterly payments
519 to the Insurance Commissioner during fiscal year two thousand
520 six for the actual operational expenses incurred as a direct result
521 of this transfer. The amount shall include the funds necessary
522 to operate the industrial council and the Insurance Commis-
523 sioner shall be administratively responsible for the industrial
524 council's budget: *Provided*, That the payments and expenses
525 shall be reconciled prior to the final fiscal year transfer and any
526 unexpended amount shall be deducted from the final quarter's
527 payment. This reimbursement methodology shall repeat for
528 fiscal year two thousand seven. Any amounts transferred under
529 this section to the Insurance Commissioner shall be appropri-
530 ated by the Legislature. For the final calendar quarter of two
531 thousand five and the first and second calendar quarters of the
532 year two thousand six, all self- insured employers shall remit to
533 the Insurance Commissioner on a quarterly basis the adminis-
534 trative component of their fiscal year two thousand six rate. For
535 the fiscal year beginning the first day of July, two thousand six,
536 self-insured employers shall remit an administrative charge to
537 the Insurance Commissioner in an amount determined by the
538 Commissioner. All self-insured employer advance deposits
539 shall transfer from the Commission to the Insurance Commis-
540 sioner upon termination of the Commission; and

541 (29) Perform all duties set forth in article two-c of this
542 chapter.

CHAPTER 33. INSURANCE.**ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.**

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

§33-41-8a. Fingerprinting and background check for applicants for employment with fraud unit.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

1 (a) There is established the West Virginia Insurance Fraud
2 Unit within the office of the Insurance Commissioner of West
3 Virginia. The Commissioner may employ full-time supervisory,
4 legal and investigative personnel for the unit, who shall be
5 qualified by training and experience in the areas of detection,
6 investigation or prosecution of fraud within and against the
7 insurance industry to perform the duties of their positions. The
8 Director of the fraud unit is a full-time position and shall be
9 appointed by the Commissioner and serve at his or her will and
10 pleasure. The Commissioner shall provide office space,
11 equipment, supplies, clerical and other staff that is necessary for
12 the unit to carry out its duties and responsibilities under this
13 article.

14 (b) The fraud unit may in its discretion:

15 (1) Initiate inquiries and conduct investigations when the
16 unit has cause to believe violations of any of the following
17 provisions of this code relating to the business of insurance
18 have been or are being committed: Chapter twenty-three;
19 chapter thirty-three; article three of chapter sixty-one; and
20 section five, article four of chapter sixty-one.

21 (2) Review reports or complaints of alleged fraud related to
22 the business of insurance activities from federal, state and local
23 law-enforcement and regulatory agencies, persons engaged in

24 the business of insurance and the general public to determine
25 whether the reports require further investigation; and

26 (3) Conduct independent examinations of alleged fraudulent
27 activity related to the business of insurance and undertake
28 independent studies to determine the extent of fraudulent
29 insurance acts.

30 (c) The insurance fraud unit may:

31 (1) Employ and train personnel to achieve the purposes of
32 this article and to employ legal counsel, investigators, auditors
33 and clerical support personnel and other personnel as the
34 Commissioner determines necessary from time to time to
35 accomplish the purposes of this article;

36 (2) Inspect, copy or collect records and evidence;

37 (3) Serve subpoenas issued by grand juries and trial courts
38 in criminal matters;

39 (4) Share records and evidence with federal, state or local
40 law-enforcement or regulatory agencies, and enter into inter-
41 agency agreements. For purposes of carrying out investigations
42 under this article, the unit shall be deemed a criminal justice
43 agency under all federal and state laws and regulations and as
44 such shall have access to any information that is available to
45 other criminal justice agencies concerning violations of the
46 insurance laws of West Virginia or related criminal laws;

47 (5) Make criminal referrals to the county prosecutors;

48 (6) Conduct investigations outside this state. If the informa-
49 tion the insurance fraud unit seeks to obtain is located outside
50 this state, the person from whom the information is sought may
51 make the information available to the insurance fraud unit to
52 examine at the place where the information is located. The

53 insurance fraud unit may designate representatives, including
54 officials of the state in which the matter is located, to inspect
55 the information on behalf of the insurance fraud unit, and the
56 insurance fraud unit may respond to similar requests from
57 officials of other states;

58 (7) The insurance fraud unit may initiate investigations and
59 participate in the development of, and if necessary, the prosecu-
60 tion of any health care provider, including a provider of
61 rehabilitation services, suspected of fraudulent activity related
62 to the business of insurance;

63 (8) Specific personnel, designated by the Commissioner,
64 shall be permitted to operate vehicles owned or leased for the
65 state displaying Class A registration plates;

66 (9) Notwithstanding any provision of this code to the
67 contrary, specific personnel designated by the Commissioner
68 may carry firearms in the course of their official duties after
69 meeting specialized qualifications established by the Gover-
70 nor's committee on crime, delinquency and correction, which
71 shall include the successful completion of handgun training
72 provided to law-enforcement officers by the West Virginia
73 State Police: *Provided*, That nothing in this subsection shall be
74 construed to include any person designated by the Commis-
75 sioner as a law-enforcement officer as that term is defined by
76 the provisions of section one, article twenty-nine, chapter thirty
77 of this code; and

78 (10) The insurance fraud unit shall not be subject to the
79 provisions of article nine-a, chapter six of this code and the
80 investigations conducted by the insurance fraud unit and the
81 materials placed in the files of the unit as a result of any such
82 investigation are exempt from public disclosure under the
83 provisions of chapter twenty-nine-b of this code.

84 (d) The insurance fraud unit shall perform other duties as
85 may be assigned to it by the Commissioner.

**§33-41-8a. Fingerprinting and background check for applicants
for employment with fraud unit.**

1 (a) The Commissioner shall require any applicant for
2 employment with the fraud unit to be fingerprinted. The
3 Commissioner is authorized to conduct a criminal records check
4 through the Criminal Identification Bureau of the West Virginia
5 State Police and a national criminal history check through the
6 Federal Bureau of Investigation. The results of any criminal
7 records or criminal history check shall be sent to the Commis-
8 sioner. The West Virginia State Police may exchange this
9 fingerprint data with the Federal Bureau of Investigation.

10 (b) The Director shall not disclose information obtained
11 pursuant to subsection (a) of this section except for purposes
12 directly related to the employment of the applicant.

CHAPTER 134

(H. B. 3152 — By Delegates Michael, Stalnaker, Frederick,
Proudfoot, Ron Thompson and Ashley)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §29-12-5a of the Code of West Virginia, 1931, as amended, relating to liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the State Department of Corrections; and clarifying that the

Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility.

Be it enacted by the Legislature of West Virginia:

That § 29-12-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the State Department of Corrections.

1 (a) In accordance with the provisions of this article, the
2 state Board of Risk and Insurance Management shall provide
3 appropriate professional or other liability insurance for all
4 county boards of education, teachers, supervisory and adminis-
5 trative staff members, service personnel, county superinten-
6 dents of schools and school board members and for all employ-
7 ees and officers of the State Department of Corrections:
8 *Provided*, That the Board of Risk and Insurance Management
9 is not required to provide insurance for every property, activity
10 or responsibility of county boards of education, teachers,
11 supervisory and administrative staff members, service person-
12 nel, county superintendents of schools and school board
13 members and for all employees and officers of the State
14 Department of Corrections.

15 (b) Insurance provided by the Board of Risk and Insurance
16 Management pursuant to the provisions of subsection (a) of this
17 section shall cover claims, demands, actions, suits or judgments
18 by reason of alleged negligence or other acts resulting in bodily
19 injury or property damage to any person within or without any
20 school building or correctional institution if, at the time of the
21 alleged injury, the teacher, supervisor, administrator, service

22 personnel employee, county superintendent, school board
23 member, or employee or officer of the Department of Correc-
24 tions was acting in the discharge of his or her duties, within the
25 scope of his or her office, position or employment, under the
26 direction of the Board of Education or Commissioner of
27 Corrections or in an official capacity as a county superintendent
28 or as a school board member or as Commissioner of Correc-
29 tions.

30 (c) Insurance coverage provided by the Board of Risk and
31 Insurance Management pursuant to subsection (a) of this
32 section shall be in an amount to be determined by the state
33 Board of Risk and Insurance Management, but in no event less
34 than one million dollars for each occurrence. In addition, each
35 county board of education shall purchase, through the Board of
36 Risk and Insurance Management, excess coverage of at least
37 five million dollars for each occurrence. The cost of this excess
38 coverage will be paid by the respective county boards of
39 education. Any insurance purchased under this section shall be
40 obtained from a company licensed to do business in this state.

41 (d) The insurance policy provided by the Board of Risk and
42 Insurance Management pursuant to subsection (a) of this
43 section shall include comprehensive coverage, personal injury
44 coverage, malpractice coverage, corporal punishment coverage,
45 legal liability coverage as well as a provision for the payment
46 of the cost of attorney's fees in connection with any claim,
47 demand, action, suit or judgment arising from such alleged
48 negligence or other act resulting in bodily injury under the
49 conditions specified in this section.

50 (e) The county superintendent and other school personnel
51 shall be defended by the county board or an insurer in the case
52 of suit, unless the act or omission shall not have been within the
53 course or scope of employment or official responsibility or was
54 motivated by malicious or criminal intent.

CHAPTER 135

**(Com. Sub. for S. B. 418 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §33-2-9, §33-2-16 and §33-2-17 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-2-15d; to amend and reenact §33-3-33 of said code; to amend said code by adding thereto a new section, designated §33-6-15a; to amend said code by adding thereto two new sections, designated §33-11-4a and §33-11-4b; to amend and reenact §33-11-6 of said code; and to amend said code by adding thereto a new section, designated §33-20-4a, all relating generally to the regulation of insurance; increasing certain fees for property and casualty insurers; limiting these certain fees upon meeting special fund funding threshold; providing that Insurance Commissioner shall conduct a study and promulgate rules relating thereto; providing that the Director of Consumer Advocacy be appointed by the Governor; requiring that the Director of Consumer Advocacy be a licensed lawyer; expanding the authority of the Office of Consumer Advocacy; reducing a surcharge on fire and casualty insurance policies; modifying distribution of surcharge; providing for notice of savings in certain insurance policies; eliminating a cause of action for unfair claims settlement practices by third parties; establishing procedures for the filing, investigation and processing of administrative complaints by third-party claimants; defining certain terms; establishing special account to award restitution; providing for limited administrative restitution to third-party claimants in

certain circumstances; providing for penalties for engaging in unfair claims settlement practices or general business practices; providing an internal contingent voiding provision; providing for judicial review of administrative process; limiting applicability of Act; and establishing that certain insurers shall submit rate filings biannually.

Be it enacted by the Legislature of West Virginia:

That §33-2-9, §33-2-16 and §33-2-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-2-15d; that §33-3-33 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-6-15a; that said code be amended by adding thereto two new sections, designated §33-11-4a and §33-11-4b; that §33-11-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-20-4a, all to read as follows:

Article

- 2. Insurance Commissioner.**
- 3. Licensing, Fees & Taxation of Insurers.**
- 6. The Insurance Policy.**
- 11. Unfair Trade Practices.**
- 20. Rates and Rating Organizations.**

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-15d. Report to the Legislature.

§33-2-16. Office of Consumer Advocacy established; Director of Consumer Advocacy; promulgation of rules.

§33-2-17. Office of Consumer Advocacy.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

- 1 (a) The purpose of this section is to provide an effective and
- 2 efficient system for examining the activities, operations,

3 financial condition and affairs of all persons transacting the
4 business of insurance in this state and all persons otherwise
5 subject to the jurisdiction of the Commissioner. The provisions
6 of this section are intended to enable the Commissioner to adopt
7 a flexible system of examinations which directs resources as
8 may be considered appropriate and necessary for the adminis-
9 tration of the insurance and insurance-related laws of this state.

10 (b) For purposes of this section, the following definitions
11 shall apply:

12 (1) "Commissioner" means the Commissioner of Insurance
13 of this state;

14 (2) "Company" or "insurance company" means any person
15 engaging in or proposing or attempting to engage in any
16 transaction or kind of insurance or surety business and any
17 person or group of persons who may otherwise be subject to the
18 administrative, regulatory or taxing authority of the Commis-
19 sioner, including, but not limited to, any domestic or foreign
20 stock company, mutual company, mutual protective association,
21 farmers mutual fire companies, fraternal benefit society,
22 reciprocal or interinsurance exchange, nonprofit medical care
23 corporation, nonprofit health care corporation, nonprofit
24 hospital service association, nonprofit dental care corporation,
25 health maintenance organization, captive insurance company,
26 risk retention group or other insurer regardless of the type of
27 coverage written, benefits provided or guarantees made by
28 each;

29 (3) "Department" means the Department of Insurance of
30 this state; and

31 (4) "Examiners" means the Commissioner of Insurance or
32 any individual or firm having been authorized by the Commis-
33 sioner to conduct an examination pursuant to this section,
34 including, but not limited to, the Commissioner's deputies,
35 other employees, appointed examiners or other appointed

36 individuals or firms who are not employees of the Department
37 of Insurance.

38 (c) The Commissioner or his or her examiners may conduct
39 an examination under this section of any company as often as
40 the Commissioner in his or her discretion considers appropriate.
41 The Commissioner or his or her examiners shall at least once
42 every five years visit each domestic insurer and thoroughly
43 examine its financial condition and methods of doing business
44 and ascertain whether it has complied with all the laws and
45 regulations of this state. The Commissioner may also examine
46 the affairs of any insurer applying for a license to transact any
47 insurance business in this state.

48 (d) The Commissioner or his or her examiners shall, at a
49 minimum, conduct an examination of every foreign or alien
50 insurer licensed in this state not less frequently than once every
51 five years. The examination of an alien insurer may be limited
52 to its United States business: *Provided*, That in lieu of an
53 examination under this section of any foreign or alien insurer
54 licensed in this state, the Commissioner may accept an exami-
55 nation report on the company as prepared by the insurance
56 department for the company's state of domicile or port-of-entry
57 state until the first day of January, one thousand nine hundred
58 ninety-four. Thereafter, the reports may only be accepted if:

59 (1) The insurance department was at the time of the
60 examination accredited under the National Association of
61 Insurance Commissioners' Financial Regulation Standards and
62 Accreditation Program; or

63 (2) The examination is performed under the supervision of
64 an accredited insurance department or with the participation of
65 one or more examiners who are employed by an accredited state
66 insurance department and who, after a review of the examina-
67 tion work papers and report, state under oath that the examina-
68 tion was performed in a manner consistent with the standards
69 and procedures required by their insurance department.

70 (e) In scheduling and determining the nature, scope and
71 frequency of examinations conducted pursuant to this section,
72 the Commissioner may consider such matters as the results of
73 financial statement analyses and ratios, changes in management
74 or ownership, actuarial opinions, reports of independent
75 certified public accountants and other criteria as set forth in the
76 examiners' handbook adopted by the National Association of
77 Insurance Commissioners and in effect when the Commissioner
78 exercises discretion under this section.

79 (f) For purposes of completing an examination of any
80 company under this section, the Commissioner may examine or
81 investigate any person, or the business of any person, insofar as
82 the examination or investigation is, in the sole discretion of the
83 Commissioner, necessary or material to the examination of the
84 company.

85 (g) The Commissioner may also cause to be examined, at
86 the times as he or she considers necessary, the books, records,
87 papers, documents, correspondence and methods of doing
88 business of any agent, broker, excess lines broker or solicitor
89 licensed by this state. For these purposes, the Commissioner or
90 his or her examiners shall have free access to all books, records,
91 papers, documents and correspondence of all the agents,
92 brokers, excess lines brokers and solicitors wherever the books,
93 records, papers, documents and records are situate. The
94 Commissioner may revoke the license of any agent, broker,
95 excess lines broker or solicitor who refuses to submit to the
96 examination.

97 (h) In addition to conducting an examination, the Commis-
98 sioner or his or her examiners may, as the Commissioner
99 considers necessary, analyze or review any phase of the
100 operations or methods of doing business of an insurer, agent,
101 broker, excess lines broker, solicitor or other individual or
102 corporation transacting or attempting to transact an insurance
103 business in the State of West Virginia. The Commissioner may
104 use the full resources provided by this section in carrying out
105 these responsibilities, including any personnel and equipment

106 provided by this section as the Commissioner considers necessary.

107 (i) Examinations made pursuant to this section shall be
108 conducted in the following manner:

109 (1) Upon determining that an examination should be
110 conducted, the Commissioner or his or her designee shall issue
111 an examination warrant appointing one or more examiners to
112 perform the examination and instructing them as to the scope of
113 the examination. The appointment of any examiners pursuant
114 to this section by the Commissioner shall not be subject to the
115 requirements of article three, chapter five-a of this code, except
116 that the contracts and agreements shall be approved as to form
117 and conformity with applicable law by the Attorney General.
118 In conducting the examination, the examiner shall observe
119 those guidelines and procedures set forth in the examiners'
120 handbook adopted by the National Association of Insurance
121 Commissioners. The Commissioner may also employ any other
122 guidelines or procedures as the Commissioner may consider
123 appropriate;

124 (2) Every company or person from whom information is
125 sought, its officers, directors and agents shall provide to the
126 examiners appointed under subdivision (1) of this subsection
127 timely, convenient and free access at all reasonable hours at its
128 offices to all books, records, accounts, papers, documents and
129 any or all computer or other recordings relating to the property,
130 assets, business and affairs of the company being examined.
131 The officers, directors, employees and agents of the company
132 or person shall facilitate the examination and aid in the exami-
133 nation so far as it is in their power to do so;

134 (3) The refusal of any company, by its officers, directors,
135 employees or agents, to submit to examination or to comply
136 with any reasonable written request of the examiners shall be
137 grounds for suspension, revocation, refusal or nonrenewal of
138 any license or authority held by the company to engage in an
139 insurance or other business subject to the Commissioner's
140 jurisdiction. Any proceedings for suspension, revocation,

141 refusal or nonrenewal of any license or authority shall be
142 conducted pursuant to section eleven of this article;

143 (4) The Commissioner or his or her examiners shall have
144 the power to issue subpoenas, to administer oaths and to
145 examine under oath any person as to any matter pertinent to the
146 examination, analysis or review. The subpoenas shall be
147 enforced pursuant to the provisions of section six of this article;

148 (5) When making an examination, analysis or review under
149 this section, the Commissioner may retain attorneys, appraisers,
150 independent actuaries, independent certified public accountants,
151 professionals or specialists with training or experience in
152 reinsurance, investments or information systems or other
153 professionals and specialists as examiners, the cost of which
154 shall be borne by the company which is the subject of the
155 examination, analysis or review or, in the Commissioner's
156 discretion, paid from the Commissioner's Examination Revolv-
157 ing Fund. The Commissioner may recover costs paid from the
158 Commissioner's Examination Revolving Fund pursuant to this
159 subdivision from the company upon which the examination,
160 analysis or review is conducted unless the subject of the
161 examination, analysis or review is an individual described in
162 subdivision (2), subsection (q) of this section;

163 (6) Nothing contained in this section may be construed to
164 limit the Commissioner's authority to terminate or suspend any
165 examination, analysis or review in order to pursue other legal
166 or regulatory action pursuant to the insurance laws of this state.
167 The Commissioner or his or her examiners may at any time
168 testify and offer other proper evidence as to information
169 secured during the course of an examination, analysis or review
170 whether or not a written report of the examination has at that
171 time either been made, served or filed in the Commissioner's
172 Office;

173 (7) Nothing contained in this section may be construed to
174 limit the Commissioner's authority to use and, if appropriate,
175 to make public any final or preliminary examination report, any
176 examiner or company workpapers or other documents or any

177 other information discovered or developed during the course of
178 any examination, analysis or review in the furtherance of any
179 legal or regulatory action which the Commissioner may, in his
180 or her sole discretion, consider appropriate. An examination
181 report, when filed, shall be admissible in evidence in any action
182 or proceeding brought by the Commissioner against an insur-
183 ance company, its officers or agents and shall be prima facie
184 evidence of the facts stated therein.

185 (j) Examination reports prepared pursuant to the provisions
186 of this section shall comply with the following requirements:

187 (1) All examination reports shall be comprised of only facts
188 appearing upon the books, records or other documents of the
189 company, its agents or other persons examined or as ascertained
190 from the testimony of its officers or agents or other persons
191 examined concerning its affairs and any conclusions and
192 recommendations the examiners find reasonably warranted
193 from the facts;

194 (2) No later than sixty days following completion of the
195 examination the examiner in charge shall file with the Commis-
196 sioner a verified written report of examination under oath.
197 Upon receipt of the verified report, the Commissioner shall
198 transmit the report to the company examined, together with a
199 notice which shall afford the company examined a reasonable
200 opportunity of not more than ten days to make a written
201 submission or rebuttal with respect to any matters contained in
202 the examination report;

203 (3) Within thirty days of the end of the period allowed for
204 the receipt of written submissions or rebuttals the Commis-
205 sioner shall fully consider and review the report, together with
206 any written submissions or rebuttals and any relevant portions
207 of the examiner's workpapers and enter an order:

208 (A) Adopting the examination report as filed or with
209 modification or corrections. If the examination report reveals
210 that the company is operating in violation of any law, rule or
211 prior order of the Commissioner, the Commissioner may order

212 the company to take any action the Commissioner considers
213 necessary and appropriate to cure the violation; or

214 (B) Rejecting the examination report with directions to the
215 examiners to reopen the examination for purposes of obtaining
216 additional data, documentation or information and refileing
217 pursuant to subdivision (2) of this subsection; or

218 (C) Calling for an investigatory hearing with no less than
219 twenty days' notice to the company for purposes of obtaining
220 additional documentation, data, information and testimony;

221 (4) All orders entered pursuant to this subsection shall be
222 accompanied by findings and conclusions resulting from the
223 Commissioner's consideration and review of the examination
224 report, relevant examiner workpapers and any written submis-
225 sions or rebuttals. Any order issued pursuant to paragraph (A),
226 subdivision (3) of this subsection shall be considered a final
227 administrative decision and may be appealed pursuant to
228 section fourteen of this article and shall be served upon the
229 company by certified mail, together with a copy of the adopted
230 examination report. Within thirty days of the issuance of the
231 adopted report the company shall file affidavits executed by
232 each of its directors stating under oath that they have received
233 a copy of the adopted report and related orders.

234 (k) Hearings conducted pursuant to this section shall be
235 subject to the following requirements:

236 (1) Any hearing conducted pursuant to this section by the
237 Commissioner or the Commissioner's authorized representative
238 shall be conducted as a nonadversarial confidential investiga-
239 tory proceeding as necessary for the resolution of any inconsis-
240 tencies, discrepancies or disputed issues apparent upon the face
241 of the filed examination report or raised by or as a result of the
242 Commissioner's review of relevant workpapers or by the
243 written submission or rebuttal of the company. Within twenty
244 days of the conclusion of any hearing, the Commissioner shall
245 enter an order pursuant to paragraph (A), subdivision (3),
246 subsection (j) of this section;

247 (2) The Commissioner may not appoint an examiner as an
248 authorized representative to conduct the hearing. The hearing
249 shall proceed expeditiously with discovery by the company
250 limited to the examiner's workpapers which tend to substantiate
251 any assertions set forth in any written submission or rebuttal.
252 The Commissioner or the Commissioner's representative may
253 issue subpoenas for the attendance of any witnesses or the
254 production of any documents considered relevant to the
255 investigation whether under the control of the Commissioner,
256 the company or other persons. The documents produced shall
257 be included in the record and testimony taken by the Commis-
258 sioner or the Commissioner's representative shall be under oath
259 and preserved for the record. Nothing contained in this section
260 shall require the Commissioner to disclose any information or
261 records which would indicate or show the existence or content
262 of any investigation or activity of a criminal justice agency;

263 (3) The hearing shall proceed with the Commissioner or the
264 Commissioner's representative posing questions to the persons
265 subpoenaed. Thereafter, the company and the department may
266 present testimony relevant to the investigation. Cross-examina-
267 tion may be conducted only by the Commissioner or the
268 Commissioner's representative. The company and the Com-
269 missioner shall be permitted to make closing statements and
270 may be represented by counsel of their choice.

271 (1) Adoption of the examination report shall be subject to
272 the following requirements:

273 (1) Upon the adoption of the examination report under
274 paragraph (A), subdivision (3), subsection (j) of this section, the
275 Commissioner may continue to hold the content of the exami-
276 nation report as private and confidential information for a
277 period of ninety days except to the extent provided in subdivi-
278 sion (6), subsection (i) of this section. Thereafter, the Commis-
279 sioner may open the report for public inspection so long as no
280 court of competent jurisdiction has stayed its publication;

281 (2) Nothing contained in this section may prevent or be
282 construed as prohibiting the Commissioner from disclosing the

283 content of an examination report, preliminary examination
284 report or results or any matter relating thereto or the results of
285 any analysis or review to the insurance department of this or
286 any other state or country or to law-enforcement officials of this
287 or any other state or agency of the federal government at any
288 time, so long as the agency or office receiving the report or
289 matters relating thereto agrees in writing to hold it confidential
290 and in a manner consistent with this section;

291 (3) In the event the Commissioner determines that regula-
292 tory action is appropriate as a result of any examination,
293 analysis or review, he or she may initiate any proceedings or
294 actions as provided by law;

295 (4) All working papers, recorded information, documents
296 and copies thereof produced by, obtained by or disclosed to the
297 Commissioner or any other person in the course of an examina-
298 tion, analysis or review made under this section must be given
299 confidential treatment and are not subject to subpoena and may
300 not be made public by the Commissioner or any other person,
301 except to the extent provided in subdivision (5), subsection (i)
302 of this section. Access may also be granted in accordance with
303 section nineteen of this article. The parties must agree in
304 writing prior to receiving the information to provide to it the
305 same confidential treatment as required by this section unless
306 the prior written consent of the company to which it pertains
307 has been obtained.

308 (m) The Commissioner may require any examiner to
309 furnish a bond in such amount as Commissioner may determine
310 to be appropriate and the bond shall be approved, filed and
311 premium paid, with suitable proof submitted to the Commis-
312 sioner, prior to commencement of employment by the Commis-
313 sioner. No examiner may be appointed by the Commissioner
314 if the examiner, either directly or indirectly, has a conflict of
315 interest or is affiliated with the management of or owns a
316 pecuniary interest in any person subject to examination under
317 this section. This section shall not be construed to automati-
318 cally preclude an examiner from being:

319 (1) A policyholder or claimant under an insurance policy;

320 (2) A grantor of a mortgage or similar instrument on the
321 examiner's residence to a regulated entity if done under
322 customary terms and in the ordinary course of business;

323 (3) An investment owner in shares of regulated diversified
324 investment companies; or

325 (4) A settlor or beneficiary of a "blind trust" into which any
326 otherwise impermissible holdings have been placed;

327 (5) Notwithstanding the requirements of this subsection, the
328 Commissioner may retain, from time to time, on an individual
329 basis qualified actuaries, certified public accountants or other
330 similar individuals who are independently practicing their
331 professions even though these persons may, from time to time,
332 be similarly employed or retained by persons subject to
333 examination under this section.

334 (n) Personnel conducting examinations, analyses or reviews
335 of either a domestic, foreign or alien insurer shall be compen-
336 sated for each day worked at a rate set by the Commissioner.
337 The personnel shall also be reimbursed for their travel and
338 living expenses at the rate set by the Commissioner. Other
339 individuals who are not employees of the Department of
340 Insurance shall all be compensated for their work, travel and
341 living expenses at rates approved by the Commissioner or as
342 otherwise provided by law. As used in this section, the costs of
343 an examination, analysis or review means:

344 (1) The entire compensation for each day worked by all
345 personnel, including those who are not employees of the
346 Department of Insurance, the conduct of the examination,
347 analysis or review calculated as hereinbefore provided;

348 (2) Travel and living expenses of all personnel, including
349 those who are not employees of the Department of Insurance,
350 directly engaged in the conduct of the examination, analysis or
351 review calculated at the rates as hereinbefore provided for;

352 (3) All other incidental expenses incurred by or on behalf
353 of the personnel in the conduct of any authorized examination,
354 analysis or review.

355 (o) (1) All property and casualty insurers subject to the
356 provisions of this section shall annually pay to the commis-
357 sioner on or before the first day of July, one thousand nine
358 hundred ninety-one, and every first day of July thereafter an
359 examination assessment fee of up to five thousand dollars.
360 Four hundred fifty dollars of this fee shall be paid to the
361 Treasurer of the state to the credit of a special revolving fund to
362 be known as the commissioner's Examination Revolving Fund
363 which is hereby established; up to four thousand two hundred
364 dollars shall be paid to the Treasurer of the state to the credit of
365 the Unfair claims Settlement Practice Trust fund established in
366 section four-b, article eleven of this chapter and three hundred
367 fifty dollars shall be paid to the Treasurer of the state. If the
368 Trust Fund has moneys in excess of one million dollars, the
369 examination assessment fee shall be eight hundred dollars and
370 the five thousand-dollar fee shall only be reinstated at whatever
371 amount the commissioner deems necessary to maintain the
372 Fund, if the Fund value goes below one million dollars. The
373 Commissioner may at his or her discretion, upon notice to the
374 insurers subject to this subsection, increase this examination
375 assessment fee or levy an additional examination assessment
376 fee of two hundred fifty dollars. In no event may the total
377 examination assessment fee, including any additional examina-
378 tion assessment fee levied, exceed one thousand five hundred
379 dollars per insurer in any calendar year.

380 (2) All insurers other than property and casualty insurers
381 subject to the provisions of this section shall annually pay to the
382 Commissioner on or before the first day of July, one thousand
383 nine hundred ninety-one, and every first day of July thereafter
384 an examination assessment fee of eight hundred dollars. Four
385 hundred fifty dollars of this fee shall be paid to the Treasurer of
386 the state to the credit of the Commissioner's Examination
387 Revolving Fund and three hundred fifty dollars shall be paid to
388 the treasurer of the state. The Commissioner may at his or her

389 discretion, upon notice to the insurers subject to this subsection,
390 increase this examination assessment fee of two hundred fifty
391 dollars. In no event may the total examination assessment fee,
392 including any additional examination assessment fee levied,
393 exceed one thousand five hundred dollars per insurer in any
394 calendar year.

395 (p) The moneys collected by the Commissioner from an
396 increase or additional examination assessment fee shall be paid
397 to the Treasurer of the State to be credited to the Commis-
398 sioner's Examination Revolving Fund. Any funds expended or
399 obligated by the Commissioner from the Commissioner's
400 Examination Revolving Fund may be expended or obligated
401 solely for defrayment of the costs of examinations, analyses or
402 reviews of the financial affairs and business practices of
403 insurance companies, agents, brokers, excess lines brokers,
404 solicitors or other individuals or corporations transacting or
405 attempting to transact an insurance business in this state made
406 by the Commissioner pursuant to this section or for the pur-
407 chase of equipment and supplies, travel, education and training
408 for the Commissioner's deputies, other employees and ap-
409 pointed examiners necessary for the Commissioner to fulfill the
410 statutory obligations created by this section.

411 (q) The Commissioner may require other individuals who
412 are not employees of the Department of Insurance who have
413 been appointed by the Commissioner to conduct or participate
414 in the examination, analysis or review of insurers, agents,
415 brokers, excess lines brokers, solicitors or other individuals or
416 corporations transacting or attempting to transact an insurance
417 business in this state to:

418 (1) Bill and receive payments directly from the insurance
419 company being examined, analyzed or reviewed for their work,
420 travel and living expenses as previously provided in this
421 section; or

422 (2) If an individual agent, broker or solicitor is being
423 examined, analyzed or reviewed, bill and receive payments
424 directly from the Commissioner's Examination Revolving Fund

425 for their work, travel and living expenses as previously pro-
426 vided in this section. The Commissioner may recover costs
427 paid from the Commissioner's Examination Revolving Fund
428 pursuant to this subdivision from the person upon whom the
429 examination, analysis or review is conducted.

430 (r) The Commissioner and his or her examiners shall be
431 entitled to immunity to the following extent:

432 (1) No cause of action shall arise nor shall any liability be
433 imposed against the Commissioner or his or her examiners for
434 any statements made or conduct performed in good faith while
435 carrying out the provisions of this section;

436 (2) No cause of action shall arise, nor shall any liability be
437 imposed, against any person for the act of communicating or
438 delivering information or data to the Commissioner or his or
439 her examiners pursuant to an examination, analysis or review
440 made under this section if the act of communication or delivery
441 was performed in good faith and without fraudulent intent or
442 the intent to deceive;

443 (3) The Commissioner or any examiner shall be entitled to
444 an award of attorney's fees and costs if he or she is the prevail-
445 ing party in a civil cause of action for libel, slander or any other
446 relevant tort arising out of activities in carrying out the provi-
447 sions of this section and the party bringing the action was not
448 substantially justified in doing so. For purposes of this section,
449 a proceeding is "substantially justified" if it had a reasonable
450 basis in law or fact at the time that it was initiated;

451 (4) This subsection does not abrogate or modify in any way
452 any constitutional immunity or common law or statutory
453 privilege or immunity heretofore enjoyed by any person
454 identified in subdivision (1) of this subsection.

§33-2-15d. Report to the Legislature.

1 (a) By the first day of January, two thousand seven, the
2 Commissioner shall submit a report to the Legislature. The

3 report shall contain analysis of the impact of legislation enacted
4 during the two thousand five regular legislative session upon
5 rates and insurance availability in the state.

6 (b) The Insurance Commissioner shall by proposal of
7 legislative or procedural rules, pursuant to article three, chapter
8 twenty-nine-a of this code, put forth analytical criteria and
9 methodology of all factors to be considered in the report. This
10 purpose of this section is to assure that all relevant factors of
11 concern to the Legislature regarding the effect of the reforms
12 enacted in this article, any savings to consumers, the promotion
13 of insurance availability and impacts on insurance industry
14 services and performance are fully reviewed and addressed.

**§33-2-16. Office of Consumer Advocacy established; Director of
Consumer Advocacy; promulgation of rules.**

1 (a) There is hereby created within the agency of the
2 Insurance Commissioner the Office of Consumer Advocacy.
3 The position of Director of the Office of Consumer Advocacy
4 is a full-time position. The Director shall be an attorney
5 licensed in the State of West Virginia. The Director shall be
6 appointed by the Governor for a term of four years to coincide
7 with the term of the Governor and may be discharged only for
8 failure to carry out the duties of the office or for other good and
9 sufficient cause: *Provided*, That the current Director of the
10 Office of Consumer Advocacy or other appointee of the
11 Commissioner shall continue in the position until the Governor
12 appoints a new Director.

13 (b) The Insurance Commissioner shall provide office space,
14 equipment and supplies for the office.

15 (c) The Director may promulgate rules pursuant to article
16 three, chapter twenty-nine-a of this code in order to effect the
17 purposes of this section and sections seventeen and eighteen of
18 this article.

19 (d) On or before the first day of each regular session of the
20 Legislature, the Director shall file with the Governor, the Clerk
21 of the Senate and the Clerk of the House of Delegates a report
22 detailing the actions taken by the division in the preceding
23 calendar year.

§33-2-17. Office of Consumer Advocacy.

1 (a) In addition to the authority established under the rules
2 promulgated by the Director, the Office of Consumer Advocacy
3 is authorized to:

4 (1) Institute, intervene in, or otherwise participate in, as an
5 advocate for the public interest and the interests of insurance
6 consumers, proceedings in state and federal courts, before
7 administrative agencies or before the Health Care Authority,
8 concerning applications or proceedings before the Health Care
9 Authority or the review of any act, failure to act or order of the
10 Health Care Authority;

11 (2) At the request of one or more policyholders, or when-
12 ever the public interest is served, to advocate the interests of
13 those policyholders in proceedings arising out of any filing
14 made with the Insurance Commissioner by any insurance
15 company or relating to any complaint alleging an unfair or
16 deceptive act or practice in the business of insurance;

17 (3) At the request of one or more third-party claimant who
18 does not have legal representation at a hearing on his or her
19 claim, or whenever the public interest is served, to advocate the
20 interests of those third-party claimants in proceedings arising
21 out of any filing made with the Insurance Commissioner by any
22 insurance company or relating to any third-party complaint
23 alleging an unfair claims settlement practice;

24 (4) Institute, intervene in or otherwise participate in, as an
25 advocate for the public interest and the interests of insurance
26 consumers, proceedings in state and federal courts, before
27 administrative agencies, or before the Insurance Commissioner,
28 concerning applications or proceedings before the Commis-

29 sioner or the review of any act, failure to act or order of the
30 Insurance Commissioner;

31 (5) Review and compile information, data and studies of the
32 reasonable and customary rate schedules of health care provid-
33 ers and health insurers for the purposes of reviewing, establish-
34 ing, investigating, or supporting any policy regarding health
35 care insurance rates;

36 (6) Exercise all the same rights and powers regarding
37 examination and cross-examination of witnesses, presentation
38 of evidence, rights of appeal and other matters as any party in
39 interest appearing before the Insurance Commissioner or the
40 Health Care Authority;

41 (7) Hire consultants, experts, lawyers, actuaries, econo-
42 mists, statisticians, accountants, clerks, stenographers, support
43 staff, assistants and other personnel necessary to carry out the
44 provisions of this section and sections sixteen and eighteen of
45 this article, which personnel shall be paid from special revenue
46 funds appropriated for the use of the office;

47 (8) Contract for the services of technically qualified persons
48 in the area of insurance matters to assist in the preparation and
49 presentation of matters before the courts, the Insurance Com-
50 missioner, administrative agencies or the Health Care Author-
51 ity, which persons shall be paid from special revenue funds
52 appropriated for the use of the office;

53 (9) Make recommendations to the Legislature concerning
54 legislation to assist the Office in the performance of its duties;

55 (10) Communicate and exchange data and information with
56 other federal or state agencies, divisions, departments or
57 officers and with other interested parties, including, but not
58 limited to, health care providers, insurance companies, consum-
59 ers or other interested parties; and

60 (11) Perform other duties to effect the purposes of the
61 Office.

62 (b) The provisions of this section do not apply to any filing
63 made by an insurance company, or act or order performed or
64 issued by the Commissioner, or complaint filed by a policy-
65 holder with the Commissioner prior to the thirtieth day of June,
66 one thousand nine hundred ninety-one. All proceedings and
67 orders in connection with these prior matters shall be governed
68 by the law in effect at the time of the filing, or performance or
69 issuance of the act or order.

70 (c) Nothing in this section may be construed to authorize
71 the Director to participate in the review and consideration of
72 any rate filing made pursuant to this chapter.

ARTICLE 3. LICENSING, FEES & TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

1 (a)(1) For the purpose of providing additional revenue for
2 volunteer fire departments, part-volunteer fire departments and
3 certain retired teachers and the teachers retirement reserve fund,
4 there is hereby authorized and imposed on and after the first
5 day of July, one thousand nine hundred ninety-two, on the
6 policyholder of any fire insurance policy or casualty insurance
7 policy issued by any insurer, authorized or unauthorized, or by
8 any risk retention group, a policy surcharge equal to one
9 percent of the taxable premium for each such policy. After the
10 thirtieth day of June, two thousand five, the surcharge shall be
11 imposed as specified in subdivisions (2) and (3) of this subsec-
12 tion.

13 (2) After the thirtieth day of June, two thousand five,
14 through the thirty-first day of December, two thousand five, for
15 the purpose of providing additional revenue for volunteer fire
16 departments, part-volunteer fire departments and to provide

17 additional revenue to the Public Employees Insurance Agency
18 and municipal pension plans, there is hereby authorized and
19 imposed on and after the first day of July, two thousand five, on
20 the policyholder of any fire insurance policy or casualty
21 insurance policy issued by any insurer, authorized or unautho-
22 rized, or by any risk retention group, a policy surcharge equal
23 to one percent of the taxable premium for each such policy.

24 (3) After the thirty-first day of December, two thousand
25 five, for the purpose of providing additional revenue for
26 volunteer fire departments and part-volunteer fire departments,
27 there is hereby authorized and imposed on the policyholder of
28 any fire insurance policy or casualty insurance policy issued by
29 any insurer, authorized or unauthorized, or by any risk retention
30 group, a policy surcharge equal to fifty-five one hundredths of
31 one percent of the taxable premium for each such policy.

32 (4) For purposes of this section, casualty insurance may not
33 include insurance on the life of a debtor pursuant to or in
34 connection with a specific loan or other credit transaction or
35 insurance on a debtor to provide indemnity for payments
36 becoming due on a specific loan or other credit transaction
37 while the debtor is disabled as defined in the policy. The policy
38 surcharge may not be subject to premium taxes, agent commis-
39 sions or any other assessment against premiums.

40 (b) The policy surcharge shall be collected and remitted to
41 the Commissioner by the insurer, or in the case of surplus lines
42 coverage, by the surplus lines licensee, or if the policy is issued
43 by a risk retention group, by the risk retention group. The
44 amount required to be collected under this section shall be
45 remitted to the Commissioner on a quarterly basis on or before
46 the twenty-fifth day of the month succeeding the end of the
47 quarter in which they are collected, except for the fourth quarter
48 for which the surcharge shall be remitted on or before the first
49 day of March of the succeeding year.

50 (c) Any person failing or refusing to collect and remit to the
51 Commissioner any policy surcharge and whose surcharge
52 payments are not postmarked by the due dates for quarterly
53 filing is liable for a civil penalty of up to one hundred dollars
54 for each day of delinquency, to be assessed by the Commis-
55 sioner. The Commissioner may suspend the insurer, broker or
56 risk retention group until all surcharge payments and penalties
57 are remitted in full to the Commissioner.

58 (d)(1) All money from the policy surcharge shall be
59 collected by the Commissioner who shall disburse the money
60 received from the surcharge into a special account in the State
61 Treasury, designated the Fire Protection Fund. The net pro-
62 ceeds of this portion of the tax and the interest thereon, after
63 appropriation by the Legislature, shall be distributed quarterly
64 on the first day of the months of January, April, July and
65 October to each volunteer fire company or department on an
66 equal share basis by the State Treasurer. After the thirtieth day
67 of June, two thousand five, the money received from the
68 surcharge shall be distributed as specified in subdivisions (2)
69 and (3) of this subsection.

70 (2)(A) After the thirtieth day of June, two thousand five,
71 through the thirty-first day of December, two thousand five, all
72 money from the policy surcharge shall be collected by the
73 Commissioner who shall disburse one half of the money
74 received from the surcharge into the Fire Protection Fund for
75 distribution as provided in subdivision (1) of this subsection.

76 (B) The remaining portion of moneys collected shall be
77 transferred into the fund in the State Treasury of the Public
78 Employees Insurance Agency into which are deposited the
79 proportionate shares made by agencies of this state of the Public
80 Employees Insurance Agency costs of those agencies, until the
81 first day of November, two thousand five. After the thirty-first
82 day of October, two thousand five, through the thirty-first day

83 of December, two thousand five, the remain portion shall be
84 transferred to the special account in the State Treasury, known
85 as the Municipal Pensions and Protection Fund.

86 (3) After the thirty-first day of December, two thousand
87 five, all money from the policy surcharge shall be collected by
88 the Commissioner who shall disburse all of the money received
89 from the surcharge into the Fire Protection Fund for distribution
90 as provided in subdivision (1) of this subsection.

91 (4) Before each distribution date to volunteer fire compa-
92 nies or departments, the State Fire Marshal shall report to the
93 State Treasurer the names and addresses of all volunteer and
94 part-volunteer fire companies and departments within the state
95 which meet the eligibility requirements established in section
96 eight-a, article fifteen, chapter eight of this code.

97 (e) The allocation, distribution and use of revenues pro-
98 vided in the Fire Protection Fund are subject to the provisions
99 of sections eight-a and eight-b, article fifteen, chapter eight of
100 this code.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-15a. Notation of consumer cost savings.

1 Each policy issued following enactment of this provision
2 during the two thousand five regular session, during the year
3 following the effective date, shall display in a prominent
4 location on the policy itself or on an insert included with each
5 policy and provided to each policyholder, statements as
6 following:

7 (1) "YOUR COSTS FOR THIS POLICY (HAVE/HAVE
8 NOT) BEEN REDUCED BY (insert savings amount here)
9 BECAUSE OF CIVIL JUSTICE REFORMS ENACTED BY

10 THE WEST VIRGINIA LEGISLATURE IN 2005 AND
11 SIGNED INTO LAW BY THE GOVERNOR”; and

12 (2) “YOUR COST FOR THIS POLICY HAS BEEN
13 REDUCED BY (insert savings amount here) BECAUSE OF
14 PREMIUM SURCHARGE REDUCTIONS ENACTED BY
15 THE WEST VIRGINIA LEGISLATURE IN 2005 AND
16 SIGNED INTO LAW BY THE GOVERNOR”.

17 If the insurer did not offer the type of insurance provided
18 by the policy in two thousand four, the requirement for these
19 statements do not apply.

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-4a. Complaints by third-party claimants; elimination of private cause of action.

§33-11-4b. Unfair Claims Settlement Practice Trust Fund.

§33-11-4a. Complaints by third-party claimants; elimination of private cause of action.

1 (a) A third-party claimant may not bring a private cause of
2 action or any other action against any person for an unfair
3 claims settlement practice. A third-party claimant’s sole
4 remedy against a person for an unfair claims settlement practice
5 or the bad faith settlement of a claim is the filing of an adminis-
6 trative complaint with the Commissioner in accordance with
7 subsection (b) of this section. A third-party claimant may not
8 include allegations of unfair claims settlement practices in any
9 underlying litigation against an insured.

10 (b) A third-party claimant may file an administrative
11 complaint against a person for an alleged unfair claims settle-
12 ment practice with the Commissioner. The administrative
13 complaint shall be filed as soon as practicable but in no event
14 later than one year following the actual or implied discovery of
15 the alleged unfair claims settlement practice.

16 (1) The administrative complaint shall be on a form
17 provided by the Commissioner and shall state with specificity
18 the following information and such other information as the
19 Commissioner may require:

20 (A) The statutory provision, if known, which the person
21 allegedly violated;

22 (B) The facts and circumstances giving rise to the violation;

23 (C) The name of any individual or other entity involved in
24 the violation; and

25 (D) Reference to specific policy language that is relevant to
26 the violation, if known.

27 (2) If the administrative complaint is deficient, the Com-
28 missioner shall contact the third-party claimant within fifteen
29 days of receipt of the complaint to obtain the necessary infor-
30 mation.

31 (3) Upon receipt of a sufficiently complete administrative
32 complaint, the Commissioner must provide the person against
33 whom the administrative complaint is filed written notice of the
34 alleged violation.

35 (4) If the person against whom the administrative complaint
36 was filed substantially corrects the circumstances that gave rise
37 to the violation or offers to resolve the complaint in a manner
38 found reasonable by the Commissioner within sixty days after
39 receiving the notice from the Commissioner pursuant to
40 subdivision (3) of this subsection, the Commissioner shall close
41 the complaint and no further action shall lie on the matter,
42 either by the Commissioner or by the third party.

43 (5) The person that is the recipient of a notice from the
44 Commissioner pursuant to subdivision (3) of this subsection

45 shall report to the Commissioner on the disposition of the
46 alleged violation within fifteen days of the disposition but no
47 later than sixty days from receipt of notice of the complaint
48 from the Commissioner.

49 (c) If the third-party claim is not resolved within the sixty-
50 day period described in subdivision (4), subsection (b) of this
51 section through either the person's substantial correction of the
52 circumstances giving rise to the alleged violation or an offer
53 from the person to resolve the administrative complaint that is
54 found to be reasonable by the Commissioner, the Commissioner
55 shall conduct any investigation he or she considers necessary to
56 determine whether the allegations contained in the administra-
57 tive complaint are meritorious.

58 (d) Following the time period and investigation provided in
59 subsection (c) of this section, if the Commissioner finds that
60 merit exists for a complaint and the complaint has not been
61 resolved, the Commissioner shall forward a complete copy of
62 the complaint to the Office of Consumer Advocacy and, if at his
63 or her discretion, may order further investigation and hearing to
64 determine if the person has committed an unfair claims settle-
65 ment practice with such frequency as to constitute a general
66 business practice. Notice of any hearing shall be provided to all
67 parties. The Commissioner shall assign a time and place for a
68 hearing and shall notify the parties of the hearing by written
69 notice at least ten days in advance thereof. The hearing shall be
70 held within ninety days from the date of filing the complaint
71 unless the complaint has been successfully resolved pursuant to
72 subdivision (4), subsection (b) of this section or continued by
73 agreement of all parties or by the Commissioner for good cause.
74 The Commissioner shall cause hearings to be conducted in the
75 geographical region of the state where the complainant resides.
76 The Commissioner may promulgate rules pursuant to article
77 three, chapter twenty-nine-a of this code necessary, pursuant to

78 the authority of this chapter, to establish procedures to conduct
79 hearings pursuant to this section and chapter.

80 (e) If the Commissioner finds that the person has committed
81 the unfair claim settlement practice with such frequency as to
82 constitute a general business practice, the Commissioner may
83 proceed to take administrative action he or she considers
84 appropriate in accordance with section six of this article or as
85 otherwise provided in this chapter. If the Commissioner finds
86 that the person engaged in any method of competition, act or
87 practice that involves an intentional violation of subdivision (9),
88 section four of this article, and even though it has not been
89 established that the person engaged in a general business
90 practice, the Commissioner may proceed to take administrative
91 action he or she considers appropriate in accordance with
92 subsection (b), section six of this article. The person is entitled
93 to notice and hearing in connection with the administrative
94 proceeding.

95 (f) A finding by the Commissioner that the actions of a
96 person constitute a general business practice may only be based
97 on the existence of substantially similar violations in a number
98 of separate claims or causes of action.

99 (g) A good faith disagreement over the value of an action
100 or claim or the liability of any party to any action or claim is
101 not an unfair claims settlement practice.

102 (h) The Commissioner, pursuant to article three, chapter
103 twenty-nine-a of this code, may promulgate by emergency rule
104 standards for subsection (9), section four of this article.

105 (i) Nothing in this section in any way limits the rights of the
106 Commissioner to investigate and take action against a person
107 which the Commissioner has reason to believe has committed
108 an unfair claims settlement practice or has consistently resolved
109 administrative complaints by third-party claimants within the

110 sixty-day period set forth in subdivision (4), subsection (b) of
111 this section.

112 (j) Definitions:

113 (1) "Third-party claimant" means any individual, corpora-
114 tion, association, partnership or any other legal entity asserting
115 a claim against any individual, corporation, association,
116 partnership or other legal entity insured under an insurance
117 policy or insurance contract for the claim in question.

118 (2) "Unfair claims settlement practice" means a violation of
119 subsection (9), section four of this article.

120 (3) "Underlying litigation" means a third-party claimant's
121 lawsuit involving a claim against an insured.

122 (4) "Underlying claim" means the claim by a third-party
123 claimant against an insured.

§33-11-4b. Unfair Claims Settlement Practice Trust Fund.

1 (a) There is hereby created a special account in the State
2 Treasury designated the Unfair Claims Settlement Practice
3 Trust Fund, which shall be an interest-bearing account and may
4 be invested in the manner permitted by section nine, article six,
5 chapter twelve of this code, with the interest income or other
6 refund earned thereon a proper credit to the fund. Funds paid
7 into the account may also be derived from the following
8 sources:

9 (1) Payments received pursuant to section nine, article two
10 of this chapter; and

11 (2) Any appropriations by the Legislature which may be
12 made for this purpose.

13 (b) The moneys from the principal in the fund shall be
14 expended by the Commissioner to compensate claimants as
15 provided in sections four-a and six of this article.

**§33-11-6. Violations, cease and desist and penalty orders and
modifications thereof.**

1 If, after notice and hearing, the Commissioner determines
2 that any person has engaged in or is engaging in any method of
3 competition, act or practice in violation of the provisions of this
4 article or any rules or regulations promulgated by the Commis-
5 sioner thereunder, the Commissioner shall issue an order
6 directing the person to cease and desist from engaging in the
7 method of competition, act or practice and, in addition thereto,
8 the Commissioner may at his or her discretion order any one or
9 more of the following:

10 (a) Require the payment to the State of West Virginia of a
11 penalty in a sum not exceeding one thousand dollars for each
12 and every act or violation, but not to exceed an aggregate
13 penalty of ten thousand dollars, unless the person knew or
14 reasonably should have known he or she was in violation of this
15 article, in which case the penalty shall not exceed five thousand
16 dollars for each and every act or violation, but not to exceed an
17 aggregate penalty of one hundred thousand dollars in any six-
18 month period.

19 (b) In the event the act involves an intentional violation of
20 subdivision (9), section four of this article, and even though it
21 has not been established that the person engaged in a general
22 business practice, require the payment to the State of West
23 Virginia of a penalty in a sum not to exceed ten thousand
24 dollars.

25 (c) Require the payment to the State of West Virginia of a
26 penalty in a sum not exceeding two hundred fifty thousand
27 dollars if the Commissioner finds that the insurer committed or

28 performed unfair claims settlement practices with such fre-
29 quency as to indicate a general business practice.

30 (d) Revoke or suspend the license of any person if he or she
31 knew, or reasonably should have known, that he or she was in
32 violation of this article.

33 (e)(1) Provide restitution from the Unfair Claims Settle-
34 ment Practice Trust Fund to a claimant who has suffered
35 damages as a result of a general business practice or from an
36 egregious act by a person whether or not the act constituted a
37 pattern corresponding to an unfair claim settlement practice
38 committed with such frequency as to constitute a general
39 business practice.

40 (2) Restitution provided herein may include: (A) Actual
41 economic damages; and (B) noneconomic damages not to
42 exceed ten thousand dollars. Restitution may not be given for
43 attorney fees and punitive damages.

44 (f) It is expressly understood and intended that the provi-
45 sions of paragraph (1), subdivision (e) of this section do not
46 create a private cause of action against the person that has
47 committed an unfair claims settlement practice. In the event
48 that any provision of said paragraph is found to be unconstitu-
49 tional or is deemed by any court of competent jurisdiction to
50 create a private cause of action, then subdivision (e) shall be
51 void.

52 (g) Any person aggrieved by an order of the Commissioner
53 under this article may seek judicial review of the order as
54 provided in section fourteen, article two of this chapter.

55 (h) No order of the Commissioner pursuant to this article or
56 order of any court to enforce it, or holding of a hearing, shall in
57 any manner relieve or absolve any person affected by the order
58 or hearing from any other liability, penalty or forfeiture under
59 law.

60 (i) The provisions of section four-a of this article and
61 subdivision (e) of this section do not apply to medical profes-
62 sional liability insurance claims pursuant to article seven-b,
63 chapter fifty-five of this code and workers compensation
64 insurance policies governed by article two-c, chapter twenty-
65 three of this code.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4a. Biannual rate filings for certain insurance lines.

1 On or before the first day of July, two thousand five, the
2 Commissioner shall promulgate legislative rules pursuant to
3 article three, chapter twenty-nine-a of this code establishing
4 procedures whereby each insurer providing five percent or more
5 of insurance coverage in this state for private passenger
6 automobile insurance and property insurance obtained for
7 personal or family needs shall biannually submit rate filings
8 required under this section: *Provided*, That the requirements
9 under this subsection shall terminate on the first day of July,
10 two thousand nine.

CHAPTER 136

(Com. Sub. for S. B. 30 — By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §33-2-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-2-21; to amend and reenact §33-6-

8 of said code; to amend said code by adding thereto a new section, designated §33-6-15a; to amend and reenact §33-16-2 of said code; to amend and reenact §33-16B-1 and §33-16B-3 of said code; to amend and reenact §33-17-8 and §33-17-9 of said code; to amend said code by adding thereto three new sections, designated §33-17A-4a, §33-17A-4b and §33-17A-4c; and to amend and reenact §33-20-4 of said code, all relating to insurance law reforms and modifications generally; allowing the Commissioner to permit automobile insurers to withdraw from doing business in this state; requiring insurer to submit a plan; permitting promulgation of rules; redesignating a section of the insurance code enacted as part of the bill assigning workers' compensation duties to the Insurance Commissioner; clarifying that certain rules remain in effect; exempting commercial insurance lines from the requirement of prior approval of rates and forms; establishing requirements for prior approval; providing for suspension of review period when additional information is requested; providing definitions; clarifying that certain health insurance forms marketed to associations must be filed with the Commissioner; providing that commercial and certain health insurance forms marketed to associations are effective upon first use after filing; providing certain requirements for association policies; providing for a notation of savings on policies; clarifying that prior rate approval applies to health insurance certificates and endorsements; providing for filing of fire and marine insurance rider or endorsement review; adding a ground for nonrenewal of property insurance policies; providing an alternative method for nonrenewal of property insurance; providing a manner of electing an alternative method; requiring report to the Legislature; and making certain technical changes.

Be it enacted by the Legislature of West Virginia:

That §33-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-2-21; that §33-6-8 of said code

be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-6-15a; that §33-16-2 of said code be amended and reenacted; that §33-16B-1 and §33-16B-3 of said code be amended and reenacted; that §33-17-8 and §33-17-9 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-17A-4a, §33-17A-4b and §33-17A-4c; and that §33-20-4 of said code be amended and reenacted, all to read as follows:

Article

- 2. Insurance Commissioner.**
- 6. The Insurance Policy.**
- 16. Group accident and sickness.**
- 16B. Accident and sickness rates.**
- 17. Fire and marine insurance.**
- 17A. Property Insurance Declination, Termination and Disclosure.**
- 20. Rates and Rating Organizations.**

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-20. Authority of Commissioner to allow withdrawal of insurance carriers from doing business in the state.

§33-2-21. Authority of Insurance Commissioner to regulate workers compensation industry; authority of Insurance Commissioner to administer chapter twenty-three of the Code of West Virginia.

§33-2-20. Authority of Commissioner to allow withdrawal of insurance carriers from doing business in the state.

1 (a) Notwithstanding any provision of the code to the
2 contrary, the Commissioner may, consistent with the provisions
3 of this section, authorize an insurer to withdraw from the line
4 of automobile liability insurance for personal, private passenger
5 automobiles covered by article six-a of this chapter or from
6 doing business entirely in this state if:

7 (1) The insurer has submitted and received approval from
8 the Commissioner of a withdrawal plan; and

9 (2) The insurer demonstrates to the satisfaction of the
10 Commissioner that allowing the insurer to withdraw would be

11 in the best interest of the insurer, its policyholders and the
12 citizens of this state.

13 (b) Any insurer that elects to nonrenew or cancel the
14 particular type or line of insurance coverage provided by
15 section five, article seventeen-a of this chapter shall submit to
16 the Insurance Commissioner a withdrawal plan for informa-
17 tional purposes only prior to cancellation or nonrenewal of all
18 its business in this state.

19 (c) The Commissioner shall promulgate rules pursuant to
20 chapter twenty-nine-a of this code setting forth the criteria for
21 withdrawal plans: *Provided*, That the procedural rules previ-
22 ously promulgated setting forth the criteria for withdrawal
23 plans, which rules were made effective the twenty-fifth day of
24 September, two thousand four, shall continue in effect in the
25 same manner as if this section had not been amended during the
26 first extraordinary session of the Legislature in two thousand
27 five.

**§33-2-21. Authority of Insurance Commissioner to regulate
workers compensation industry; authority of
Insurance Commissioner to administer chapter
twenty-three of the Code of West Virginia.**

1 (a) Upon the termination of the Workers' Compensation
2 Commission pursuant to chapter twenty-three of this code, the
3 powers and duties heretofore imposed upon the Workers'
4 Compensation Commission as they relate to general administra-
5 tion of the provisions of said chapter are hereby transferred to
6 and imposed upon the Insurance Commissioner.

7 (b) Unless otherwise specified in chapter twenty-three of
8 this code, upon termination of the Workers' Compensation
9 Commission, the duties imposed upon the Workers' Compensa-
10 tion Commission as they relate to the award and payment of
11 disability and death benefits and the review of claims in articles

12 four and five of said chapter will be imposed upon the Employ-
13 ers Mutual Insurance Company established pursuant to article
14 two-c of said chapter, a private carrier offering workers'
15 compensation insurance in this state and self-insured employ-
16 ers. Whenever reference is made to the Workers' Compensation
17 Commissioner in those articles, the duty prescribed shall apply
18 to the Employers Mutual Insurance Company, a private carrier
19 or self-insured employer, as applicable.

20 (c) From the effective date of this enactment, the Insurance
21 Commissioner shall regulate all insurers licensed to transact
22 workers' compensation insurance in this state and all of the
23 provisions of this chapter shall apply to such insurers, unless
24 otherwise exempted by statute.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Filing of forms.

§33-6-15a. Notation of consumer cost savings.

§33-6-8. Filing of forms.

1 (a) No insurance policy form, no group certificate form, no
2 insurance application form where a written application is
3 required and is to be made a part of the policy and no rider,
4 endorsement or other form to be attached to any policy shall be
5 delivered or issued for delivery in this state by an insurer unless
6 it has been filed with the Commissioner and, to the extent
7 required by subdivision (1), subsection (b) of this section,
8 approved by the Commissioner, except that as to group insur-
9 ance policies delivered outside this state, only the group
10 certificates to be delivered or issued for delivery in this state
11 shall be filed for approval with the Commissioner. This section
12 does not apply to policies, riders, endorsements or forms of
13 unique character designed for and used with relation to insur-
14 ance upon a particular subject, or which relate to the manner of
15 distribution of benefits or to the reservation of rights and

16 benefits under life or accident and sickness insurance policies,
17 and are used at the request of the individual policyholder,
18 contract holder or certificate holder, nor to the surety bond
19 forms.

20 (b)(1) Forms for noncommercial lines shall be filed by an
21 insurer no less than sixty days in advance of any delivery. At
22 the expiration of the sixty day period, unless the period was
23 extended by the commissioner to obtain additional information
24 from the insurer, the form is deemed to be approved unless
25 prior thereto it was affirmatively approved or disapproved by
26 the commissioner. Approval of any form by the commissioner
27 constitutes a waiver of any unexpired portion of the sixty day
28 period.

29 (2) Forms for: (A) Commercial lines property and casualty
30 risks; and (B) any mass-marketed life and/or health insurance
31 policy offered to members of any association by the association
32 shall be filed with the Commissioner and need not be approved
33 by the Commissioner prior to use. The Commissioner may,
34 within the first thirty days after receipt of the form, request
35 information to ensure compliance with applicable statutory
36 provisions and may disapprove forms not in compliance with
37 the provisions of this chapter. If the Commissioner does not
38 disapprove the form within the thirty-day period, the form is
39 effective upon its first use after filing.

40 (c) When an insurer does not submit supporting information
41 with the form filing that allows the Commissioner to determine
42 whether the form meets all applicable statutory requirements,
43 the Commissioner shall require the insurer to furnish supporting
44 information. The sixty-day period for personal lines risks shall
45 be suspended on the date the Commissioner requests additional
46 information and shall recommence on the date the Commis-
47 sioner receives the supporting information: *Provided*, That the
48 Commissioner shall have no less than fifteen days from receipt

49 of the supporting information to act. The Commissioner may
50 request additional information after the initial sixty-day period
51 with respect to noncommercial lines, or thirty-day period with
52 respect to commercial lines and mass-marketed life and/or
53 health insurance to associations, to ensure continuing compli-
54 ance with applicable statutory provisions and may at any time,
55 after notice and for cause shown, withdraw any approval or
56 disapprove any form: *Provided, however,* That any disapproval
57 by the Commissioner of any form or withdrawal of a previous
58 approval shall state the grounds therefor and shall include a
59 notice that the insurer may request a hearing on the denial or
60 withdrawal of approval.

61 (d) The Commissioner may, by order, exempt from the
62 requirements of this section for so long as he or she considers
63 proper any insurance document or form or type specified in
64 the order, to which, in his or her opinion, this section may not
65 practicably be applied, or the filing and approval of which are,
66 in his or her opinion, not desirable or necessary for the protec-
67 tion of the public.

68 (e) For purposes of this section:

69 (1) An association must have a minimum of sixty-one
70 members at the outset of the issuance of the mass-marketed life
71 and/or health insurance policy and shall have been organized
72 and maintained in good faith for purposes other than that of
73 obtaining or providing insurance. The association shall also
74 have been in active existence for at least two years and shall
75 have a constitution and bylaws which provide that: (A) The
76 association holds annual meetings to further purposes of its
77 members; (B) except in the case of credit unions, the associa-
78 tion collects dues or solicits contributions from members; and
79 C) the members have voting privileges and representation on
80 the governing board and committees that exist under the
81 authority of the association: *Provided,* That upon written

82 application by an association and for good cause shown, the
83 Commissioner may grant an exemption to the association from
84 the minimum member requirements of this section.

85 (2) "Commercial lines" means insurance for business and
86 professional interests, except that it does not include medical
87 malpractice insurance.

88 (3) "Noncommercial lines" means all insurance other than
89 commercial lines and includes medical malpractice and
90 insurance for personal, family and household needs.

91 (f) This section also applies to any form used by domestic
92 insurers for delivery in a jurisdiction outside West Virginia if
93 the insurance supervisory official of the jurisdiction informs the
94 Commissioner that the form is not subject to approval or
95 disapproval by the official and upon the Commissioner's order
96 requiring the form to be submitted to him or her for that
97 purpose. The same standards applicable to forms for domestic
98 use apply to forms used by domestic insurers for delivery in a
99 jurisdiction outside West Virginia.

§33-6-15a. Notation of consumer cost savings.

1 Each policy issued following enactment of this provision
2 during the two thousand five regular session, during the year
3 following the effective date, shall display in a prominent
4 location on the policy itself or on an insert included with each
5 policy and provided to each policyholder, statements as
6 follows:

7 (1) "YOUR COSTS FOR THIS POLICY (HAVE/HAVE
8 NOT) BEEN REDUCED BY (insert savings amount here)
9 BECAUSE OF INSURANCE LAW REFORMS ENACTED
10 BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND
11 SIGNED INTO LAW BY THE GOVERNOR".

12 If the insurer did not offer the type of insurance provided
13 by the policy in two thousand four, the requirement for these
14 statements do not apply.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS.

§33-16-2. Eligible groups.

1 Any insurer licensed to transact accident and sickness
2 insurance in this state may issue group accident and sickness
3 policies coming within any of the following classifications:

4 (1) A policy issued to an employer, who shall be considered
5 the policyholder, insuring at least ten employees of
6 the employer, for the benefit of persons other than the em-
7 ployer, and conforming to the following requirements:

8 (A) If the premium is paid by the employer the group shall
9 comprise all employees or all of any class or classes thereof
10 determined by conditions pertaining to the employment; or

11 (B) If the premium is paid by the employer and employees
12 jointly, or by the employees, the group shall comprise not less
13 than seventy percent of all employees of the employer or not
14 less than seventy-five percent of all employees of any class or
15 classes determined by conditions pertaining to the employment;

16 (C) The term "employee" as used herein is considered to
17 include the officers, managers and employees of the employer,
18 the partners, if the employer is a partnership, the officers,
19 managers and employees of subsidiary or affiliated corporations
20 of a corporate employer, and the individual proprietors, partners
21 and employees of individuals and firms, the business of which
22 is controlled by the insured employer through stock ownership,
23 contract or otherwise. The term "employer" as used herein may
24 include any municipal or governmental corporation, unit,
25 agency or department and the proper officers of any unincorpo-

26 rated municipality or department, as well as private individuals,
27 partnerships and corporations.

28 (2) A policy issued to an association or to a trust or to the
29 trustees of a fund established, created or maintained for the
30 benefit of members of one or more associations. The associa-
31 tion or associations shall have at the issuance of the policy a
32 minimum of one hundred persons and have been organized and
33 maintained in good faith for purposes other than that of
34 obtaining insurance; shall have been in active existence for at
35 least one year; and shall have a constitution and bylaws that
36 provide that: The association or associations hold regular
37 meetings not less than annually to further the purposes of the
38 members; except for credit unions, the association or associa-
39 tions collect dues or solicit contributions from members; and
40 the members have voting privileges and representation on the
41 governing board and committees. The policy is subject to the
42 following requirements:

43 (A) The policy may insure members of the association or
44 associations, employees thereof or employees of members, or
45 one or more of the preceding or all of any class or classes for
46 the benefit of persons other than the employee's employer.

47 (B) The premium for the policy shall be paid from:

48 (i) Funds contributed by the association or associations;

49 (ii) Funds contributed by covered employer members;

50 (iii) Funds contributed by both covered employer members
51 and the association or associations;

52 (iv) Funds contributed by the covered persons; or

53 (v) Funds contributed by both the covered persons and the
54 association, associations or employer members.

55 (C) Except as provided in paragraph (D), a policy on which
56 no part of the premium is to be derived from funds contributed
57 by the covered persons specifically for their insurance must
58 insure all eligible persons, except those who reject coverage in
59 writing.

60 (D) An insurer may exclude or limit the coverage on any
61 person as to whom evidence of individual insurability is not
62 satisfactory to the insurer.

63 (E) A small employer, as defined in subdivision (r), section
64 two, article sixteen-d of this chapter, insured under an eligible
65 group policy provided in this subdivision shall also be subject
66 to the marketing and rate practices provisions in article sixteen-
67 d of this chapter.

68 (3) A policy issued to a bona fide association;

69 (4) A policy issued to a college, school or other institution
70 of learning or to the head or principal thereof, insuring at least
71 ten students, or students and employees, of the institution;

72 (5) A policy issued to or in the name of any volunteer fire
73 department, insuring all of the members of the department or all
74 of any class or classes thereof against any one or more of the
75 hazards to which they are exposed by reason of the membership
76 but in each case not less than ten members;

77 (6) A policy issued to any person or organization to which
78 a policy of group life insurance may be issued or delivered in
79 this state, to insure any class or classes of individuals that could
80 be insured under the group life policy; and

81 (7) A policy issued to cover any other substantially similar
82 group which in the discretion of the Commissioner may be
83 subject to the issuance of a group accident and sickness policy
84 or contract.

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-1. Filing and approval of accident and sickness rates.

§33-16B-3. Exceptions.

§33-16B-1. Filing and approval of accident and sickness rates.

1 Premium rate charges for any individual or group accident
2 and sickness insurance policy, certificate or other evidence of
3 insurance issued, endorsed or delivered in this state shall be
4 filed with the Commissioner for a waiting period of sixty days
5 before the charges become effective. At the expiration of sixty
6 days the premium rate charges filed are deemed approved
7 unless prior thereto the charges have been affirmatively
8 approved or disapproved by the Commissioner.

9 The Commissioner shall disapprove accident and health
10 insurance premium rates which are not in compliance with the
11 requirements of this chapter or any rule promulgated by the
12 Commissioner pursuant to section two of this article. The
13 Commissioner shall send written notice of the disapproval to
14 the insurer. The Commissioner may approve the premium rates
15 before the sixty-day period expires by giving written notice of
16 approval.

§33-16B-3. Exceptions.

1 This article does not apply to policies issued to group
2 accident and health insurance plans upon which premiums are
3 negotiated with the group policyholder and are experienced
4 rated.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-8. Filing of forms.

§33-17-9. Total or partial fire loss.

§33-17-8. Filing of forms.

1 (a) No fire or marine policy, rider or endorsement to be
2 attached to any policy covering any risk located or to be
3 performed in West Virginia shall be delivered or issued for
4 delivery in this state unless that form is: (1) Filed with and
5 approved by the Commissioner; (2) conforms to applicable
6 legislative rules of the Commissioner; (3) is identical as to
7 language to a policy, rider or endorsement approved by the
8 Commissioner; or (4) qualifies under subsection (c) of this
9 section. If the use of any form under the provisions of subdivi-
10 sion (2) of this section by any insurer or by the members and
11 subscribers of any rating organization is so extensive that in the
12 opinion of the Commissioner the public interest requires, the
13 Commissioner may require that the form be filed with him or
14 her by the insurer or by the rating organization on behalf of its
15 members and subscribers.

16 (b) The procedure for filing and approval or disapproval of
17 forms under this section is provided in section eight, article six
18 of this chapter. Grounds for disapproval are those set forth in
19 section nine of said article. Filings may be made on behalf of
20 any insurer by a rating organization licensed under the provi-
21 sions of article twenty of this chapter. This section does not
22 apply to ocean marine policies, riders or endorsements, or to
23 forms on specially rated inland marine risks.

24 (c) For commercial lines risks, a fire or marine policy, rider
25 or endorsement is subject to the provisions of section six, article
26 eight of this chapter governing other commercial lines form
27 filings as defined in section eight, article six of this chapter.

§33-17-9. Total or partial fire loss.

1 All insurers providing fire insurance on real property in
2 West Virginia shall be liable, in case of total loss by fire or
3 otherwise, as stated in the policy, for the whole amount of
4 insurance stated in the policy, upon such real property; and in

5 case of partial loss by fire or otherwise, as aforesaid, of the real
6 property insured, the liability shall be for the total amount of
7 the partial loss, not to exceed the whole amount of insurance
8 upon the real property as stated in the policy. This section
9 does not apply where such insurance has been procured from
10 two or more insurers covering the same interest in such real
11 property.

**ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION
AND DISCLOSURE.**

§33-17A-4a. Alternative method for nonrenewal for property insurance.

§33-17A-4b. Manner of making election relating to nonrenewals.

§33-17A-4c. Report to the Legislature.

**§33-17A-4a. Alternative method for nonrenewal for property
insurance.**

1 (a) On or after the first day of July, two thousand five, an
2 insurer may nonrenew a property insurance policy for any
3 reason that is consistent with its underwriting standards.

4 (b) Notwithstanding any other provisions in this section,
5 race, religion, nationality, ethnic group, age, sex, marital status
6 or other reason prohibited by the provisions of this chapter may
7 not be considered as a reason for nonrenewal.

8 (c) Notwithstanding the provisions of subsection (c),
9 section four of this article, a nonrenewal may only be issued
10 pursuant to the provisions of this section upon notice to the
11 named insured at least thirty days before the end of the policy
12 period of the insurer's election not to renew the policy.

13 (d) Commencing the first day of July, two thousand five,
14 the total number of nonrenewal notices issued by the insurer
15 each year pursuant to this section that result in nonrenewals
16 may not exceed one percent per year of the total number of the
17 policies of the insurer in force at the end of the previous

18 calendar year in this state: *Provided*, That the total number of
19 such nonrenewal notices issued each year to insureds within any
20 given county in this state that result in nonrenewals may not
21 exceed one percent per year of the total number of policies in
22 force in that county at the end of the previous calendar year:
23 *Provided, however*, That an insurer may nonrenew one policy
24 per year in any county if the applicable percentage limitation
25 results in less than one policy.

26 (e) A notice issued pursuant to this section shall state the
27 specific reason or reasons for refusal to renew and shall advise
28 the named insured that nonrenewal of the policy for any reason
29 is subject to a hearing and review as provided in section seven
30 of this article: *Provided*, That the hearing shall relate to
31 whether the nonrenewal of the policy was issued for a discrimi-
32 natory reason, was based upon inadequate notice, was based on
33 an underwriting standard found by the Commissioner to be in
34 violation of this chapter or causes the insurer to exceed the
35 percentage limitations, or percentage limitations by county, of
36 nonrenewal notices set forth in this section. The notice shall
37 also advise the insured of possible eligibility for coverage
38 through the West Virginia Essential Property Insurance
39 Association.

40 (f) Each insurer licensed to write property insurance
41 policies in this state shall file with the Commissioner a copy of
42 its underwriting standards, including any amendments or
43 supplements. The Commissioner shall review and examine the
44 underwriting standards to ensure that they are consistent with
45 generally accepted underwriting principles. The underwriting
46 standards filed with the Commissioner shall be considered
47 confidential by law and privileged, are exempt from disclosure
48 pursuant to chapter twenty-nine-b of this code, are not open to
49 public inspection, are not subject to subpoena, are not subject
50 to discovery or admissible in evidence in any criminal, civil or
51 administrative action and are not subject to production pursuant

52 to court order. The Commissioner may promulgate legislative
53 rules pursuant to chapter twenty-nine-a of this code to imple-
54 ment the provisions of this section.

55 (g) Each insurer that has elected to issue nonrenewal
56 notices pursuant to the percentage limitations provided in this
57 section shall report to the Commissioner, on or before the
58 thirtieth day of September of each year, the total number of
59 nonrenewal notices issued in this state and in each county of
60 this state for the preceding year and the specific reason or
61 reasons for the nonrenewals by county.

§33-17A-4b. Manner of making election relating to nonrenewals.

1 (a) Each insurer licensed to write property insurance
2 policies in this state as of the first day of July, two thousand
3 five, may elect to issue all nonrenewal notices either pursuant
4 to subsection (c), section four of this article or section four-a of
5 this article. Each insurer must notify the Commissioner of its
6 election on or before the first day of July, two thousand five,
7 and shall remain bound by the election for a period of five
8 years. For each subsequent five-year period, each insurer shall
9 notify the Commissioner of its election to issue all nonrenewal
10 notices either pursuant to subsection (c), section four of this
11 article or section four-a of this article. The failure of an insurer
12 to notify the Commissioner of its election by the first day of
13 July, two thousand five, will be considered to be an election by
14 the insurer to issue all nonrenewal notices pursuant to subsec-
15 tion (c), section four of this article and the insurer will be bound
16 by the election for a period of five years.

17 (b) An insurer that is not licensed to write property insur-
18 ance policies in this state as of the first day of July, two
19 thousand five, but which becomes licensed to write property
20 insurance policies after that date shall, no later than four years
21 after the date the insurer becomes licensed to write the policies,

22 make an election to issue all nonrenewal notices either pursuant
23 to subsection (c), section four of this article or section four-a of
24 this article and shall notify the Commissioner of its election. If
25 the insurer elects to issue all nonrenewal notices pursuant to
26 section four-a of this article, the total number of nonrenewals
27 may not exceed the percentage limitations set forth in that
28 section. An insurer first becoming licensed to issue property
29 insurance policies in this state after the first day of July, two
30 thousand five, shall be bound by its election for a period of five
31 years and for each subsequent five-year period shall notify the
32 Commissioner of its election to issue all nonrenewal notices
33 either pursuant to subsection (c), section four of this article or
34 section four-a of this article.

35 (c) An insurer that elects to issue nonrenewals pursuant to
36 subsection (c), section four of this article may include as a
37 permitted reason for nonrenewal of a policy, in addition to the
38 reasons enumerated in section five of this article, two or more
39 paid claims under a policy within a period of thirty-six months,
40 each of which occurs after the first day of July, two thousand
41 five.

§33-17A-4c. Report to the Legislature.

1 By the first day of January, two thousand ten, the Commis-
2 sioner shall submit a report to the Legislature. The report shall
3 contain the following:

4 (1) An analysis of the impact of legislation enacted during
5 the two thousand five legislative session upon rates and
6 insurance availability in the state; and

7 (2) Statistics reflecting the rate history of insurers conduct-
8 ing business in West Virginia from the first day of July, two
9 thousand five, until the first day of July, two thousand nine.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4. Rate filings.

1 (a) (1) Every insurer shall file with the Commissioner every
2 manual of classifications, territorial rate areas established
3 pursuant to subdivision (2), subsection (c), section three of this
4 article, rules and rates, every rating plan and every modification
5 of any of the foregoing which it proposes to use for casualty
6 insurance to which this article applies.

7 (2) Every insurer shall file with the Commissioner, except
8 as to inland marine risks which by general custom of the
9 business are not written according to manual rates or rating
10 plans, every manual, minimum, class rate, rating schedule or
11 rating plan and every other rating rule and every modification
12 of any of the foregoing which it proposes to use for fire and
13 marine insurance to which this article applies. Specific inland
14 marine rates on risks specially rated, made by a rating organiza-
15 tion, shall be filed with the Commissioner.

16 (b) Every filing shall state the proposed effective date and
17 shall indicate the character and extent of the coverage contem-
18 plated. When a filing is not accompanied by the information
19 upon which the insurer supports the filing and the Commis-
20 sioner does not have sufficient information to determine
21 whether the filing meets the requirements of this article, he or
22 she shall require the insurer to furnish the information upon
23 which it supports the filing and in that event the waiting period
24 shall commence as of the date the information is furnished. The
25 information furnished in support of a filing may include: (1)
26 The experience or judgment of the insurer or rating organiza-
27 tion making the filing; (2) the experience or judgment of the
28 insurer or rating organization in the territorial rate areas
29 established by subdivision (2), subsection (c), section three of
30 this article; (3) its interpretation of any statistical data it relies
31 upon; (4) the experience of other insurers or rating organiza-
32 tions; or (5) any other relevant factors. A filing and any

33 supporting information is open to public inspection as soon as
34 the filing is received by the Commissioner. Any interested
35 party may file a brief with the Commissioner supporting his or
36 her position concerning the filing. Any person or organization
37 may file with the Commissioner a signed statement declaring
38 and supporting his or her or its position concerning the filing.
39 Upon receipt of the statement prior to the effective date of the
40 filing, the Commissioner shall mail or deliver a copy of the
41 statement to the filer, which may file a reply as it may desire to
42 make. This section is not applicable to any memorandum or
43 statement of any kind by any employee of the Commissioner.

44 (c) An insurer may satisfy its obligation to make a filing by
45 becoming a member of, or a subscriber to, a licensed rating
46 organization which makes filings and by authorizing the
47 Commissioner to accept filings on its behalf: *Provided*, That
48 nothing contained in this article shall be construed as requiring
49 any insurer to become a member of or a subscriber to any rating
50 organization.

51 (d) The Commissioner shall review filings as soon as
52 reasonably possible after they have been made in order to
53 determine whether they meet the requirements of this article.

54 (e) Subject to the exceptions specified in subsections (f), (g)
55 and (h) of this section, each filing shall be on file for a waiting
56 period of sixty days before it becomes effective. Upon written
57 application by an insurer or rating organization, the Commis-
58 sioner may authorize a filing which he or she has reviewed to
59 become effective before the expiration of the waiting period.
60 A filing shall be deemed to meet the requirements of this article
61 unless disapproved by the Commissioner within the waiting
62 period.

63 (f) Any special filing with respect to a surety bond required
64 by law or by court or executive order or by order, rule or

65 regulation of a public body, not covered by a previous filing,
66 shall become effective when filed and shall be deemed to meet
67 the requirements of this article until the Commissioner reviews
68 the filing and so long thereafter as the filing remains in effect.

69 (g) Specific inland marine rates on risks specially rated by
70 a rating organization shall become effective when filed and
71 shall be deemed to meet the requirements of this article until the
72 Commissioner reviews the filing and so long thereafter as the
73 filing remains in effect.

74 (h) Rates for commercial lines property and casualty risks
75 must be filed with the Commissioner and the filings need not be
76 approved by the Commissioner. The Commissioner may
77 request additional information to ensure compliance with
78 applicable statutory standards, but if the Commissioner does not
79 disapprove the filing within the initial thirty-day period after
80 receipt, the rate filing will become effective upon first usage
81 after filing: *Provided*, That the Commissioner may at any time
82 thereafter, after notice and for cause shown, disapprove any rate
83 filing.

84 (i) Under legislative rules the Commissioner may, by
85 written order, suspend or modify the requirement of filing as to
86 any kind of insurance, subdivision or combination thereof, or as
87 to classes of risks, the rates for which cannot practicably be
88 filed before they are used. These orders and rules shall be made
89 known to insurers and rating organizations affected thereby.
90 The Commissioner may make any examination he or she may
91 consider advisable to ascertain whether any rates affected by an
92 order meet the standards set forth in subsection (b), section
93 three of this article.

94 (j) Upon the written application of the insured, stating his
95 or her reasons therefor, filed with and approved by the Com-
96 missioner, a rate in excess of that provided by a filing otherwise
97 applicable may be used on any specific risks.

98 (k) No insurer shall make or issue a contract or policy
99 except in accordance with the filings which are in effect for that
100 insurer as provided in this article. This subsection does not
101 apply to contracts or policies for inland marine risks as to which
102 filings are not required.

103 (l) In instances when an insurer files a request for an
104 increase of automobile liability insurance rates in the amount of
105 fifteen percent or more, the Insurance Commissioner shall
106 provide notice of the increase with the office of the Secretary of
107 State to be filed in the State Register and shall provide inter-
108 ested persons the opportunity to comment on the request up to
109 the time the Commissioner approves or disapproves the rate
110 increase.

111 (m) For purposes of this section, "commercial" means
112 commercial lines as defined in subdivision (2), subsection (e),
113 section eight, article six of this chapter.

CHAPTER 137

(S. B. 459 — By Senator Minard)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §33-4-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-10-41, all relating to reinsurance; and a reinsurer's liability in an insolvency.

Be it enacted by the Legislature of West Virginia:

That §33-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-10-41, all to read as follows:

Article

4. General Provisions.

10. Rehabilitation and Liquidation.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.

1 (a) For purposes of this section, an “assumption reinsurance
2 agreement” means any contract which:

3 (1) Transfers insurance obligations and/or risks of existing
4 or in-force contracts of insurance from a transferring insurer to
5 an assuming insurer; and

6 (2) Is intended to effect a novation of the transferred
7 contract of insurance with the result that the assuming insurer
8 becomes directly liable to the policyholders of the transferring
9 insurer and the transferring insurer’s insurance obligations
10 and/or risks under the contracts are extinguished.

11 (b) An insurer shall reinsure its risks, or any part thereof,
12 only in solvent insurers complying with the capital and surplus
13 requirements of section five-b, article three of this chapter.

14 (c) Credit for reinsurance shall be governed by the provi-
15 sions of sections fifteen-a and fifteen-b of this article.

16 (1) No credit shall be allowed, as an admitted asset or
17 deduction from liability, to any ceding insurer for reinsurance,
18 unless the reinsurance contract provides, in substance, that in
19 the event of the insolvency of the ceding insurer, the reinsur-
20 ance shall be payable under a contract reinsured by the assum-
21 ing insurer on the basis of reported claims allowed by the
22 liquidation court, without diminution because of the insolvency

23 of the ceding insurer. Payments shall be made directly to the
24 ceding insurer or to its domiciliary liquidator except: (A) Where
25 the contract or other written agreement specifically provides
26 another payee of the reinsurance in the event of the insolvency
27 of the ceding insurer; or (B) where the assuming insurer, with
28 the consent of the direct insured, has assumed the policy
29 obligations of the ceding insurer as direct obligations of the
30 assuming insurer to the payees under the policies and in
31 substitution for the obligations of the ceding insurer to payees.

32 (2) The reinsurance agreement may provide that the
33 domiciliary liquidator of an insolvent ceding insurer shall give
34 written notice to the assuming insurer of the pendency of a
35 claim against the ceding insurer on the contract reinsured within
36 a reasonable time after the claim is filed in the liquidation
37 proceeding. During the pendency of the claim, any assuming
38 insurer may investigate the claim and interpose, at its own
39 expense, in the proceeding where the claim is to be adjudicated
40 any defenses which it deems available to the ceding insurer or
41 its liquidator. The expense may be filed as a claim against the
42 insolvent ceding insurer to the extent of a proportionate share
43 of the benefit which may accrue to the ceding insurer solely as
44 a result of the defense undertaken by the assuming insurer.
45 Where two or more assuming insurers are involved in the same
46 claim and a majority in interest elect to interpose a defense to
47 the claim, the expense shall be apportioned in accordance with
48 the terms of the reinsurance agreement as though the expense
49 had been incurred by the ceding insurer.

50 (d) Any licensed insurer may accept reinsurance for the
51 same kinds of insurance and within the same limits as it is
52 authorized to transact direct insurance.

53 (e) A licensed insurer may reinsure all or substantially all
54 of its risks on property or lives located in West Virginia, or
55 substantially all of a major class thereof, with another insurer
56 by an assumption reinsurance agreement: *Provided*, That the

57 assumption reinsurance agreement shall not become effective
58 unless filed in advance with and approved in writing by the
59 Commissioner: *Provided, however,* That if a licensed insurer
60 is deemed by the Commissioner to be in hazardous financial
61 condition, as defined in article thirty-four-a of this chapter, or
62 an administrative or judicial proceeding has been instituted
63 against it for the purpose of liquidating, reorganizing or
64 conserving the insurer, and the transfer of the contracts of
65 insurance is determined by the Commissioner to be in the best
66 interest of the policyholders, the Commissioner may by written
67 order waive the advance filing and approval required by this
68 section, which waiver may include a form of implied consent
69 and adequate notification to the policyholder of the circum-
70 stances requiring the transfer.

71 (f) The Commissioner shall approve a reinsurance agree-
72 ment within one hundred twenty days after the filing of same
73 unless he or she finds that it is inequitable to the licensed
74 insurer, its owners or its policyholders or would substantially
75 reduce the protection or service to its policyholders. If the
76 Commissioner does not approve the agreement, he or she shall
77 notify the insurer in writing specifying his or her reasons
78 therefor. If the Commissioner does not disapprove the agree-
79 ment within one hundred twenty days, the agreement shall be
80 deemed approved.

81 (g) A filing may not be made pursuant to this section unless
82 the reinsurance agreement is certified under oath by responsible
83 officers of the reinsurer and the reinsured to contain the entire
84 agreement between the parties to the reinsurance agreement.

85 (h) The Commissioner shall promulgate rules pursuant to
86 chapter twenty-nine-a of this code for the implementation and
87 administration of the provisions of this section to include, but
88 not be limited to, the type of assumption agreements subject to
89 the provisions of this section, their content and the standards the
90 Commissioner may utilize in reviewing the agreements.

91 (i) Any insurer subject to this section is also subject to the
92 provisions of article thirty-eight of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-41. Reinsurer's liability.

1 The amount recoverable by the liquidator from reinsurers
2 may not be reduced as a result of delinquency proceedings
3 unless the reinsurance contract provides, in substance, that in
4 the event of the insolvency of the ceding insurer, the reinsur-
5 ance shall be payable under a contract reinsured by the assum-
6 ing insurer on the basis of reported claims allowed by the
7 liquidation court, without diminution because of the insolvency
8 of the ceding insurer. The payments shall be made directly to
9 the ceding insurer or to its domiciliary liquidator except: (1)
10 Where the contract or other written agreement specifically
11 provides another payee of the reinsurance in the event of the
12 insolvency of the ceding insurer; or (2) where the assuming
13 insurer, with the consent of the direct insured, has assumed the
14 policy obligations of the ceding insurer as direct obligations of
15 the assuming insurer to the payees under the policies and in
16 substitution for the obligations of the ceding insurer to the
17 payees.

CHAPTER 138

**(Com. Sub. for H. B. 2973 — By Delegates H. White,
Hrutkay and Ron Thompson)**

[Passed April 5, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to repeal §33-8A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-8A-2 and §33-8A-3 of said code, all relating to the use of clearing corporations and federal reserve book-entry system by insurance companies; defining terms; allowing broker-dealers to act as custodian of insurance company assets; establishing eligibility standards for broker-dealers to act as custodians; eliminating references to foreign deposit requirements; and repealing the internal effective date.

Be it enacted by the Legislature of West Virginia:

That §33-8A-8 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-8A-2 and §33-8A-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.

§33-8A-2. Definitions.

§33-8A-3. Use of book-entry systems and clearing corporations.

§33-8A-2. Definitions.

1 As used in this article, the term:

2 (1) "Agent" means a national bank, state bank, trust
3 company or broker-dealer that maintains an account in its name
4 in a clearing corporation or that is a member of the federal
5 reserve system and through which a custodian participates in a
6 clearing corporation or the federal reserve book-entry system,
7 including the Treasury/Reserve Automated Debt Entry Securi-
8 ties System (TRADES) or Treasury Direct Systems, except that
9 with respect to securities issued by institutions organized or
10 existing under the laws of a foreign country, "agent" may
11 include a corporation that is organized or existing under the

12 laws of a foreign country and that is legally qualified under
13 those laws to accept custody of securities;

14 (2) "Clearing corporation" has the same meaning set forth
15 in subdivision (5), subsection (a), section one hundred two,
16 article eight, chapter forty-six of this code, except that with
17 respect to securities issued by institutions organized or existing
18 under the laws of any foreign country, clearing corporation may
19 include a corporation which is organized or existing under the
20 laws of any foreign country and is legally qualified under such
21 laws to effect the transactions in securities by computerized
22 book entry. Clearing corporation also includes the Trea-
23 sury/Reserve Automated Debt Entry Securities System
24 (TRADES) or Treasury Direct Book-Entry Systems established
25 pursuant to 31 C.F.R., Part 357;

26 (3) "Custodian" means:

27 (A) A national bank, state bank or trust company that shall
28 at all times during which it acts as a custodian pursuant to this
29 article be no less than adequately capitalized as determined by
30 the standards adopted by United States banking regulators and
31 that is regulated by either state banking laws or is a member of
32 the Federal Reserve System and that is legally qualified to
33 accept custody of securities in accordance with the standards set
34 forth below, except that with respect to securities issued by
35 institutions organized or existing under the laws of a foreign
36 country, "custodian" may include a bank or trust company
37 incorporated or organized under the laws of a country other
38 than the United States that is regulated as such by that country's
39 government or an agency thereof that shall at all times during
40 which it acts as a custodian pursuant to this article be no less
41 than adequately capitalized as determined by the standards
42 adopted by international banking authorities and that is legally
43 qualified to accept custody of securities; or

44 (B) A broker-dealer that is registered with and subject to
45 the jurisdiction of the Securities and Exchange Commission,
46 maintains membership in the Securities Investor Protection
47 Corporation, and has a tangible net worth equal to or greater
48 than two hundred fifty million dollars. For the purposes of this
49 subdivision, “tangible net worth” means shareholders’ equity,
50 less intangible assets, as reported in the broker-dealer’s most
51 recent annual or transition report pursuant to section 13 or 15(d)
52 of the Securities Exchange Act of 1934 filed with the Securities
53 and Exchange Commission (15 U.S.C. §78m or §78o(d));

54 (4) “Custodied securities” means securities held by the
55 custodian or its agent or in a clearing corporation, including the
56 Treasury/Reserve Automated Debt Entry Securities Systems
57 (TRADES) or Treasury Direct Systems;

58 (5) “Direct participant” means a bank, trust company or
59 other institution or other custodian which maintains an account
60 in its name in a clearing corporation and through which an
61 insurance company participates in a clearing corporation;

62 (6) “Federal reserve book-entry system” means the comput-
63 erized systems sponsored by the United States Department of
64 the Treasury and certain agencies and instrumentalities of the
65 United States for holding and transferring securities of the
66 United States government and such agencies and instrumentali-
67 ties, respectively, in federal reserve banks and through banks
68 which are members of the Federal Reserve System or which
69 otherwise have access to such computerized systems;

70 (7) “Member bank” means a national bank, state bank or
71 trust company which is a member of the Federal Reserve
72 System and through which an insurance company participates
73 in the federal reserve book-entry system;

74 (8) “Securities” means certificated securities as defined in
75 subdivision (4), subsection (a), section one hundred two, article

76 eight, chapter forty-six of this code and uncertificated securities
77 as defined in subdivision (18) of subsection (a), section one
78 hundred two, article eight, chapter forty-six; and

79 (9) "Security certificate" has the same meaning set forth in
80 subdivision (16), subsection (a), section one hundred two,
81 article eight, chapter forty-six of this code.

§33-8A-3. Use of book-entry systems and clearing corporations.

1 (a) Notwithstanding any other provision of law, a domestic
2 insurance company may deposit or arrange for the deposit of
3 securities held in or purchased for its general account and its
4 separate accounts in a clearing corporation or the federal
5 reserve book-entry system. When securities are deposited with
6 a clearing corporation, certificates representing securities of the
7 same class of the same issuer may be merged and held in bulk
8 in the name of the nominee of the clearing corporation with any
9 other securities deposited with the clearing corporation by any
10 person, regardless of the ownership of the securities, and
11 certificates representing securities of small denominations may
12 be merged into one or more certificates of larger denomina-
13 tions. The records of any custodian through which an insurance
14 company holds securities in the federal reserve book-entry
15 system or a clearing corporation shall at all times show that the
16 securities are held for the insurance company and for which
17 accounts. Ownership of, and other interests in, the securities
18 may be transferred by bookkeeping entry on the books of such
19 clearing corporation or in the federal reserve book-entry system
20 without, in either case, physical delivery of certificates repre-
21 senting the securities.

22 (b) The Commissioner is authorized to promulgate rules
23 governing the deposit of securities by insurance companies and
24 custodians with clearing corporations and in the federal reserve
25 book-entry system.

CHAPTER 139

(H. B. 2937 — By Delegates H. White, Ron Thompson,
Hrutkay, Perry, Azinger and G. White)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §33-11-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-13-48, all relating to replacement of life insurance and annuities; unfair trade practices; and promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-11-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-13-48, all to read as follows:

Article

- 11. Unfair Trade Practices.**
- 13. Life Insurance.**

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-5a. Replacement of life insurance.

- 1 (a) As used in this section:
- 2 (1) "Replacement" means any transaction in which new life
- 3 insurance is to be purchased and by reason of such transaction
- 4 existing life insurance has been or is to be:

5 (A) Lapsed, forfeited, surrendered or otherwise terminated;

6 (B) Converted to reduced paid-up insurance, continued as
7 extended term insurance or otherwise reduced in value by the
8 use of nonforfeiture benefits or other policy values;

9 (C) Amended so as to effect either a reduction in benefits
10 or in the term for which coverage would otherwise remain in
11 force or for which benefits would be paid;

12 (D) Reissued with any reduction in cash value; or

13 (E) Pledged as collateral or subjected to borrowing, whether
14 in a single loan or under a schedule of borrowing over a period
15 of time for amounts in the aggregate exceeding twenty-five
16 percent (25%) of the loan value set forth in the policy;

17 (2) "Existing insurer" means the insurance company whose
18 existing life insurance policy is or will be terminated or
19 otherwise affected in a replacement transaction;

20 (3) "Replacing insurer" means the insurance company,
21 including the same insurer or an insurer in the same group of
22 affiliated insurers, that issues new life insurance in a replace-
23 ment transaction; and

24 (4) "Existing life insurance" means any life insurance in
25 force including life insurance under a binding or conditional
26 receipt or a life insurance policy that is within an unconditional
27 refund period, but excluding life insurance obtained through the
28 exercise of a dividend option.

29 (b) No replacing insurer shall issue any life insurance in a
30 replacement transaction to replace existing life insurance unless
31 the replacing insurer shall agree in writing with the insured that:

32 (1) The new life insurance issued by the replacing insurer
33 will not be contestable by it in the event of such insured's death

34 to any greater extent than the existing life insurance would have
35 been contestable by the existing insurer had such replacement
36 not taken place provided, however, that this paragraph shall not
37 apply to that amount of insurance written and issued which
38 exceeds the amount of the existing life insurance; and

39 (2) The new life insurance issued by the replacing insurer
40 may be voluntarily surrendered by the insured at any time
41 within thirty (30) days after its delivery to the insured in
42 exchange for a full refund of premiums paid by the replacing
43 insurer to the insured.

44 (c) Unless otherwise specifically included, subsection (b)
45 of this section shall not apply to:

46 (1) Annuities;

47 (2) Individual credit life insurance;

48 (3) Group life insurance, group credit life insurance and life
49 insurance policies issued in connection with a pension, profit-
50 sharing or other benefit plan qualifying for tax deductibility of
51 premiums, provided, however, that as to any plan described in
52 this subsection, full and complete disclosure of all material
53 facts shall be given to the administrator of any plan to be
54 replaced;

55 (4) Variable life insurance under which the death benefits
56 and cash values vary in accordance with unit values of invest-
57 ments held in a separate account;

58 (5) An application to the existing insurer that issued the
59 existing life insurance and a contractual policy change or
60 conversion privilege or a privilege of policy change granted by
61 the insurer is being exercised;

62 (6) Existing life insurance that is a nonconvertible term life
63 insurance policy which will expire in five (5) years or less and
64 cannot be renewed; or

65 (7) Proposed life insurance that is to replace life insurance
66 under a binding or conditional receipt issued by the same
67 company.

68 (d) For purposes of inducing or attempting to induce a
69 policyholder to lapse, forfeit, borrow against, surrender, retain,
70 exchange, modify, convert, or otherwise alter or dispose of any
71 insurance policy or coverage, no person shall:

72 (1) Prepare, make or issue, or cause to be prepared, made
73 or issued, any written or oral misrepresentation of a material
74 fact regarding the terms, conditions or benefits of either
75 existing insurance coverage or proposed replacement insurance
76 coverage; or

77 (2) Omit information concerning a material fact regarding
78 the terms, conditions or benefits of either existing insurance
79 coverage or proposed replacement insurance coverage.

80 (e) The provisions of this section shall have no further force
81 and effect as of the effective date of the emergency rule
82 authorized by the provisions of section forty-eight, article
83 thirteen of this chapter.

ARTICLE 13. LIFE INSURANCE.

§33-13-48. Replacement of existing rule with model rule.

1 The Commissioner shall propose and file with the Secretary
2 of State an emergency rule pursuant to the provisions of section
3 fifteen, article three, chapter twenty-nine-a of this code that is
4 based on the model regulation regarding the replacement of life
5 insurance and annuities approved by the National Association
6 of Insurance Commissioners in nineteen ninety-eight and

7 amended in two thousand. This emergency rule will be effective
8 upon approval by the Secretary of State and will replace the
9 legislative rule previously filed by the Commissioner on the
10 sixteenth day of May, nineteen ninety-seven as Title 114, Series
11 8 of the Code of State Rules: *Provided*, That the rule filed as an
12 emergency rule pursuant to this section shall be refiled at the
13 earliest opportunity as a legislative rule for review and promul-
14 gation in accordance with the provisions of article three, chapter
15 twenty-nine-a of this code.

CHAPTER 140

(H. B. 3014 — By Delegates H. White, Hrutkay, G. White
Ron Thompson, Webster, Cann and Hamilton)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §33-15-2g of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-16-1b, all relating to required coverage for specific conditions or treatments in individual and group accident and sickness policies of insurance; and providing limitations on applicability of these requirements.

Be it enacted by the Legislature of West Virginia:

That §33-15-2g of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-16-1b, all to read as follows:

Article

15. Accident and Sickness Insurance.

16. Group Accident and Sickness Insurance.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**§33-15-2g. Applicability.**

1 (a) The requirements of sections two-b, two-d, two-e and
2 two-f of this article and the provisions of this article which
3 generally require policies of accident and sickness insurance to
4 cover specific conditions or treatments, but which are not
5 expressly made applicable to the following types of policies, do
6 not apply to:

7 (1) Coverage only for accident, or disability income
8 insurance or any combination thereof;

9 (2) Coverage issued as a supplement to liability insurance;

10 (3) Liability insurance, including general liability insurance
11 and automobile liability insurance;

12 (4) Workers' Compensation or similar insurance;

13 (5) Automobile medical payment insurance;

14 (6) Credit-only insurance;

15 (7) Coverage for on-site medical clinics; and

16 (8) Other similar insurance coverage, which may be
17 specified by rule, under which benefits for medical care are
18 secondary or incidental to other insurance benefits.

19 (b) The requirements of sections two-b, two-d, two-e and
20 two-f of this article and the provisions of this article which
21 generally require policies of accident and sickness insurance to
22 cover specific conditions or treatments, but which are not
23 expressly made applicable to the following types of policies, do
24 not apply to the following if provided under a separate policy,
25 certificate, or contract of insurance:

- 26 (1) Limited scope dental or vision benefits;
- 27 (2) Benefits for long-term care, nursing home care, home
28 health care, community-based care, or any combination thereof;
- 29 (3) Coverage for only a specified disease or illness;
- 30 (4) Hospital indemnity or other fixed indemnity insurance;
- 31 (5) Medicare supplement insurance (as defined under
32 section 1882(g)(1) of the Social Security Act), coverage
33 supplemental to the coverage provided under chapter 55 of title
34 10, United States Code, and similar supplemental coverage
35 provided to coverage under group accident and sickness
36 insurance; and
- 37 (6) Any other benefits as may be specified by rule.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1b. Applicability.

- 1 (a) The provisions of this article which generally require
2 policies of group accident and sickness insurance to cover
3 specific conditions or treatments, but which are not expressly
4 made applicable to the following types of policies, do not apply
5 to:
 - 6 (1) Coverage only for accident, or disability income
7 insurance or any combination thereof;
 - 8 (2) Coverage issued as a supplement to liability insurance;
 - 9 (3) Liability insurance, including general liability insurance
10 and automobile liability insurance;
 - 11 (4) Workers' Compensation or similar insurance;

- 12 (5) Automobile medical payment insurance;
- 13 (6) Credit-only insurance;
- 14 (7) Coverage for on-site medical clinics; and
- 15 (8) Other similar insurance coverage, which may be
16 specified by rule, under which benefits for medical care are
17 secondary or incidental to other insurance benefits.
- 18 (b) The requirements of sections two-b, two-d, two-e and
19 two-f, article fifteen of this chapter and the provisions of this
20 article which generally require policies of group accident and
21 sickness insurance to cover specific conditions or treatments,
22 but which are not expressly made applicable to the following
23 types of policies, do not apply to the following if provided
24 under a separate policy, certificate, or contract of insurance:
- 25 (1) Limited scope dental or vision benefits;
- 26 (2) Benefits for long-term care, nursing home care, home
27 health care, community-based care, or any combination thereof;
- 28 (3) Coverage for only a specified disease or illness;
- 29 (4) Hospital indemnity or other fixed indemnity insurance;
- 30 (5) Medicare supplement insurance (as defined under
31 section 1882(g)(1) of the Social Security Act), coverage
32 supplemental to the coverage provided under chapter 55 of title
33 10, United States Code, and similar supplemental coverage
34 provided to coverage under group accident and sickness
35 insurance; and
- 36 (6) Any other benefits as may be specified by rule.

CHAPTER 141

(Com. Sub. for H. B. 3138 — By Delegates Amores, Trump,
Caputo, Brown, Webster, Palumbo, Schadler, Campbell,
Browning, Marshall and Mahan)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16E-1, §33-16E-2, §33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all relating to insurance and contraceptive coverage; providing definitions; specifying application of article; requiring health insurance plans provide parity for contraceptive drugs, devices and outpatient services; and providing exemptions and prohibitions.

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 §33-16E-1, §33-16E-2, §33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all to read as follows:

ARTICLE 16E. CONTRACEPTIVE COVERAGE.

§33-16E-1. Findings; short title.

§33-16E-2. Definitions.

§33-16E-3. Applicability.

§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.

§33-16E-5. Extraordinary surcharges prohibited.

§33-16E-6. Additional prohibitions.

§33-16E-7. Religious employer exemption.

§33-16E-1. Findings; short title.

1 (a) This article may be referred to as the “Prescription
2 Fairness Act of 2005.”

3 (b) The Legislature hereby finds and declares that:

4 (1) Contraceptives prevent unintended pregnancy;

5 (2) Planned pregnancies lead to healthier pregnancies,
6 children and families; and

7 (3) Contraceptive coverage provides West Virginians with
8 critical access to birth control.

9 (4) Therefore, the Legislature finds that prescription
10 contraceptives are basic health-care for West Virginia’s women
11 and families and that health insurance plans which include a
12 prescription drug plan should be required to cover contracep-
13 tives.

§33-16E-2. Definitions.

1 For the purposes of this article, these definitions are
2 applicable unless a different meaning clearly appears from the
3 context.

4 (1) “Contraceptives” means drugs or devices approved by
5 the food and drug administration to prevent pregnancy.

6 (2) “Covered person” means the policyholder, subscriber,
7 certificate holder, enrollee or other individual who is participat-
8 ing in, or receiving coverage under a health insurance plan. For
9 the purposes of this article, covered person does not include a
10 dependent child.

11 (3) “Health insurance plan” means benefits consisting of
12 medical care provided directly, through insurance or reimburse-

13 ment, or indirectly, including items and services paid for as
14 medical care, under any hospital or medical expense incurred
15 policy or certificate; hospital, medical or health service corpora-
16 tion contract; health maintenance organization contract;
17 fraternal benefit society contract; plan provided by a multiple-
18 employer trust or a multiple-employer welfare arrangement; or
19 plan provided by the West Virginia Public Employees Insur-
20 ance Agency pursuant to article sixteen, chapter five of this
21 code.

22 (4) "Outpatient contraceptive services" means consulta-
23 tions, examinations, procedures and medical services, provided
24 on an outpatient basis and related to the use of prescription
25 contraceptive drugs and devices to prevent pregnancy issued
26 under a health insurance plan that provides benefits for pre-
27 scription drugs or prescription devices in a prescription drug
28 plan.

29 (5) "Religious employer" is an entity whose sincerely held
30 religious beliefs or sincerely held moral convictions are central
31 to the employer's operating principles, and the entity is an
32 organization listed under 26 U.S.C. 501 (c)(3), 26 U.S.C. 3121,
33 or listed in the Official Catholic Directory published by P. J.
34 Kennedy and Sons.

§33-16E-3. Applicability.

1 (a) The provisions of this article apply to individual and
2 group health insurance plans issued by accident and sickness
3 insurers; health maintenance organizations; fraternal benefit
4 societies; hospital service corporations; the West Virginia
5 Public Employees Insurance Agency; health-care service
6 corporations; health service corporations; multiple employee
7 trusts; and multiple employer welfare arrangements. The
8 provisions of this section shall not apply to persons eligible for
9 coverage under Title XIX of the Social Security Act, known as

10 Medicaid (42 U.S.C. § 1396a *et seq.*), or for any other similar
11 coverage under state or federal governmental plans.

12 (b) The provisions of this article do not apply to:

13 (1) Any policy of liability insurance or contract supple-
14 mental thereto; coverage only for accident or disability income
15 insurance or any combination thereof; automobile medical
16 payment insurance; credit-only insurance; coverage for on-site
17 medical clinics; workers' compensation insurance; or other
18 similar insurance under which benefits for medical care are
19 secondary or incidental to other insurance benefits;

20 (2) If offered separately, a policy providing benefits for
21 long-term care, nursing home care, home health care,
22 community-based care or any combination thereof, dental or
23 vision benefits, or other similar, limited benefits;

24 (3) If offered as independent, noncoordinated benefits
25 under separate policies or certificates, specified disease or
26 illness coverage, hospital indemnity or other fixed indemnity
27 insurance, or coverage, such as medicare supplement insurance,
28 supplemental to a group health plan; or

29 (4) A policy of accident and sickness insurance covering a
30 period of less than one year.

§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.

1 (a) Health insurance plans that provide benefits for
2 prescription drugs or prescription devices in prescription drug
3 plans may not exclude or restrict benefits to covered persons for
4 any prescription contraceptive drug or prescription contracep-
5 tive device approved by the federal Food and Drug Administra-
6 tion. All customary benefit management rules, including, but

7 not limited to, drug formularies and coverage criteria may be
8 applied by the health insurance plan.

9 (b) Health insurance plans that provide benefits for
10 prescription drugs or prescription devices in a prescription drug
11 plan and that provide benefits for outpatient services provided
12 by a health care professional may not exclude or restrict
13 outpatient contraceptive services for covered persons for
14 prescription contraceptives or prescription devices.

§33-16E-5. Extraordinary surcharges prohibited.

1 A health insurance plan is prohibited from:

2 (1) Imposing deductibles, copayments, other cost-sharing
3 mechanisms, or waiting periods for prescription contraceptive
4 drugs or devices greater than deductibles, copayments, other
5 cost-sharing mechanisms or waiting periods for other covered
6 prescription drugs or devices.

7 (2) Imposing deductibles, copayments, other cost-sharing
8 mechanisms or waiting periods for outpatient contraceptive
9 services greater than such deductibles, copayments, other cost-
10 sharing mechanisms or waiting periods for other covered
11 outpatient services.

§33-16E-6. Additional prohibitions.

1 A health insurance plan is prohibited from:

2 (1) Denying eligibility, enrollment or renewal of coverage
3 to any individual because of their use or potential use of
4 contraceptives.

5 (2) Providing monetary payments or rebates to covered
6 persons to encourage them to accept less than the minimum
7 protections available under this section.

8 (3) Penalizing, or otherwise reducing or limiting the
9 reimbursement of a health care professional because such
10 professional prescribed contraceptive drugs or devices, or
11 provided contraceptive services.

12 (4) Providing incentives, monetary or otherwise, to a
13 health-care professional to induce such professional to withhold
14 contraceptive drugs, devices or services from covered persons.

§33-16E-7. Religious employer exemption.

1 (a) Notwithstanding any other provision of this article, a
2 religious employer may exclude or restrict from any health-care
3 insurance plan contract benefits for any prescription contracep-
4 tive drugs and devices that are contrary to the religious em-
5 ployer's religious tenets.

6 (b) Nothing in this article shall be construed to exclude
7 coverage for prescription contraceptive supplies ordered by a
8 health-care provider with prescriptive authority for reasons
9 other than contraceptive purposes, such as decreasing the risk
10 of ovarian cancer or eliminating symptoms of menopause, or
11 for prescription contraception that is necessary to preserve the
12 life or health of an enrollee.

13 (c) The health insurer for every religious employer that
14 invokes the exemption provided under this section shall provide
15 written notice to prospective enrollees prior to enrollment with
16 the plan, listing the contraceptive health-care services the
17 employer refuses to cover for religious reasons. The health
18 insurer shall make available for purchase at the prevailing
19 group rate a rider that provides prescription contraceptive drugs
20 and devices.

CHAPTER 142

(S. B. 256 — By Senators Bailey, Dempsey, Fanning, Love and Sharpe)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §33-22-2a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-17-6a; and to amend and reenact §33-22-2 of said code, all relating to flood insurance; requiring that certain insurance documents include a notice regarding the absence of flood insurance and the possible availability of flood insurance from other sources; requiring that farmers' mutual insurance companies include the notice; and making technical corrections to citations.

Be it enacted by the Legislature of West Virginia:

That §33-22-2a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-17-6a; and that §33-22-2 of said code be amended and reenacted, all to read as follows:

Article

- 17. **Fire and Marine Insurance.**
- 22. **Farmers' Mutual Fire Insurance Companies.**

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-6a. Notice of noncoverage of flood damages and the availability of flood insurance.

1. Every insurer issuing or renewing a policy that provides fire
2. insurance, as that term is defined in subsection (c), section ten,

3 article one of this chapter, but which does not cover damages
4 from flood, shall provide to the policyholder of every policy
5 delivered in this state a notice that provides as follows: THIS
6 POLICY DOES NOT COVER DAMAGE FROM FLOOD.
7 FOR INFORMATION ABOUT FLOOD INSURANCE,
8 CONTACT THE NATIONAL FLOOD INSURANCE PRO-
9 GRAM OR YOUR INSURANCE AGENT.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

1 Each company to the same extent that provisions are
2 applicable to domestic mutual insurers shall be governed by and
3 be subject to the following provisions of this chapter, but only
4 to the extent these provisions are not inconsistent with the
5 provisions of this article: Article one (definitions); article two
6 (insurance commissioner); article four (general provisions),
7 except that section sixteen of said article may not be applicable
8 thereto; article seven (assets and liabilities); article eight-a (use
9 of clearing corporations and federal reserve book-entry system);
10 article ten (rehabilitation and liquidation), except that under the
11 provisions of section thirty-two of said article assessments may
12 not be levied against any former member of a farmers' mutual
13 fire insurance company who is no longer a member of the
14 company at the time the order to show cause was issued; article
15 eleven (unfair trade practices); article twelve (insurance
16 producers and solicitors), except that the agent's license fee
17 shall be five dollars; section six-a, article seventeen (notice of
18 noncoverage of flood damages and the availability of flood
19 insurance); article twenty-six (West Virginia Insurance Guar-
20 anty Association Act); article twenty-seven (insurance holding
21 company systems); article thirty (mine subsidence insurance),
22 except that under the provisions of section six of said article a
23 farmers' mutual insurance company shall have the option of
24 offering mine subsidence coverage to all of its policyholders,
25 but may not be required to do so; article thirty-three (annual

26 audited financial report); article thirty-four (administrative
27 supervision); article thirty-four-a (standards and commis-
28 sioner's authority for companies considered to be in hazardous
29 financial condition); article thirty-five (criminal sanctions for
30 failure to report impairment); article thirty-six (business
31 transacted with Producer-Controlled Property-Casualty Insurer
32 Act); article thirty-seven (managing general agents); article
33 thirty-nine (disclosure of material transactions); article forty
34 (risk-based capital for insurers); and article forty-one (Insurance
35 Fraud Prevention Act).

CHAPTER 143

(Com. Sub. for S. B. 427 — By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to repeal §33-25A-24a, §33-25A-24b, §33-25A-29 and §33-25A-30 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25A-3a, §33-25A-12, §33-25A-14, §33-25A-17, §33-25A-22, §33-25A-23 and §33-25A-24 of said code; to amend said code by adding thereto a new section, designated §33-25A-14a; and to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code, all relating to health maintenance organizations; eliminating the requirement that a health maintenance organization be incorporated in this state in order to obtain a certificate of authority; eliminating the requirement of annual application for renewal of certificates of authority; increasing the time copies of grievances must be retained; permitting health status to be a basis for underwriting individual policies; changing the period in which

examinations must be performed by the Commissioner from three to five years; increasing the filing fee for annual reports; correcting a reference; clarifying scope of Commissioner's powers in performing examinations; clarifying that Insurance Fraud Prevention Act applies to health maintenance organizations; defining terms; and subjecting health maintenance organizations to risk-based capital requirements.

Be it enacted by the Legislature of West Virginia:

That §33-25A-24a, §33-25A-24b, §33-25A-29 and §33-25A-30 of the Code of West Virginia, 1931, as amended, be repealed; that §33-25A-3a, §33-25A-12, §33-25A-14, §33-25A-17, §33-25A-22, §33-25A-23 and §33-25A-24 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-25A-14a; and that §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code be amended and reenacted, all to read as follows:

Article

25A. Health Maintenance Organization Act.

40. Risk-Based Capital (RBC) for Insurers.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-3a. Conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; effect of bankruptcy proceedings.

§33-25A-12. Grievance procedure.

§33-25A-14. Prohibited advertising practices.

§33-25A-14a. Other prohibited practices.

§33-25A-17. Examinations.

§33-25A-22. Fees.

§33-25A-23. Penalties and enforcement.

§33-25A-24. Scope of provisions; applicability of other laws.

§33-25A-3a. Conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; effect of bankruptcy proceedings.

1 (a) As a condition precedent to the issuance or maintenance
2 of a certificate of authority, a health maintenance organization
3 shall file or have on file with the Commissioner:

4 (1) An acknowledgment that a delinquency proceeding
5 pursuant to article ten of this chapter, or supervision by the
6 Commissioner pursuant to article thirty-four of this chapter,
7 constitute the exclusive methods for the liquidation, rehabilita-
8 tion, reorganization or conservation of a health maintenance
9 organization;

10 (2) A waiver of any right to file or be subject to a bank-
11 ruptcy proceeding;

12 (3) Within thirty days of any change in the membership of
13 the governing body of the organization or in the officers or
14 persons holding five percent or more of the common stock of
15 the organization, or as otherwise required by the Commissioner:

16 (A) An amended list of the names, addresses and official
17 positions of each member of the governing body and a full
18 disclosure of any financial interest by a member of the govern-
19 ing body or any provider or any organization or corporation
20 owned or controlled by that person and the health maintenance
21 organization and the extent and nature of any contract or
22 financial arrangements between that person and the health
23 maintenance organization; and

24 (B) A complete biographical statement on forms prescribed
25 by the Commissioner and an independent investigation report
26 on each person for whom a biographical statement and inde-
27 pendent investigation report have not previously been submit-
28 ted; and

29 (4) For health maintenance organizations that have been
30 operating in this state for at least three years, a copy of the
31 current quality assurance report submitted to the health mainte-

32 nance organization by a nationally recognized accreditation and
33 review organization approved by the Commissioner, or in the
34 case of the issuance of an initial certificate of authority to a
35 health maintenance organization, a determination by the
36 Commissioner as to the feasibility of the health maintenance
37 organization's proposed quality assurance program: *Provided*,
38 That if a health maintenance organization files proof found in
39 the Commissioner's discretion to be sufficient to demonstrate
40 that the health maintenance organization has timely applied for
41 and reasonably pursued a review of its quality assurance
42 program, but a quality report has not been issued by the
43 accreditation and review organization, the health maintenance
44 organization shall be considered to have complied with this
45 subdivision.

46 (b) All certificates of authority issued to health maintenance
47 organizations expire at midnight on the thirty-first day of May
48 of each year. The Commissioner shall renew annually the
49 certificates of authority of all health maintenance organizations
50 that continue to meet all requirements of this section and
51 subsection (2), section four of this article: *Provided*, That a
52 health maintenance organization shall not qualify for renewal
53 of its certificate of authority if the organization has no subscrib-
54 ers in this state within twelve months after issuance of the
55 certificate of authority: *Provided, however*, That an organiza-
56 tion not qualifying for renewal may apply for a new certificate
57 of authority under section three of this article.

58 (c) The commencement of a bankruptcy proceeding either
59 by or against a health maintenance organization shall, by
60 operation of law;

61 Terminate the health maintenance organization's certificate
62 of authority; and

63 Vest in the Commissioner for the use and benefit of the
64 subscribers of the health maintenance organization the title to

65 any deposits of the health maintenance organization held by the
66 Commissioner: *Provided*, That if the bankruptcy proceeding is
67 initiated by a party other than the health maintenance organiza-
68 tion, the operation of this subsection shall be stayed for a period
69 of sixty days following the date of commencement of the
70 proceeding.

§33-25A-12. Grievance procedure.

1 (a) A health maintenance organization shall establish and
2 maintain a grievance procedure, which has been approved by
3 the Commissioner, to provide adequate and reasonable proce-
4 dures for the expeditious resolution of written grievances
5 initiated by enrollees concerning any matter relating to any
6 provisions of the organization's health maintenance contracts,
7 including, but not limited to, claims regarding the scope of
8 coverage for health care services; denials, cancellations or
9 nonrenewals of enrollee coverage; observance of an enrollee's
10 rights as a patient; and the quality of the health care services
11 rendered.

12 (b) A detailed description of the HMO's subscriber griev-
13 ance procedure shall be included in all group and individual
14 contracts as well as any certificate or member handbook
15 provided to subscribers. This procedure shall be administered
16 at no cost to the subscriber. An HMO subscriber grievance
17 procedure shall include the following:

18 (1) Both informal and formal steps shall be available to
19 resolve the grievance. A grievance is not considered formal
20 until a written grievance is executed by the subscriber or
21 completed on forms prescribed and received by the HMO;

22 (2) Each HMO shall designate at least one grievance
23 coordinator who is responsible for the implementation of the
24 HMO's grievance procedure;

25 (3) Phone numbers shall be specified by the HMO for the
26 subscriber to call to present an informal grievance or to contact
27 the grievance coordinator. Each phone number shall be toll free
28 within the subscriber's geographic area and provide reasonable
29 access to the HMO without undue delays. There must be an
30 adequate number of phone lines to handle incoming grievances;

31 (4) An address shall be included for written grievances;

32 (5) Each level of the grievance procedure shall have some
33 person with problem-solving authority to participate in each
34 step of the grievance procedure;

35 (6) The HMO shall process the formal written subscriber
36 grievance through all phases of the grievance procedure in a
37 reasonable length of time not to exceed sixty days, unless the
38 subscriber and HMO mutually agree to extend the time frame.
39 If the complaint involves the collection of information outside
40 the service area, the HMO has thirty additional days to process
41 the subscriber complaint through all phases of the grievance
42 procedure. The time limitations prescribed in this subdivision
43 requiring completion of the grievance process within sixty days
44 shall be tolled after the HMO has notified the subscriber, in
45 writing, that additional information is required in order to
46 properly complete review of the grievance. Upon receipt by the
47 HMO of the additional information requested, the time for
48 completion of the grievance process set forth in this subdivision
49 shall resume;

50 (7) The subscriber grievance procedure shall state that the
51 subscriber has the right to appeal to the Commissioner. There
52 shall be the additional requirement that subscribers under a
53 group contract between the HMO and a department or division
54 of the state shall first appeal to the state agency responsible for
55 administering the relevant program, and if either of the two
56 parties are not satisfied with the outcome of the appeal, they

57 may then appeal to the Commissioner. The HMO shall provide
58 to the subscriber written notice of the right to appeal upon
59 completion of the full grievance procedure and supply the
60 Commissioner with a copy of the final decision letter;

61 (8) The HMO shall have physician involvement in review-
62 ing medically related grievances. Physician involvement in the
63 grievance process should not be limited to the subscriber's
64 primary care physician, but may include at least one other
65 physician;

66 (9) The HMO shall offer to meet with the subscriber during
67 the formal grievance process. The location of the meeting shall
68 be at the administrative offices of the HMO within the service
69 area or at a location within the service area which is convenient
70 to the subscriber;

71 (10) The HMO may not establish time limits of less than
72 one year from the date of occurrence for the subscriber to file
73 a formal grievance;

74 (11) Each HMO shall maintain an accurate record of each
75 formal grievance. Each record shall include the following: A
76 complete description of the grievance, the subscriber's name
77 and address, the provider's name and address and the HMO's
78 name and address; a complete description of the HMO's factual
79 findings and conclusions after completion of the full formal
80 grievance procedure; a complete description of the HMO's
81 conclusions pertaining to the grievance as well as the HMO's
82 final disposition of the grievance; and a statement as to which
83 levels of the grievance procedure the grievance has been
84 processed and how many more levels of the grievance proce-
85 dure are remaining before the grievance has been processed
86 through the HMO's entire grievance procedure.

87 (c) Copies of the grievances and the responses to the
88 grievances shall be available to the Commissioner and, subject

89 to state and federal privacy laws, to the public for inspection for
90 five years.

91 (d) Any subscriber grievance in which time is of the
92 essence shall be handled on an expedited basis, such that a
93 reasonable person would believe that a prevailing subscriber
94 would be able to realize the full benefit of a decision in his or
95 her favor.

96 (e) Each health maintenance organization shall submit to
97 the Commissioner an annual report in a form prescribed by the
98 Commissioner which describes the grievance procedure and
99 contains a compilation and analysis of the grievances filed,
100 their disposition, and their underlying causes.

§33-25A-14. Prohibited advertising practices.

1 (a) No health maintenance organization, or representative
2 of a health maintenance organization, may cause or knowingly
3 permit the use of advertising which is untrue or misleading,
4 solicitation which is untrue or misleading, or any form of
5 evidence of coverage which is deceptive. No advertising may
6 be used until it has been approved by the Commissioner.
7 Advertising which has not been disapproved by the Commis-
8 sioner within sixty days of filing shall be considered approved.
9 For purposes of this article:

10 (1) A statement or item of information shall be considered
11 to be untrue if it does not conform to fact in any respect which
12 is or may be significant to an enrollee of, or person considering
13 enrollment in, a health maintenance organization;

14 (2) A statement or item of information shall be considered
15 to be misleading, whether or not it may be literally untrue if, in
16 the total context in which the statement is made or the item of
17 information is communicated, the statement or item of informa-
18 tion may be reasonably understood by a reasonable person, not

19 possessing special knowledge regarding health care coverage,
20 as indicating any benefit or advantage or the absence of any
21 exclusion, limitation, or disadvantage of possible significance
22 to an enrollee of, or person considering enrollment in, a health
23 maintenance organization, if the benefit or advantage or
24 absence of limitation, exclusion or disadvantage does not in fact
25 exist;

26 (3) An evidence of coverage shall be considered to be
27 deceptive if the evidence of coverage taken as a whole, and
28 with consideration given to typography and format, as well as
29 language, is such as to cause a reasonable person, not possess-
30 ing special knowledge regarding health maintenance organiza-
31 tions, and evidences of coverage therefor, to expect benefits,
32 services or other advantages which the evidence of coverage
33 does not provide or which the health maintenance organization
34 issuing the evidence of coverage does not regularly make
35 available for enrollees covered under the evidence of coverage;
36 and

37 (4) The Commissioner may propose rules for legislative
38 approval in accordance with article three, chapter twenty-nine-a
39 of this code to further define practices which are untrue,
40 misleading or deceptive.

41 (b) (1) No health maintenance organization may use in its
42 name, contracts, logo or literature any of the words "insurance",
43 "casualty", "surety", "mutual" or any other words which are
44 descriptive of the insurance, casualty or surety business or
45 deceptively similar to the name or description of any insurance
46 or surety corporation doing business in this state: *Provided,*
47 That when a health maintenance organization has contracted
48 with an insurance company for any coverage permitted by this
49 article, it may so state; and

50 (2) Only a person that has been issued a certificate of
51 authority under this article may use the words "health mainte-

52 nance organization” or the initials “HMO” in its name, con-
53 tracts, logo or literature to imply, directly or indirectly, that it
54 is a health maintenance organization or hold itself out to be a
55 health maintenance organization.

56 (c) (1) No agent of a health maintenance organization or
57 person selling enrollments in a health maintenance organization
58 shall sell an enrollment in a health maintenance organization
59 unless the agent or person shall first disclose in writing to the
60 prospective purchaser the following information using the
61 following exact terms in bold print: “Services offered”,
62 including any exclusions or limitations; “full cost”, including
63 copayments; “facilities available”; “transportation services”;
64 “disenrollment rate”; and “staff”, including the names of all
65 full-time staff physicians, consulting specialists, hospitals and
66 pharmacies associated with the health maintenance organiza-
67 tion. In any home solicitation, any three-day cooling-off period
68 applicable to consumer transactions generally applies in the
69 same manner as consumer transactions.

70 (2) The form disclosure statement shall not be used in sales
71 until it has been approved by the Commissioner or submitted to
72 the Commissioner for sixty days without disapproval.

73 (d) No contract with an enrollee shall prohibit an enrollee
74 from canceling his or her enrollment at any time for any reason
75 except that the contract may require thirty days’ notice to the
76 health maintenance organization.

77 (e) Any person who, in connection with an enrollment,
78 violates any provision of this section may be held liable for an
79 amount equivalent to one year’s subscription rate, plus costs
80 and a reasonable attorney’s fee.

§33-25A-14a. Other prohibited practices.

1 (a) No health maintenance organization may cancel or fail
2 to renew the coverage of an enrollee except for: (1) Failure to

3 pay the charge for health care coverage; (2) termination of the
4 health maintenance organization; (3) termination of the group
5 plan; (4) enrollee moving out of the area served; (5) enrollee
6 moving out of an eligible group; or (6) other reasons established
7 in rules promulgated by the Commissioner. No health mainte-
8 nance organization shall use any technique of rating or group-
9 ing to cancel or fail to renew the coverage of an enrollee. An
10 enrollee shall be given thirty days' notice of any cancellation or
11 nonrenewal and the notice shall include the reasons for the
12 cancellation or nonrenewal: *Provided*, That each enrollee
13 moving out of an eligible group shall be granted the opportunity
14 to enroll in the health maintenance organization on an individ-
15 ual basis. A health maintenance organization may not disenroll
16 an enrollee for nonpayment of copayments unless the enrollee
17 has failed to make payment in at least three instances over any
18 twelve-month period: *Provided, however*, That the enrollee may
19 not be disenrolled if the disenrollment would constitute
20 abandonment of a patient. Any enrollee wrongfully disenrolled
21 shall be reenrolled.

22 (b) The providers of a health maintenance organization who
23 provide health care services and the health maintenance
24 organization shall not have recourse against enrollees for
25 amounts above those specified in the evidence of coverage as
26 the periodic prepayment or copayment for health care services.

27 (c) No health maintenance organization shall enroll more
28 than three hundred thousand persons in this state: *Provided*,
29 That a health maintenance organization may petition the
30 Commissioner to exceed an enrollment of three hundred
31 thousand persons and, upon notice and hearing, good cause
32 being shown and a determination made that an increase would
33 be beneficial to the subscribers, creditors and stockholders of
34 the organization or would otherwise increase the availability of
35 coverage to consumers within the state, the Commissioner may,
36 by written order only, allow the petitioning organization to
37 exceed an enrollment of three hundred thousand persons.

38 (d) No health maintenance organization shall discriminate
39 in enrollment policies or quality of services against any person
40 on the basis of race, sex, age, religion, place of residence,
41 source of payment or, with respect to enrollment in group
42 policies, health status: *Provided*, That differences in rates based
43 on valid actuarial distinctions, including distinctions relating to
44 age and sex, shall not be considered discrimination in enroll-
45 ment policies.

46 (e) Any person who, in connection with an enrollment,
47 violates any provision of this section may be held liable for an
48 amount equivalent to one year's subscription rate, plus costs
49 and a reasonable attorney's fee.

§33-25A-17. Examinations.

1 (a) The Commissioner may make an examination of the
2 affairs of any health maintenance organization and providers
3 with whom the organization has contracts, agreements or other
4 arrangements as often as he or she considers it necessary for the
5 protection of the interests of the people of this state but not less
6 frequently than once every five years.

7 (b) The Commissioner may contract with the Department
8 of Health and Human Resources, any entity which has been
9 accredited by a nationally recognized accrediting organization
10 and has been approved by the Commissioner to make examina-
11 tions concerning the quality of health care services of any
12 health maintenance organization and providers with whom the
13 organization has contracts, agreements or other arrangements,
14 or any entity contracted with by the Department of Health and
15 Human Resources, as often as it considers necessary for the
16 protection of the interests of the people of this state, but not less
17 frequently than once every three years: *Provided*, That in
18 making the examination, the Department of Health and Human
19 Resources or the accredited entity shall use the services of

20 persons or organizations with demonstrable expertise in
21 assessing quality of health care.

22 (c) Every health maintenance organization and affiliated
23 provider shall submit its books and records to the examinations
24 and in every way facilitate them. For the purpose of examina-
25 tions, the Commissioner and the Department of Health and
26 Human Resources have all powers necessary to conduct the
27 examinations, including, but not limited to, the power to issue
28 subpoenas, the power to administer oaths to and examine the
29 officers and agents of the health maintenance organization and
30 the principals of the providers concerning their business.

31 (d) The health maintenance organization and any other
32 entity subject to examination pursuant to this article are subject
33 to the provisions of sections four, five, six, seven, eight and
34 nine, article two of this chapter in regard to the expense and
35 conduct of examinations.

36 (e) In lieu of the examination, the Commissioner may
37 accept the report of an examination made by other states.

38 (f) The expenses of an examination assessing quality of
39 health care under subsection (b) of this section and section
40 seventeen-a of this article shall be reimbursed pursuant to
41 subsection (n), section nine, article two of this chapter.

§33-25A-22. Fees.

1 Every health maintenance organization subject to this
2 article shall pay to the Commissioner the following fees: For
3 filing an application for a certificate of authority or amendment
4 to the application, two hundred dollars; for each renewal of a
5 certificate of authority, the annual fee as provided in section
6 thirteen, article three of this chapter; for each form filing and
7 for each rate filing, the fee, as provided in section thirty-four,
8 article six of this chapter; and for filing each annual report, one

9 hundred dollars. Fees charged under this section shall be for
10 the purposes set forth in section thirteen, article three of this
11 chapter.

§33-25A-23. Penalties and enforcement.

1 (1) The Commissioner may, in lieu of suspension or
2 revocation of a certificate of authority under section eighteen of
3 this article, levy an administrative penalty in an amount not less
4 than one hundred dollars nor more than five thousand dollars,
5 if reasonable notice in writing is given of the intent to levy the
6 penalty and the health maintenance organization has a reason-
7 able time within which to remedy the defect in its operations
8 which gave rise to the penalty citation. The Commissioner may
9 augment this penalty by an amount equal to the sum that he or
10 she calculates to be the damages suffered by enrollees or other
11 members of the public.

12 (2) Any person who violates any provision of this article
13 shall be guilty of a misdemeanor and, upon conviction thereof,
14 shall be fined not less than one thousand dollars nor more than
15 ten thousand dollars, or imprisoned in jail not more than one
16 year, or both fined and imprisoned.

17 (3) (a) If the Commissioner has cause to believe that any
18 violation of this article or rules promulgated pursuant to this
19 article has occurred or is threatened, prior to the levy of a
20 penalty or suspension or revocation of a certificate of authority,
21 the Commissioner shall give notice to the health maintenance
22 organization and to the representatives, or other persons who
23 appear to be involved in the suspected violation, to arrange a
24 conference with the alleged violators or their authorized
25 representatives for the purpose of attempting to ascertain the
26 facts relating to the suspected violation and, in the event it
27 appears that any violation has occurred or is threatened, to
28 arrive at an adequate and effective means of correcting or
29 preventing the violation.

30 (b) Proceedings under this subsection shall not be governed
31 by any formal procedural requirements and may be conducted
32 in a manner the Commissioner determines appropriate under the
33 circumstances. Enrollees shall be afforded notice by publication
34 of proceedings under this subsection and shall be afforded the
35 opportunity to intervene.

36 (4) (a) The Commissioner may issue an order directing a
37 health maintenance organization or a representative of a health
38 maintenance organization to cease and desist from engaging in
39 any act or practice in violation of the provisions of this article
40 or regulations promulgated pursuant to this article.

41 (b) Within ten days after service of the order of cease and
42 desist, the respondent may request a hearing on the question of
43 whether acts or practices in violation of this article have
44 occurred. The hearings shall be conducted pursuant to chapter
45 twenty-nine-a of this code and judicial review shall be available
46 as provided by chapter twenty-nine-a of this code.

47 (5) In the case of any violation of the provisions of this
48 article or rules promulgated pursuant to this article, if the
49 Commissioner elects not to issue a cease and desist order, or in
50 the event of noncompliance with a cease and desist order issued
51 pursuant to subsection (4) of this section, the Commissioner
52 may institute a proceeding to obtain injunctive relief, or seek
53 other appropriate relief, in the circuit court of the county of the
54 principal place of business of the health maintenance organiza-
55 tion.

56 (6) Any enrollee of or resident of the service area of the
57 health maintenance organization may bring an action to enforce
58 any provision, standard or rule enforceable by the Commis-
59 sioner. In the case of any successful action to enforce this
60 article, or accompanying standards or rules the individual shall
61 be awarded the costs of the action together with a reasonable
62 attorney's fee as determined by the court.

§33-25A-24. Scope of provisions; applicability of other laws.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws and provisions of hospital or medical
3 service corporation laws are not applicable to any health
4 maintenance organization granted a certificate of authority
5 under this article. The provisions of this article shall not apply
6 to an insurer or hospital or medical service corporation licensed
7 and regulated pursuant to the insurance laws or the hospital or
8 medical service corporation laws of this state except with
9 respect to its health maintenance corporation activities autho-
10 rized and regulated pursuant to this article. The provisions of
11 this article may not apply to an entity properly licensed by a
12 reciprocal state to provide health care services to employer
13 groups, where residents of West Virginia are members of an
14 employer group, and the employer group contract is entered
15 into in the reciprocal state. For purposes of this subsection, a
16 “reciprocal state” means a state which physically borders West
17 Virginia and which has subscriber or enrollee hold harmless
18 requirements substantially similar to those set out in section
19 seven-a of this article.

20 (b) Factually accurate advertising or solicitation regarding
21 the range of services provided, the premiums and copayments
22 charged, the sites of services and hours of operation and any
23 other quantifiable, nonprofessional aspects of its operation by
24 a health maintenance organization granted a certificate of
25 authority or its representative may not be construed to violate
26 any provision of law relating to solicitation or advertising by
27 health professions: *Provided*, That nothing contained in this
28 subsection shall be construed as authorizing any solicitation or
29 advertising which identifies or refers to any individual provider
30 or makes any qualitative judgment concerning any provider.

31 (c) Any health maintenance organization authorized under
32 this article may not be considered to be practicing medicine and

33 is exempt from the provisions of chapter thirty of this code
34 relating to the practice of medicine.

35 (d) The following provisions of this chapter shall be
36 applicable to any health maintenance organization granted a
37 certificate of authority under this article or which is otherwise
38 subject to the provisions of this article: The provisions of
39 sections four, five, six, seven, eight, nine and nine-a, article two
40 (Insurance Commissioner); sections fifteen and twenty, article
41 four (general provisions); section twenty, article five (borrow-
42 ing by insurers); section seventeen, article six (validity of
43 noncomplying forms); article six-c (guaranteed loss ratios as
44 applied to individual sickness and accident insurance policies);
45 article seven (assets and liabilities); article eight (investments);
46 article eight-a (use of clearing corporations and federal reserve
47 book-entry system); article nine (administration of deposits);
48 article ten (rehabilitation and liquidation); article twelve
49 (insurance producers and solicitors); section fourteen, article
50 fifteen (policies discriminating among health care providers);
51 section sixteen, article fifteen (policies not to exclude insured's
52 children from coverage; required services; coordination with
53 other insurance); section eighteen, article fifteen (equal
54 treatment of state agency); section nineteen, article fifteen
55 (coordination of benefits with Medicaid); article fifteen-b
56 (Uniform Health Care Administration Act); section three,
57 article sixteen (required policy provisions); section three-f,
58 article sixteen (required policy provisions – treatment of
59 temporomandibular joint disorder and craniomandibular
60 disorder); section eleven, article sixteen (group policies not to
61 exclude insured's children from coverage; required services;
62 coordination with other insurance); section thirteen, article
63 sixteen (equal treatment of state agency); section fourteen,
64 article sixteen (coordination of benefits with Medicaid); article
65 sixteen-a (group health insurance conversion); article sixteen-d
66 (marketing and rate practices for small employer accident and
67 sickness insurance policies); article twenty-five-c (Health

68 Maintenance Organization Patient Bill of Rights); article
69 twenty-five-f (coverage for patient cost of clinical trials); article
70 twenty-seven (insurance holding company systems); article
71 thirty-three (annual audited financial report); article thirty-four
72 (administrative supervision); article thirty-four-a (standards and
73 Commissioner's authority for companies considered to be in
74 hazardous financial condition); article thirty-five (criminal
75 sanctions for failure to report impairment); article thirty-seven
76 (managing general agents); article thirty-nine (disclosure of
77 material transactions); article forty (risk-based capital for
78 insurers); article forty-one (Insurance Fraud Prevention Act);
79 and article forty-two (Women's Access to Health Care Act). In
80 circumstances where the code provisions made applicable to
81 health maintenance organizations by this subsection refer to the
82 "insurer", the "corporation" or words of similar import, the
83 language shall be construed to include health maintenance
84 organizations.

85 (e) Any long-term care insurance policy delivered or issued
86 for delivery in this state by a health maintenance organization
87 shall comply with the provisions of article fifteen-a of this
88 chapter.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.

§33-40-1. Definitions.

§33-40-2. RBC reports.

§33-40-3. Company action level event.

§33-40-6. Mandatory control level event.

§33-40-7. Hearings.

§33-40-1. Definitions.

1 As used in this article, these terms have the following
2 meanings:

3 (a) "Adjusted RBC report" means an RBC report which has
4 been adjusted by the Commissioner in accordance with subsec-
5 tion (e), section two of this article.

6 (b) "Corrective order" means an order issued by the
7 Commissioner specifying corrective actions which the Commis-
8 sioner has determined are required.

9 (c) "HMO" means the same as defined in subsection (11),
10 section two, article twenty-five-a of this chapter; as used in
11 sections one, three, four, five, seven, eight and twelve of this
12 article, the term "insurer" includes HMO.

13 (d) "Domestic insurer" means any insurance company,
14 farmers' mutual fire insurance company or HMO domiciled in
15 this state.

16 (e) "Foreign insurer" means any insurance company which
17 is licensed to do business in this state under article three of this
18 chapter but is not domiciled in this state or any HMO that has
19 been issued a certificate of authority under article twenty-five-a
20 of this chapter but that is not domiciled in this state.

21 (f) "NAIC" means the National Association of Insurance
22 Commissioners.

23 (g) "Life and/or health insurer" means any insurance
24 company licensed under article three of this chapter or a
25 licensed property and casualty insurer writing only accident and
26 health insurance.

27 (h) "Property and casualty insurer" means any insurance
28 company licensed under article three of this chapter or any
29 farmers' mutual fire insurance company licensed under article
30 twenty-two of this chapter, but shall not include monoline
31 mortgage guaranty insurers, financial guaranty insurers and title
32 insurers.

33 (i) "Negative trend" means, with respect to a life and/or
34 health insurer, negative trend over a period of time, as deter-

35 mined in accordance with the trend test calculation included in
36 the RBC instructions.

37 (j) "RBC instructions" means the RBC report, including
38 risk-based capital instructions adopted by the NAIC, as the
39 RBC instructions may be amended by the NAIC, from time to
40 time, in accordance with the procedures adopted by the NAIC.

41 (k) "RBC level" means an insurer's or HMO's company
42 action level RBC, regulatory action level RBC, authorized
43 control level RBC, or mandatory control level RBC where:

44 (1) "Company action level RBC" means, with respect to
45 any insurer, the product of two and its authorized control level
46 RBC;

47 (2) "Regulatory action level RBC" means the product of
48 one and one-half and its authorized control level RBC;

49 (3) "Authorized control level RBC" means the number
50 determined under the risk-based capital formula in accordance
51 with the RBC instructions;

52 (4) "Mandatory control level RBC" means the product of
53 seven-tenths and the authorized control level RBC.

54 (l) "RBC plan" means a comprehensive financial plan
55 containing the elements specified in subsection (b), section
56 three of this article. If the Commissioner rejects the RBC plan
57 and it is revised by the insurer or HMO, with or without the
58 Commissioner's recommendation, the plan shall be called the
59 revised RBC plan.

60 (m) "RBC report" means the report required in section two
61 of this article.

62 (n) "Total adjusted capital" means the sum of:

63 (1) An insurer's or HMO's statutory capital and surplus as
64 determined in accordance with the statutory accounting
65 applicable to the financial statements required to be filed under
66 section fourteen, article four of this chapter; and

67 (2) Any other items required by the RBC instructions.

§33-40-2. RBC reports.

1 (a) Every domestic insurer shall, on or prior to each first
2 day of March (the "filing date"), prepare and submit to the
3 Commissioner a report of its RBC levels as of the end of the
4 calendar year just ended, in a form and containing the informa-
5 tion required by the RBC instructions. In addition, every
6 domestic insurer shall file its RBC report:

7 (1) With the NAIC in accordance with the RBC instruc-
8 tions; and

9 (2) With the Insurance Commissioner in any state in which
10 the insurer is authorized to do business, if the Insurance
11 Commissioner has notified the insurer of its request in writing,
12 in which case the insurer shall file its RBC report not later than
13 the later of:

14 (A) Fifteen days from the receipt of notice to file its RBC
15 report with that state; or

16 (B) The filing date.

17 (b) A life and health insurer's RBC shall be determined in
18 accordance with the formula set forth in the RBC instructions.
19 The formula shall take into account (and may adjust for the
20 covariance between):

21 (1) The risk with respect to the insurer's assets;

22 (2) The risk of adverse insurance experience with respect to
23 the insurer's liabilities and obligations;

24 (3) The interest rate risk with respect to the insurer's
25 business; and

26 (4) All other business risks and any other relevant risks set
27 forth in the RBC instructions determined in each case by
28 applying the factors in the manner set forth in the RBC instruc-
29 tions.

30 (c) A property and casualty insurer's RBC and an HMO's
31 RBC shall be determined in accordance with the applicable
32 formula set forth in the RBC instructions. The formula shall
33 take into account (and may adjust for the covariance between),
34 determined in each case by applying the factors in the manner
35 set forth in the RBC instructions:

36 (1) Asset risk;

37 (2) Credit risk;

38 (3) Underwriting risk; and

39 (4) All other business risks and any other relevant risks as
40 are set forth in the RBC instructions.

41 (d) An excess of capital over the amount produced by the
42 risk-based capital requirements contained in this article and the
43 formulas, schedules and instructions referenced in this article
44 is desirable in the business of insurance. Accordingly, insurers
45 and HMOs should seek to maintain capital above the RBC
46 levels required by this article. Additional capital is used and
47 useful in the insurance business and helps to secure insurers and
48 HMOs against various risks inherent in, or affecting, the
49 business of insurance and not accounted for or only partially
50 measured by the risk-based capital requirements contained in
51 this article.

52 (e) If a domestic insurer files an RBC report which, in the
53 judgment of the Commissioner is inaccurate, then the Commis-
54 sioner shall adjust the RBC report to correct the inaccuracy and
55 shall notify the insurer of the adjustment. The notice shall
56 contain a statement of the reason for the adjustment. An RBC
57 report that is adjusted is referred to as an "Adjusted RBC
58 Report".

§33-40-3. Company action level event.

1 (a) "Company action level event" means any of the
2 following events:

3 (1) The filing of an RBC report by an insurer which
4 indicates that:

5 (A) The insurer's total adjusted capital is greater than or
6 equal to its regulatory action level RBC, but less than its
7 company action level RBC; or

8 (B) If a life and/or health insurer, the insurer has total
9 adjusted capital which is greater than or equal to its company
10 action level RBC, but less than the product of its authorized
11 control level RBC and two and one-half and has a negative
12 trend;

13 (2) The notification by the Commissioner to the insurer of
14 an adjusted RBC report that indicates an event in subdivision
15 (1) of this subsection, provided the insurer does not challenge
16 the adjusted RBC report under section seven of this article; or

17 (3) If, pursuant to section seven of this article, an insurer
18 challenges an adjusted RBC report that indicates the event in
19 subdivision (1) of this subsection, the notification by the
20 Commissioner to the insurer that the Commissioner has, after
21 a hearing, rejected the insurer's challenge.

22 (b) In the event of a company action level event, the insurer
23 shall prepare and submit to the Commissioner an RBC plan
24 which shall:

25 (1) Identify the conditions which contribute to the company
26 action level event;

27 (2) Contain proposals of corrective actions which the
28 insurer intends to take and would be expected to result in the
29 elimination of the company action level event;

30 (3) Provide projections of the insurer's financial results in
31 the current year and at least the four succeeding years or, in the
32 case of an HMO, in the current year and at least the two
33 succeeding years, both in the absence of proposed corrective
34 actions and giving effect to the proposed corrective actions,
35 including projections of statutory operating income, net income,
36 capital and/or surplus. (The projections for both new and
37 renewal business may include separate projections for each
38 major line of business and separately identify each significant
39 income, expense and benefit component);

40 (4) Identify the key assumptions impacting the insurer's
41 projections and the sensitivity of the projections to the assump-
42 tions; and

43 (5) Identify the quality of, and problems associated with,
44 the insurer's business, including, but not limited to, its assets,
45 anticipated business growth and associated surplus strain,
46 extraordinary exposure to risk, mix of business and use of
47 reinsurance, if any, in each case.

48 (c) The RBC plan shall be submitted:

49 (1) Within forty-five days of the company action level
50 event; or

51 (2) If the insurer challenges an adjusted RBC report
52 pursuant to section seven of this article, within forty-five days
53 after notification to the insurer that the Commissioner has, after
54 a hearing, rejected the insurer's challenge.

55 (d) Within sixty days after the submission by an insurer of
56 an RBC plan to the Commissioner, the Commissioner shall
57 notify the insurer whether the RBC plan may be implemented
58 or is, in the judgment of the Commissioner, unsatisfactory. If
59 the Commissioner determines the RBC plan is unsatisfactory,
60 the notification to the insurer shall set forth the reasons for the
61 determination and may set forth proposed revisions which will
62 render the RBC plan satisfactory in the judgment of the
63 Commissioner. Upon notification from the Commissioner, the
64 insurer shall prepare a revised RBC plan, which may incorpo-
65 rate by reference any revisions proposed by the Commissioner,
66 and shall submit the revised RBC plan to the Commissioner:

67 (1) Within forty-five days after the notification from the
68 Commissioner; or

69 (2) If the insurer challenges the notification from the
70 Commissioner under section seven of this article, within
71 forty-five days after a notification to the insurer that the
72 Commissioner has, after a hearing, rejected the insurer's
73 challenge.

74 (e) In the event of a notification by the Commissioner to an
75 insurer that the insurer's RBC plan or revised RBC plan is
76 unsatisfactory, the Commissioner may, at the Commissioner's
77 discretion, subject to the insurer's right to a hearing under
78 section seven of this article, specify in the notification that the
79 notification constitutes a regulatory action level event.

80 (f) Every domestic insurer that files an RBC plan or revised
81 RBC plan with the Commissioner shall file a copy of the RBC

82 plan or revised RBC plan with the Insurance Commissioner in
83 any state in which the insurer is authorized to do business if:

84 (1) The state has an RBC provision substantially similar to
85 subsection (a), section eight of this article; and

86 (2) The Insurance Commissioner of that state has notified
87 the insurer of its request for the filing in writing, in which case
88 the insurer shall file a copy of the RBC plan or revised RBC
89 plan in that state no later than the later of:

90 (i) Fifteen days after the receipt of notice to file a copy of
91 its RBC plan or revised RBC plan with the state; or

92 (ii) The date on which the RBC plan or revised RBC plan
93 is filed under subsections (c) and (d) of this section.

§33-40-6. Mandatory control level event.

1 (a) "Mandatory control level event" means any of the
2 following events:

3 (1) The filing of an RBC report which indicates that the
4 insurer's or HMO's total adjusted capital is less than its
5 mandatory control level RBC;

6 (2) Notification by the Commissioner to the insurer or
7 HMO of an adjusted RBC report that indicates the event in
8 subdivision (1) of this subsection, provided the insurer or HMO
9 does not challenge the adjusted RBC report under section seven
10 of this article; or

11 (3) If, pursuant to section seven of this article, the insurer
12 or HMO challenges an adjusted RBC report that indicates the
13 event in subdivision (1) of this subsection, notification by the
14 Commissioner to the insurer or HMO that the Commissioner
15 has, after a hearing, rejected the insurer's or HMO's challenge.

16 (b) In the event of a mandatory control level event:

17 (1) With respect to a life insurer, the Commissioner shall
18 take any actions that are necessary to place the insurer under
19 regulatory control under article ten of this chapter. In that
20 event, the mandatory control level event shall be considered
21 sufficient grounds for the Commissioner to take action under
22 said article, and the Commissioner has the rights, powers and
23 duties with respect to the insurer that are set forth in said article.
24 If the Commissioner takes actions pursuant to an adjusted RBC
25 report, the insurer is entitled to the protections of said article
26 pertaining to summary proceedings. Notwithstanding any of
27 the provisions of this subdivision, the Commissioner may
28 forego action for up to ninety days after the mandatory control
29 level event if the Commissioner finds there is a reasonable
30 expectation that the mandatory control level event may be
31 eliminated within the ninety-day period.

32 (2) With respect to a property and casualty insurer, the
33 Commissioner shall take any actions that are necessary to place
34 the insurer under regulatory control under article ten of this
35 chapter or, in the case of an insurer which is writing no business
36 and which is running-off its existing business, may allow the
37 insurer to continue its run-off under the supervision of the
38 Commissioner. In either event, the mandatory control level
39 event shall be considered sufficient grounds for the Commis-
40 sioner to take action under said article and the Commissioner
41 has the rights, powers and duties with respect to the insurer that
42 are set forth in said article. If the Commissioner takes actions
43 pursuant to an adjusted RBC report, the insurer is entitled to the
44 protections of said article pertaining to summary proceedings.
45 Notwithstanding any of the provisions of this subdivision, the
46 Commissioner may forego action for up to ninety days after the
47 mandatory control level event if the Commissioner finds there
48 is a reasonable expectation that the mandatory control level
49 event may be eliminated within the ninety-day period.

50 (3) With respect to HMOs, the Commissioner shall take any
51 actions that are necessary to place the HMO under regulatory
52 control in accordance with the provisions of article ten and
53 section nineteen, article twenty-five of this chapter. In that
54 event, the mandatory control level event shall be considered
55 sufficient grounds for the Commissioner to take action under
56 said section and the Commissioner has the rights, powers and
57 duties with respect to the HMO as are set forth in said section.
58 If the Commissioner takes actions pursuant to an adjusted RBC
59 report, the HMO is entitled to the protections of said article
60 pertaining to summary proceedings. Notwithstanding any of
61 the provisions of this subdivision, the Commissioner may
62 forego action for up to ninety days after the mandatory control
63 level event if the Commissioner finds there is a reasonable
64 expectation that the mandatory control level event may be
65 eliminated within the ninety-day period.

§33-40-7. Hearings.

1 Insurers have the right to a confidential departmental
2 hearing, on the record, at which the insurer may challenge any
3 determination or action by the Commissioner made pursuant to
4 the provisions of this article. The insurer shall notify the
5 Commissioner of its request for a hearing within ten days after
6 receiving notification from the Commissioner.

7 (a) Notification to an insurer by the Commissioner of an
8 adjusted RBC report; or

9 (b) Notification to an insurer by the Commissioner that:

10 (1) The insurer's RBC plan or revised RBC plan is unsatis-
11 factory; and

12 (2) The notification constitutes a regulatory action level
13 event with respect to the insurer; or

14 (c) Notification to any insurer by the Commissioner that the
15 insurer has failed to adhere to its RBC plan or revised RBC plan
16 and that the failure has a substantial adverse effect on the ability
17 of the insurer to eliminate the company action level event with
18 respect to the insurer in accordance with its RBC plan or
19 revised RBC plan; or

20 (d) Notification to an insurer by the Commissioner of a
21 corrective order with respect to the insurer.

22 (e) Upon receipt of the insurer's request for a hearing, the
23 Commissioner shall set a date for the hearing, which shall be no
24 less than fifteen nor more than forty-five days after the date of
25 the insurer's request.

26 (f) To the extent that the provisions of this section conflict
27 with any other provisions applicable to HMOs, the provisions
28 of this section apply.

CHAPTER 144

(S. B. 254 —By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-38-3a and §33-38-14, all relating to reinsurance intermediaries; defining terms; establishing licensing requirements and procedures; setting fees; providing for service of process; and providing for reciprocity in certain instances.

Be it enacted by the Legislature of West Virginia:

That §33-38-2, §33-38-3 and §33-38-13 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 §33-38-3a and §33-38-14, all to read as follows:

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

§33-38-2. Definitions.

§33-38-3. Licensure.

§33-38-3a. License applications, issuance, refusal and renewal.

§33-38-13. Fees.

§33-38-14. Reciprocity.

§33-38-2. Definitions.

1 The definitions set forth in section two, article twelve of
2 this chapter apply to this article. In addition, as used in this
3 article:

4 (a) "Actuary" means a person who is a member in good
5 standing of the American academy of actuaries.

6 (b) "Controlling person" means any person, firm, associa-
7 tion or corporation who directly or indirectly has the power to
8 direct or cause to be directed, the management, control or
9 activities of the reinsurance intermediary.

10 (c) "Commissioner" means the Insurance Commissioner of
11 West Virginia.

12 (d) "Insurer" means any person, firm, association or
13 corporation duly licensed in this state pursuant to the applicable
14 provisions of this chapter as an insurer.

15 (e) "Firm" means an individual doing business as a sole
16 proprietor, a partnership, limited liability company, limited
17 liability partnership or other legal entity.

18 (f) "Licensed producer" means an insurance producer or
19 reinsurance intermediary licensed pursuant to the applicable
20 provisions of this chapter.

21 (g) "Reinsurance intermediary" means a reinsurance
22 intermediary-broker or a reinsurance intermediary-manager as
23 these terms are defined in subdivisions (g) and (h) of this
24 section.

25 (h) "Reinsurance intermediary-broker" means any person,
26 other than an officer or employee of the ceding insurer, firm,
27 association or corporation who solicits, negotiates or places
28 reinsurance cessions or retrocessions on behalf of a ceding
29 insurer without the authority or power to bind reinsurance on
30 behalf of such insurer.

31 (i) "Reinsurance intermediary-manager" means any person,
32 firm, association or corporation who has authority to bind or
33 manages all or part of the assumed reinsurance business of a
34 reinsurer, including the management of a separate division,
35 department or underwriting office, and acts as an agent for such
36 reinsurer, whether known as a reinsurance intermediary-
37 manager, manager or other similar term. Notwithstanding the
38 above, the following persons are not considered a reinsurance
39 intermediary-manager, with respect to such reinsurer, for the
40 purposes of this article:

41 (1) An employee of the reinsurer;

42 (2) A United States manager of the United States branch of
43 an alien reinsurer;

44 (3) An underwriting manager who, pursuant to contract,
45 manages all the reinsurance operations of the reinsurer, is under
46 common control with the reinsurer, subject to article twenty-
47 seven of this chapter, and whose compensation is not based on
48 the volume of premiums written.

49 (4) The manager of a group, association, pool or organiza-
50 tion of insurers which engage in joint underwriting or joint
51 reinsurance and who are subject to examination by the official
52 charged with regulation of insurance in the state in which the
53 manager's principal business office is located.

54 (j) "Reinsurer" means any person, firm, association or
55 corporation duly licensed or accredited in this state pursuant to
56 the applicable provisions of this chapter as an insurer with the
57 authority to assume reinsurance.

58 (k) "To be in violation" means that the reinsurance interme-
59 diary, insurer or reinsurer for whom the reinsurance intermedi-
60 ary was acting failed to substantially comply with the provi-
61 sions of this article.

62 (l) A "qualified United States financial institution" means
63 an institution that:

64 (1) Is organized or, in the case of a United States office of
65 a foreign banking organization, licensed under the laws of the
66 United States or any state thereof;

67 (2) Is regulated, supervised and examined by federal or
68 state authorities having regulatory authority over banks and
69 trust companies; and

70 (3) Has been determined by either the Commissioner or the
71 securities valuation office of the National Association of
72 Insurance Commissioners to meet such standards of financial
73 condition and standing as are considered necessary and appro-
74 priate to regulate the quality of financial institutions whose
75 letters of credit will be acceptable to the Commissioner.

§33-38-3. Licensure.

1 (a) No person, firm, association or corporation may act as
2 a reinsurance intermediary-broker in this state if the reinsurance

3 intermediary-broker maintains an office either directly or as a
4 member or employee of a firm or association, or an officer,
5 director or employee of a corporation:

6 (1) In this state, unless such reinsurance intermediary-
7 broker is a licensed insurance producer or reinsurance interme-
8 diary in this state; or

9 (2) In another state, unless such reinsurance intermedi-
10 ary-broker is a licensed insurance producer or reinsurance
11 intermediary in this state or another state having a law substan-
12 tially similar to this article or such reinsurance intermedi-
13 ary-broker is licensed in this state as a nonresident reinsurance
14 intermediary.

15 (b) No person, firm, association or corporation may act as
16 a reinsurance intermediary-manager:

17 (1) For a reinsurer domiciled in this state, unless such
18 reinsurance intermediary-manager is a licensed insurance
19 producer or reinsurance intermediary in this state;

20 (2) In this state, if the reinsurance intermediary-manager
21 maintains an office either directly or as a member or employee
22 of a firm or association, or an officer, director or employee of
23 a corporation in this state, unless such reinsurance intermedi-
24 ary-manager is a licensed insurance producer or reinsurance
25 intermediary in this state;

26 (3) In another state for a nondomestic insurer, unless such
27 reinsurance intermediary-manager is a licensed insurance
28 producer in this state or another state having a law substantially
29 similar to this article or such person is licensed in this state as
30 a nonresident reinsurance intermediary.

31 (c) The Commissioner may require a reinsurance intermedi-
32 ary-manager subject to the provisions of subsection (b) of this
33 section to:

34 (1) File a bond in an amount from an insurer acceptable to
35 the Commissioner for the protection of the reinsurer; and

36 (2) Maintain an errors and omissions policy in an amount
37 acceptable to the Commissioner.

38 (d) Licensed attorneys at law of this state when acting in
39 their professional capacity are exempt from this section.

§33-38-3a. License applications, issuance, refusal and renewal.

1 (a) An applicant for a reinsurance intermediary license shall
2 file with the Commissioner an application on the form pre-
3 scribed by the Commissioner and pay a nonrefundable applica-
4 tion fee of five hundred dollars.

5 (b) The application shall include: (1) For a firm or associa-
6 tion, the name of each member of the firm or association and of
7 each employee of the firm or association who will act as a
8 reinsurance intermediary under the license; and (2) for a
9 corporation, the name of each officer of the corporation and of
10 each employee and director of the corporation who will act as
11 a reinsurance intermediary under the license.

12 (c) The Commissioner shall issue a nonresident reinsurance
13 intermediary license if: (1) The applicant is currently licensed
14 as a resident reinsurance intermediary or insurance producer
15 and is in good standing in his or her home state, has submitted
16 either the application for licensure that the person submitted to
17 his or her home state or a completed application deemed
18 appropriate by the Commissioner and has paid the fees required
19 by this section; and (2) the applicant's home state awards
20 nonresident licenses to residents of this state on the same basis.

21 (d) Any license issued to a firm or association authorizes all
22 the members of the firm or association and any designated
23 employees to act as reinsurance intermediaries under the license

24 and all of these persons shall be named in the application and
25 any supplements thereto. Any license issued to a corporation
26 shall authorize all of the officers, and any designated employees
27 and directors thereof, to act as reinsurance intermediaries on
28 behalf of such corporation and all of these persons shall be
29 named in the application and any supplements thereto. To add
30 a name to or delete a name from a reinsurance intermediary
31 license, the licensee shall submit to the Commissioner the
32 change on a form prescribed by the Commissioner.

33 (e) The Commissioner may refuse to issue or renew a
34 reinsurance intermediary license if the Commissioner finds that
35 the applicant, any individual named on the application, a
36 member, principal, officer or director of the applicant or a
37 controlling person of the applicant is not trustworthy, as that
38 term may be defined by the Commissioner in legislative rules
39 promulgated pursuant to section twelve of this article, to act as
40 a reinsurance intermediary, has given cause for revocation or
41 suspension of a license or has failed to comply with a require-
42 ment for issuance of a license.

43 (f) Every nonresident firm, association or corporation
44 licensed as a reinsurance intermediary in this state or acting as
45 a reinsurance intermediary in this state but which is not licensed
46 shall be subject to the provisions of section twelve, article four
47 of this chapter to the same extent as licensed insurers with
48 regard to the service of process and payment of fees.

49 (g) Upon written request, the Commissioner shall furnish a
50 summary of the basis for refusal to issue or renew a license,
51 which document shall be privileged and not subject to the
52 provisions of article one, chapter twenty-nine-a of this code.
53 Within ten days of receipt of the summary, if the applicant or
54 licensee makes a written demand upon the Commissioner for a
55 hearing to determine the reasonableness of the Commissioner's
56 action, a hearing shall be conducted in accordance with the
57 provisions of section thirteen, article two of this chapter.

58 (h) Each license issued pursuant to this article expires on
59 the thirtieth day of June next following the date of issuance.
60 Between the first day of May and the first day of June of the
61 renewal year, each licensed reinsurance intermediary shall
62 submit to the Commissioner a renewal application and a
63 nonrefundable annual renewal fee of two hundred dollars:
64 *Provided*, That a reinsurance intermediary who allows the
65 reinsurance intermediary license to lapse may, within eleven
66 months from the expiration date, reinstate the same license
67 upon payment of a renewal fee of four hundred dollars.

68 (i) All application and renewal fees collected by the
69 Commissioner pursuant to the provisions of this section shall be
70 paid into the State Treasury and credited to the special revenue
71 account created in section thirteen, article three of this chapter.

72 (j) Within thirty days of a change in its legal name or
73 mailing address, a licensee shall notify the Commissioner of
74 such change on a form prescribed by the Commissioner, and
75 failure to timely file such form may result in a penalty pursuant
76 to section eleven of this article.

§33-38-13. Fees.

1 Except where it is otherwise specially provided, the
2 Commissioner shall demand and receive the following fees
3 from all reinsurance intermediaries: For receiving and filing
4 annual reports, one hundred dollars; for filing certified copy of
5 articles of incorporation, fifty dollars; for filing copy of its
6 charter, fifty dollars; for filing statements preliminary to
7 admission, one hundred dollars; for filing of designated
8 contract, twenty-five dollars; for filing of notification of
9 termination of a contract with a reinsurance intermediary-
10 manager by the reinsurer, ten dollars; for filing to add or delete
11 names on the reinsurance intermediary license, twenty-five
12 dollars; for filing an address change, twenty-five dollars; for
13 filing a legal name change, seventy-five dollars; for filing a

14 bond or an errors and omissions policy, twenty-five dollars; and
15 for filing any additional documents as required by law or
16 furnishing copies thereof, copies of reports or certificates of
17 condition of reinsurance intermediary to be filed in any other
18 state, twenty dollars. All such fees shall be paid into the State
19 Treasury and credited to the special revenue account created in
20 section thirteen, article three of this chapter.

§33-38-14. Reciprocity.

1 (a) The Commissioner may waive any requirements for a
2 nonresident license applicant with a valid license from the
3 applicant's home state, except the requirements imposed by
4 sections three and three-a of this article, if the applicant's home
5 state awards nonresident licenses to residents of this state on the
6 same basis.

7 (b) A nonresident reinsurance intermediary's satisfaction of
8 his or her home state's continuing education requirements for
9 licensed insurance producers or reinsurance intermediaries shall
10 constitute satisfaction of this state's continuing education
11 requirements if the nonresident's home state recognizes the
12 satisfaction of its continuing education requirements imposed
13 upon insurance producers or reinsurance intermediaries from
14 this state on the same basis.

CHAPTER 145

(S. B. 253 —By Senators Minard and Sharpe)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §33-43-7 of the Code of West Virginia, 1931, as amended, relating to late filings of tax returns to the Insurance Commissioner; permitting the Commissioner to waive or reduce the penalty; and establishing the standard for granting waiver or reduction.

Be it enacted by the Legislature of West Virginia:

That §33-43-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-7. Penalties.

1 (a) If any taxpayer fails to file a return by the applicable
2 filing date, then for each day throughout which the taxpayer
3 fails to file, the taxpayer is liable for a civil penalty of twenty-
4 five dollars: *Provided*, That the Commissioner may waive or
5 reduce this penalty if the Commissioner determines that the
6 failure to timely file was caused by excusable neglect.

7 (b) If a taxpayer fails to pay a tax liability in full by the
8 applicable payment date, then for each day throughout which a
9 portion of the liability remains unpaid, the taxpayer is liable for
10 a civil penalty in an amount equal to one percent of the unpaid
11 portion: *Provided*, That the sum of the penalties imposed under
12 this subsection may not exceed one hundred percent of the tax
13 liability: *Provided, however*, That this penalty may be waived
14 or reduced if the taxpayer establishes, to the satisfaction of the
15 Commissioner, that the failure upon which the penalty is based
16 was not, in whole or in part, willful or due to the neglect of the
17 taxpayer.

18 (c) The assessment of a penalty under this section is
19 automatic unless a waiver or reduction of the penalty is agreed
20 to by the Commissioner in writing.

CHAPTER 146

(H. B. 2495 — By Delegate Pino)

[Passed March 11, 2005; in effect ninety days from passage.]

[Approved by the Governor on March 24, 2005.]

AN ACT to repeal §7-8-3 of the Code of West Virginia, 1931, as amended, relating to inspection of jails.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. JAIL AND JAILER.

§1. Repeal of section relating to inspection of jails.

- 1 Section three, article eight, chapter seven of the Code of
- 2 West Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 147

(H. B. 3105 — By Delegates Michael, Boggs, Cann, Kominar,
Stalaker, Proudfoot, Ron Thompson, Frederick,
Palumbo, H. K. White, Susman)

[Passed April 5, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-21, relating to

creating a special revenue fund for the provision of occupational safety and health initiatives.

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 §21-3-21, to read as follows:

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-21. Special Revenue Fund for the Division of Labor; authorized deposits; disbursements; purpose.

1 There is hereby created in the State Treasury a special
2 revenue fund to be known as the “Occupational Safety and
3 Health Fund” which shall consist of all gifts, grants, bequests,
4 transfers, appropriations or other donations or payments which
5 may be received by the Division of Labor from any government-
6 tal entity or unit or any person, firm, foundation, or corporation
7 for the purposes of this section, and all interest or other return
8 earned from investment of the fund. Expenditures from the fund
9 shall be made by the Commissioner of the Division of Labor to
10 provide matching funds, or to reimburse the Division of Labor
11 for providing matching funds, to obtain federal funds for the
12 administration of an occupational safety and health consultation
13 program under contract with the federal Division of Labor.

CHAPTER 148

(S. B. 347— By Senator Plymale)

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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; Higher Education Policy Commission; Council for Community and Technical College Education; Underwood-Smith Teacher Scholarship Program; West Virginia Engineering, Science and Technology Scholarship Program; Medical Education Fee and Medical Student Loan Program; and performance indicators.

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.

§18B-17-2. Authorizing rules of higher education policy commission.

§18B-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 the
2 fifteenth day of October, two thousand four, relating to the
3 Higher Education Policy Commission (Underwood-Smith
4 Teacher Scholarship Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on the
6 fifteenth day of October, two thousand four, relating to the
7 Higher Education Policy Commission (West Virginia Engineer-
8 ing, Science and Technology Scholarship Program rule) is
9 authorized.

10 (c) The legislative rule filed in the State Register on the
11 fifteenth day of October, two thousand four, relating to the
12 Higher Education Policy Commission (Medical Education Fee
13 and Medical Student Loan Program rule) is authorized.

§18B-17-3. Authorizing rule of the council for community and technical college education.

1 The legislative rule filed in the State Register on the
2 twenty-ninth day of September, two thousand four, relating to
3 the Council for Community and Technical College Education
4 (performance indicators rule) is authorized.

CHAPTER 149

**(Com. Sub. for S. B. 341— By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)**

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing Health Care

Authority to promulgate a legislative rule relating to benchmarking and discount contracts; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to implementation of Omnibus Health Care Act; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to implementation of Omnibus Health Care Act payment provisions; authorizing Department of Health and Human Resources and Insurance Commissioner to promulgate a legislative rule relating to uniform credentialing of health care practitioners; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to methods and standards for chemical test for intoxication; and authorizing Department of Health and Human Resources to promulgate a legislative rule relating to Grade "A" pasturized milk.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health Care Authority.

§64-5-2. Department of Health and Human Resources.

§64-5-1. Health Care Authority.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section eight, article twenty-nine-b, chapter sixteen
4 of this code modified by the Health Care Authority to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the fourteenth day of
7 February, two thousand five, relating to the Health Care
8 Authority (benchmarking and discount contracts, 65 CSR 26)
9 is authorized.

§64-5-2. Department of Health and Human Resources.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section seven, article twenty-nine-d, chapter
4 sixteen of this code modified by the Department of Health and
5 Human Resources to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the fifteenth day of December, two thousand four,
8 relating to the Department of Health and Human Resources
9 (implementation of the Omnibus Health Care Act, 69 CSR 2)
10 is authorized, with the following amendment:

11 On page one, subsection 1.1., line six, by striking out the
12 words "Division of Workers' Compensation" and inserting in
13 lieu thereof the words "Workers' Compensation Commis-
14 sioner";

15 On page one, subsection 1.1, line ten, after the words "and
16 the" by inserting the words "University of West Virginia", and
17 by striking out the words "which has responsibility for" and
18 inserting in lieu thereof the word "and";

19 And,

20 On page four, section 5, by striking out "5.1." and the
21 words "as a matter of law as set forth in the Act", and, after the
22 word "pursuant" by striking out the words "the Act" and
23 inserting in lieu thereof the words "W. Va. Code §16-29D-4".

24 (b) The legislative rule filed in the State Register on the
25 twenty-seventh day of August, two thousand four, under the
26 authority of section seven, article twenty-nine-d, chapter
27 sixteen of this code modified by the Department of Health and
28 Human Resources to meet the objections of the Legislative
29 Rule-Making Review Committee and refiled in the State
30 Register on the fifteenth day of December, two thousand four,

31 relating to the Department of Health and Human Resources
32 (implementation of the Omnibus Health Care Act payment
33 provisions, 69 CSR 3) is authorized.

34 (c) The legislative rule filed in the State Register on the
35 twenty-seventh day of August, two thousand four, under the
36 authority of section two, article one-a, chapter sixteen of this
37 code modified by the Department of Health and Human
38 Resources and the Insurance Commissioner to meet the
39 objections of the Legislative Rule-Making Review Committee
40 and refiled in the State Register on the twenty-first day of
41 December, two thousand four, relating to the Department of
42 Health and Human Resources and the Insurance Commissioner
43 (uniform credentialing of health care practitioners, 64 CSR 89)
44 is authorized.

45 (d) The legislative rule filed in the State Register on the
46 twenty-third day of April, two thousand four, under the
47 authority of section four, article one, chapter sixteen of this
48 code modified by the Department of Health and Human
49 Resources to meet the objections of the Legislative Rule-
50 Making Review Committee and refiled in the State Register on
51 the twenty-fifth day of January, two thousand five, relating to
52 the Department of Health and Human Resources (methods and
53 standards for chemical tests for intoxication, 64 CSR 10) is
54 authorized.

55 (e) The legislative rule filed in the State Register on the
56 twenty-seventh day of August, two thousand four, under the
57 authority of section five, article seven, chapter sixteen of this
58 code modified by the Department of Health and Human
59 Resources to meet the objections of the Legislative Rule-
60 Making Review Committee and refiled in the State Register on
61 the twenty-first day of December, two thousand four, relating
62 to the Department of Health and Human Resources (Grade "A"
63 pasturized milk, 64 CSR 34) is authorized.

CHAPTER 150

**(Com. Sub. for S. B. 382— By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing Consolidated Public Retirement Board to promulgate

a legislative rule relating to Deputy Sheriff Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Contribution System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Benefit Plan; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to West Virginia State Police disability determination and appeal process; authorizing Ethics Commission to promulgate a legislative rule relating to code of conduct for administrative law judges; authorizing Division of Information Services and Communications to promulgate a legislative rule relating to telecommunications payments by spending units; authorizing Division of Personnel to promulgate a legislative rule relating to administration of the Division; authorizing Division of Personnel to promulgate a legislative rule relating to preemployment references and inquiries; authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Public Entities Insurance Program; and authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

Article

- 1. General Legislative Authorization.**
- 2. Authorization for Department of Administration to Promulgate Legislative Rules.**

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.**§64-1-1. Legislative authorization.**

1 Under the provisions of article three, chapter twenty-nine-a
2 of the Code of West Virginia, the Legislature expressly
3 authorizes the promulgation of the rules described in articles
4 two through eleven, inclusive, of this chapter, subject only to
5 the limitations set forth with respect to each such rule in the
6 section or sections of this chapter authorizing its promulgation.
7 Legislative rules promulgated pursuant to the provisions of
8 articles one through eleven, inclusive, of this chapter in effect
9 at the effective date of this section shall continue in full force
10 and effect until reauthorized in this chapter by legislative
11 enactment or until amended by emergency rule pursuant to the
provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of Administration.

§64-2-2. Consolidated Public Retirement Board.

§64-2-3. West Virginia Ethics Commission.

§64-2-4. Division of Information Service and Communications.

§64-2-5. Division of Personnel.

§64-2-6. Board of Risk and Insurance Management.

§64-2-1. Department of Administration.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section forty-two, article three, chapter five-a of
4 this code modified by the Department of Administration to
5 meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the sixteenth
7 day of November, two thousand four, relating to the Depart-
8 ment of Administration (leasing space on behalf of state
9 spending units, 148 CSR 2) is authorized, with the following
10 amendment:

11 On page seven, by striking out all of subsection 12.6.

12 (b) The legislative rule filed in the State Register on the
13 twenty-seventh day of August, two thousand four, under the
14 authority of section forty-eight, article three, chapter five-a of
15 this code relating to the Department of Administration (state-
16 owned vehicles, 148 CSR 3) is authorized.

§64-2-2. Consolidated Public Retirement Board.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of August, two thousand four, under the
3 authority of section one, article ten-d, chapter five of this code
4 modified by the Consolidated Public Retirement Board to meet
5 the objections of the Legislative Rule-Making Review Com-
6 mittee and refiled in the State Register on the seventeenth day
7 of November, two thousand four, relating to the Consolidated
8 Public Retirement Board (general provisions, 162 CSR 1) is
9 authorized, with the following amendment:

10 On page three, subdivision 6.2.1., lines sixteen and
11 seventeen, by striking out the words "Accrued Retirement
12 Benefit" and inserting in lieu thereof the words "vested accrued
13 retirement benefit";

14 On page three, paragraph 6.2.1.1., by striking out the
15 paragraph in its entirety and inserting in lieu thereof the
16 following:

17 6.2.1.1. "Vested accrued retirement benefit" means the
18 benefit due to the member as of the date specified by the
19 parties in the Qualified Domestic Relations Order set out in
20 subdivision 6.2.2. of this rule.;

21 On page three, subdivision 6.2.3., line nine, by striking out
22 the words "Accrued Retirement Benefit" and inserting in lieu
23 thereof the words "vested accrued retirement benefit";

24 On page three, subdivision 6.2.4., line nine, by striking out
25 the words “Accrued Retirement Benefit” and inserting in lieu
26 thereof the words “vested accrued retirement benefit”;

27 On page four, paragraph 6.2.5.3., lines three and four, by
28 striking out the words “Accrued Retirement Benefit” and
29 inserting in lieu thereof the words “vested accrued retirement
30 benefit”;

31 And,

32 On page four, subdivision 6.2.8., line six, by striking out
33 the words “Moreover, no qualified domestic relations order
34 will be honored by the board while a loan under the above two
35 sections is outstanding” and inserting in lieu thereof the words
36 “*Provided*, That, a member may borrow from that portion of
37 his or her individual account not subject to the qualified
38 domestic relations order.”.

39 (b) The legislative rule filed in the State Register on the
40 twenty-fourth day of August, two thousand four, under the
41 authority of section one, article ten-d, chapter five of this code
42 modified by the Consolidated Public Retirement Board to meet
43 the objections of the Legislative Rule-Making Review Com-
44 mittee and refiled in the State Register on the seventeenth day
45 of November, two thousand four, relating to the Consolidated
46 Public Retirement Board (Deputy Sheriff Retirement System,
47 162 CSR 10) is authorized, with the following amendment:

48 On page six, by striking out section fourteen in its entirety,
49 and redesignating the remaining sections and their components
50 accordingly.

51 (c) The legislative rule filed in the State Register on the
52 twenty-fourth day of August, two thousand four, under the
53 authority of section one, article ten-d, chapter five of this code

54 modified by the Consolidated Public Retirement Board to meet
55 the objections of the Legislative Rule-Making Review Com-
56 mittee and refiled in the State Register on the seventeenth day
57 of November, two thousand four, relating to the Consolidated
58 Public Retirement Board (benefit determination and appeal,
59 162 CSR 2) is authorized.

60 (d) The legislative rule filed in the State Register on the
61 twenty-fourth day of August, two thousand four, under the
62 authority of section one, article ten-d, chapter five of this code
63 modified by the Consolidated Public Retirement Board to meet
64 the objections of the Legislative Rule-Making Review Com-
65 mittee and refiled in the State Register on the seventeenth day
66 of November, two thousand four, relating to the Consolidated
67 Public Retirement Board (Teachers Defined Contribution
68 System, 162 CSR 3) is authorized, with the following amend-
69 ment:

70 On page one, subsection 3.1, line four, after the words
71 “different meaning” by inserting a new subdivision to read as
72 follows: “3.1.1. ‘Accrued benefit’ is the amount credited to the
73 member’s annuity account.”, and by redesignating the remain-
74 ing subdivisions accordingly;

75 On page three, subsection 4.1, line thirteen, following the
76 words “fifteen (15) days of the end of the pay period.”, by
77 striking out the remainder of the subsection;

78 On page three, subsection 4.2, twenty-one, following the
79 words “fifteen (15) days of the end of the pay period.”, by
80 striking out the remainder of the subsection;

81 And,

82 On page eight, subsection 7.5, line fourteen, after the
83 words “default fund for distribution to the member”, by
84 inserting the words “or beneficiary”.

85 (e) The legislative rule filed in the State Register on the
86 twenty-fourth day of August, two thousand four, under the
87 authority of section one, article ten-d, chapter five of this code
88 modified by the Consolidated Public Retirement Board to meet
89 the objections of the Legislative Rule-Making Review Com-
90 mittee and refiled in the State Register on the seventeenth day
91 of November, two thousand four, relating to the Consolidated
92 Public Retirement Board (Teachers Defined Benefit Plan, 162
93 CSR 4) is authorized, with the following amendment:

94 On page seven, by striking out section 10 in its entirety.

95 (f) The legislative rule filed in the State Register on the
96 twenty-fourth day of August, two thousand four, under the
97 authority of section one, article ten-d, chapter five of this code
98 modified by the Consolidated Public Retirement Board to meet
99 the objections of the Legislative Rule-Making Review Com-
100 mittee and refiled in the State Register on the seventeenth day
101 of November, two thousand four, relating to the Consolidated
102 Public Retirement Board (Public Employees Retirement
103 System, 162 CSR 5) is authorized with the following amend-
104 ment:

105 On page three, by striking out section 10 in its entirety and
106 redesignating the remaining sections and their components
107 accordingly.

108 (g) The legislative rule filed in the State Register on the
109 twenty-fourth day of August, two thousand four, under the
110 authority of section one, article ten-d, chapter five of this code
111 relating to the Consolidated Public Retirement Board (West
112 Virginia State Police disability determination and appeal
113 process, 162 CSR 9) is authorized.

§64-2-3. West Virginia Ethics Commission.

1 The legislative rule filed in the State Register on the
2 twenty-sixth day of August, two thousand four, under the
3 authority of section five-a, article two, chapter six-b of this
4 code modified by the Ethics Commission to meet the objec-
5 tions of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on the sixteenth day of February,
7 two thousand five, relating to the Ethics Commission (code of
8 conduct for administrative law judges, 158 CSR 13) is autho-
9 rized, with the following amendment:

10 On pages eleven and twelve, by striking out paragraph
11 4.7.a.2. in its entirety and inserting in lieu thereof the follow-
12 ing:

13 "4.7.a.2. Personally solicit funds for a political organiza-
14 tion or political candidate; Provided, That, the provisions of
15 this paragraph do not apply to part-time state administrative
16 law judges.

17 4.7.a.3. Be compelled to pay an assessment to a political
18 organization or candidate or purchase tickets for political
19 dinners or other similar functions."

§64-2-4. Division of Information Service and Communications.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section four-a, article seven, chapter five-a of this
4 code modified by the Division of Information Services and
5 Communications to meet the objections of the Legislative
6 Rule-Making Review Committee and refiled in the State
7 Register on the thirteenth day of January, two thousand five,
8 relating to the Division of Information Services and Communi-
9 cations (telecommunications payments by spending units, 161
10 CSR 2) is authorized, with the following amendment:

11 On page one, section 2, subsection (g.), after the word
12 “IS&C”, by inserting the words “or ‘the Division’”;

13 On page two, section 2, subsection “(k.) ‘Shared Ac-
14 count’”, after the words “in §5A-7-4a”, by striking “(l)” and
15 inserting in lieu thereof “(k)”;

16 On page two, section 2, by striking all of subsection (l.)
17 and inserting in lieu thereof the following:

18 “2.15. ‘Spending Unit’ means a department, agency or
19 institution of the state government for which an appropriation
20 is requested, or to which an appropriation is made by the
21 Legislature: *Provided*, That spending unit does not include the
22 Legislature or the judiciary.”;

23 On page three, section 3, following the words “spending
24 units”, by striking out the remainder of the section and insert-
25 ing in lieu thereof “that have their telecommunications services
26 billed on the state’s shared account.”;

27 On page three, section 4, subsection (b.), line 12, by
28 striking out the words “to ensure the legitimacy of the
29 charges.”;

30 On page three, section 4, by striking out subdivision (g.) in
31 its entirety and relettering the remaining subdivision;

32 On page three, section 5, by striking out the words “IS&C
33 will insure all of its duties and rights are executed as defined
34 below after the first billing period. This allows IS&C to
35 implement the new policies and allow for transition by all
36 parties (vendors, spending units, etc.)”;

37 On page three, by striking out subdivisions 5.1.2. and
38 5.1.3. in their entirety and renumbering the remaining subdivi-
39 sion;

40 On page four, section 5.1.4., following the word “Charges”
41 by striking out the words “not rejected during this preliminary
42 review by IS&C”;

43 On page five, section 6, by striking out the words “Any
44 spending unit that is utilizing the services and pricing of a
45 telecommunications provider via a state-issued contract must
46 agree to have its charges included in the shared account and all
47 requests for telecommunications services must be obtained by
48 submitting to IS&C a Telecommunications Change Request
49 form for approval.”;

50 On page eight, section 8, line 3, after the word “via” by
51 striking out the words “a state-issued contract” and inserting in
52 lieu thereof the words “via a shared account”;

53 On page eight, by striking out subsection 8.1 in its entirety;

54 And,

55 On page eight, section 8, by striking out the words “8.2
56 Invoices submitted for payment.

57 8.2.1. Vendors are required to submit all invoices to IS&C
58 that include more than one spending unit. If vendors are
59 providing services to spending units governed by the pricing
60 included in the applicable state-issued contract then the charges
61 for these services must be included on the shared account.”.

§64-2-5. Division of Personnel.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section ten, article six, chapter twenty-nine of this
4 code modified by the Division of Personnel to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twenty-third day of

7 November, two thousand four, relating to the Division of
8 Personnel (administration, 143 CSR 1) is authorized.

9 (b) The legislative rule filed in the State Register on the
10 twenty-seventh day of August, two thousand four, under the
11 authority of section ten, article six, chapter twenty-nine of this
12 code modified by the Division of Personnel to meet the
13 objections of the Legislative Rule-Making Review Committee
14 and refiled in the State Register on the twentieth day of
15 January, two thousand five, relating to the Division of Person-
16 nel (preemployment reference and inquiries, 143 CSR 4) is
17 authorized, with the following amendment:

18 On page one, subsection 1.1., by striking out the word
19 'eligibility' and inserting in lieu thereof the word 'rejection';

20 On page one, subsection 2.1., line one, after the word
21 'employment' by striking out the word 'with' and inserting in
22 lieu thereof the words 'in the classified service of';

23 On page one, subsection 2.1., line two, by striking out the
24 semi-colon and inserting a comma, and by striking out the
25 word 'includes' and inserting in lieu thereof the word 'includ-
26 ing';

27 On page one, subsection 2.2., line two, after the word
28 'service.', by striking out the remainder of the subsection;

29 On page one, by striking out subsection 2.6. in its entirety
30 and inserting in lieu thereof the following:

31 '2.5. Disqualifying event: Conviction of a crime of an
32 infamous crime or other crime involving moral turpitude which
33 has a reasonable connection to the position/class for which the
34 applicant or employee is applying. For purposes of this rule,
35 a plea of "guilty" or "no contest" is considered a conviction

36 unless the charge was subsequently invalidated by a court
37 decision.';

38 On page one, subsection 2.5., by striking out the entire
39 subsection and inserting in lieu thereof the following:

40 '2.6. Director: The Director of the Division of Personnel or
41 his or her designee.';

42 On page two, subsection 2.11., by striking out the words
43 'actions by the individual that would cause', and, after the
44 word 'damage', by inserting the words 'or injury';

45 On page two, subsection 2.12., line one, after the word 'to'
46 by inserting the words 'a classified service position in';

47 On page two, by striking out section 3 in its entirety and
48 renumbering the succeeding sections accordingly;

49 On page two, section 4, by striking out the words 'the
50 Director shall prescribe information required to be submitted
51 by applicants, including fingerprints and driver's license
52 number, that is needed by the State Police and other entities for
53 processing or as is otherwise necessary to facilitate access to
54 information.';

55 On pages two and three, by striking out the subsections 4.1.
56 and 4.2. in their entirety, and inserting in lieu thereof the
57 following:

58 '4.1. To establish the eligibility of an applicant or em-
59 ployee, the Director may verify information provided by the
60 applicant, including, but not limited to:

61 a. Current and previous employment and/or volunteer
62 and/or student activities;

63 b. Military service;

64 c. Formal education; and

65 d. Professional licensure and/or certification.

66 4.2. To the extent permitted by law and reasonably relevant
67 to established eligibility standards or the nature of the position
68 sought by the applicant, the Director may obtain and review:

69 a. The applicant's state and/or federal criminal records
70 history;

71 b. The central abuse registry established pursuant to W. Va.
72 Code §15-2C-1, *et seq.*; and

73 c. The applicant's driving records.

74 4.3. To the extent permitted by law, the Director may
75 require an applicant to provide any information necessary to
76 afford the Director access to records reasonably relevant to
77 established eligibility standards or the nature of the position
78 sought by the applicant.

79 4.4. The Director shall conduct investigations and/or secure
80 reports necessary to assess the suitability of an applicant. The
81 Director may delegate some or all of the responsibility to
82 qualified appointing authorities in accordance with the provi-
83 sions of this rule.'

84 On page three, subsection 4.3, by renumbering the subsec-
85 tion as subsection '4.5.';

86 On page three, section 5, by striking out the entire section
87 and renumbering the succeeding sections accordingly;

88 On page four, subsection 7.1., after the words 'separate
89 file', by striking out the remainder of the subsection;

90 On page four, subsection 7.2., after the word 'all', by
91 striking out the words 'required and requested' and, after the
92 word 'reports', by inserting the words 'requested by the
93 Division of Personnel pursuant to this rule';

94 On page four, subsection 8.1., line one, by striking out the
95 words 'shall be' and inserting in lieu thereof the word 'is';

96 On page four, subsection 8.1., lines three and four, after the
97 word 'report', by striking out the word 'the' and inserting in
98 lieu thereof the word 'a', and by striking out the word 'limit'
99 and inserting in lieu thereof the word 'provided';

100 On page four, subsection 8.2., by striking out the words
101 'that is needed' and inserting in lieu thereof the word 're-
102 quired', and by striking out the words 'as is otherwise neces-
103 sary';

104 On page four, subsection 9.1., line two, after the words
105 'employee to a' by inserting the words 'classified service';

106 And,

107 On page four, by striking out section 10 in its entirety.

§64-2-6. Board of Risk and Insurance Management.

1 (a) The legislative rule filed in the State Register on the
2 twenty-sixth day of August, two thousand four, under the
3 authority of section five, article twelve, chapter twenty-nine of
4 this code modified by the Board of Risk and Insurance Man-
5 agement to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the State Register on the
7 twentieth day of January, two thousand five, relating to the
8 Board of Risk and Insurance Management (Public Entities
9 Insurance Program, 115 CSR 2) is authorized.

10 (b) The legislative rule filed in the State Register on the
11 twenty-sixth day of August, two thousand four, under the
12 authority of section five, article twelve, chapter twenty-nine of
13 this code modified by the Board of Risk and Insurance Man-
14 agement to meet the objections of the Legislative Rule-Making
15 Review Committee and refiled in the State Register on the
16 sixteenth day of February, two thousand five, relating to the
17 Board of Risk and Insurance Management (Patient Injury
18 Compensation Fund, 115 CSR 7) is authorized.

CHAPTER 151

**(Com. Sub. for H. B. 2723 — By Delegates Mahan, Palumbo,
Cann, Pino, Armstead and Overington)**

[Passed April 8, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legisla-

tive rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for the construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for the construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to West Virginia surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to underground storage tank fee assessments; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining blasting; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the national pollutant discharge elimination system (NPDES) program; and authorizing the Environmental Quality Board to promulgate a legislative rule relating to requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT
TO PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Department of Environmental Protection.

§64-3-2. Environmental Quality Board.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of August, two thousand four, under the
3 authority of section four, article five, chapter twenty-two, of
4 this code, relating to the Department of Environmental Protec-
5 tion (permits for construction and major modification of major
6 stationary sources of air pollution for the prevention of signifi-
7 cant deterioration, 45 CSR 14), is authorized.

8 (b) The legislative rule filed in the state register on the
9 twenty-fifth day of August, two thousand four, under the
10 authority of section four, article five, chapter twenty-two, of
11 this code, relating to the Department of Environmental Protec-
12 tion (emission standards for hazardous air pollutants pursuant
13 to 40 CFR Part 61, 45 CSR 15), is authorized.

14 (c) The legislative rule filed in the state register on the
15 twenty-fifth day of August, two thousand four, under the
16 authority of section four, article five, chapter twenty-two, of
17 this code, relating to the Department of Environmental Protec-
18 tion (standards of performance for new stationary sources, 45
19 CSR 16), is authorized.

20 (d) The legislative rule filed in the state register on the
21 twenty-fifth day of August, two thousand four, under the
22 authority of section four, article five, chapter twenty-two, of

23 this code, relating to the Department of Environmental Protec-
24 tion (permits for the construction and major modification of
25 major stationary sources of air pollution which cause or
26 contribute to nonattainment, 45 CSR 19), is authorized.

27 (e) The legislative rule filed in the state register on the
28 twenty-fifth day of August, two thousand four, under the
29 authority of section four, article five, chapter twenty-two, of
30 this code, relating to the Department of Environmental Protec-
31 tion (to prevent and control air pollution from hazardous waste
32 treatment, storage or disposal facilities, 45 CSR 25), is autho-
33 rized.

34 (f) The legislative rule filed in the state register on the
35 twenty-fifth day of August, two thousand four, under the
36 authority of section four, article five, chapter twenty-two, of
37 this code, relating to the Department of Environmental Protec-
38 tion (emission standards for hazardous air pollutants for source
39 categories pursuant to 40 CFR Part 63, 45 CSR 34), is autho-
40 rized.

41 (g) The legislative rule filed in the state register on the
42 twenty-seventh day of August, two thousand four, under the
43 authority of section four, article three-a, chapter twenty-two, of
44 this code, relating to the Department of Environmental Protec-
45 tion (West Virginia surface mining reclamation, 38 CSR 2), is
46 authorized.

47 (h) The legislative rule filed in the state register on the
48 fifteenth day of June, two thousand four, under the authority of
49 section twenty, article seventeen, chapter twenty-two, of this
50 code, relating to the Department of Environmental Protection
51 (underground storage tank fee assessments, 33 CSR 31), is
52 authorized.

53 (i) The legislative rule filed in the state register on the
54 twenty-seventh day of August, two thousand four, under the

55 authority of section four, article three-a, chapter twenty-two, of
56 this code, modified by the Department of Environmental
57 Protection to meet the objections of the legislative rule-making
58 review committee and refiled in the state register on the tenth
59 day of December, two thousand four, relating to the Department
60 of Environmental Protection (surface mining blasting, 199 CSR
61 1), is authorized.

62 (j) The legislative rule filed in the state register on the
63 twenty-seventh day of August, two thousand four, under the
64 authority of section six, article eighteen, chapter twenty-two, of
65 this code, modified by the Department of Environmental
66 Protection to meet the objections of the legislative rule-making
67 review committee and refiled in the state register on the twenty-
68 ninth day of December, two thousand four, relating to the
69 Department of Environmental Protection (hazardous waste
70 management, 33 CSR 20), is authorized.

71 (k) The legislative rule filed in the state register on the
72 twenty-seventh day of August, two thousand four, under the
73 authority of section four, article eleven, chapter twenty-two, of
74 this code, modified by the Department of Environmental
75 Protection to meet the objections of the legislative rule-making
76 review committee and refiled in the state register on the
77 sixteenth day of February, two thousand five, relating to the
78 Department of Environmental Protection (national pollutant
79 discharge elimination system (NPDES) Program, 47 CSR 10),
80 is authorized.

§64-3-2. Environmental Quality Board.

1 The legislative rule filed in the state register on the twenty-
2 ninth day of September, two thousand four, under the authority
3 of section four, article three, chapter twenty-two-b, of this code,
4 modified by the Environmental Quality Board to meet the
5 objections of the legislative rule-making review committee and

6 refiled in the state register on the ninth day of February, two
7 thousand five, relating to the Environmental Quality Board
8 (requirements governing water quality standards, 46 CSR 1), is
9 authorized with the following amendment:

10 "On page six of the rule by deleting subsection 4.1.c.2. in
11 its entirety."

CHAPTER 152

**(Com. Sub. for S. B. 386 — By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)**

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Commit-

tee and as amended by the Legislature; authorizing Division of Corrections to promulgate a legislative rule relating to parole supervision authorizing; authorizing State Fire Marshal to promulgate a legislative rule relating to fees for licenses, permits, inspections, plans review and other services rendered; authorizing State Police to promulgate a legislative rule relating to State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline; authorizing State Police to promulgate a legislative rule relating to the career progression system; authorizing State Police to promulgate a legislative rule relating to carrying of handguns by retired or medically discharged members; and authorizing Division of Veterans' Affairs to promulgate a legislative rule relating to Veterans' Affairs' headstones or markers.

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Division of Corrections.

§64-6-2. State Fire Marshal.

§64-6-3. State Police.

§64-6-4. Division of Veterans Affairs.

§64-6-1. Division of Corrections.

1 The legislative rule filed in the State Register on the
2 twenty-third day of June, two thousand four, under the author-
3 ity of section two, article thirteen, chapter sixty-two of this
4 code modified by the Division of Corrections to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the thirty-first day of

7 January, two thousand five, relating to the Division of Correc-
8 tions (parole supervision, 90 CSR 2) is authorized.

§64-6-2. State Fire Marshal.

1 The legislative rule filed in the State Register on the second
2 day of June, two thousand four, authorized under the authority
3 of section twenty-four, article three, chapter twenty-nine of this
4 code relating to the Office of the Fire Marshal (fees for
5 licenses, permits, inspections, plans review and other services
6 rendered, 103 CSR 2) is authorized.

§64-6-3. State Police.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of August, two thousand four, under the
3 authority of section twenty-five, article two, chapter fifteen of
4 this code modified by the State Police to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the State Register on the twenty-eighth day of January, two
7 thousand five, relating to the State Police (State Police profes-
8 sional standards investigations, employee rights, early identifi-
9 cation system, psychological assessment and progressive
10 discipline, 81 CSR 10) is authorized.

11 (b) The legislative rule filed in the State Register on the
12 twelfth day of August, two thousand four, under the authority
13 of section five, article two, chapter fifteen of this code relating
14 to the State Police (career progression system, 81 CSR 3) is
15 authorized.

16 (c) The legislative rule filed in the State Register on the
17 twenty-third day of July, two thousand four, under the author-
18 ity of section twenty-five, article two, chapter fifteen of this
19 code relating to the State Police (carrying of handguns by
20 retired or medically discharged members, 81 CSR 6) is
21 authorized.

§64-6-4. Division of Veterans Affairs.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section ten, article twenty-two-a, chapter twenty-
4 nine, of this code, modified by the Division of Veterans Affairs
5 to meet the objections of the Legislative Rule-Making Review
6 Committee and refiled in the State Register on the thirty-first
7 day of January, two thousand five, relating to the Division of
8 Veterans Affairs (VA headstones or markers, 86 CSR 4), is
9 authorized.

CHAPTER 153

**(Com. Sub. for S. B. 357 — By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to

promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to retail liquor operations; authorizing Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to private club licensing; authorizing Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to bailment policies and procedures; authorizing Insurance Commission to promulgate a legislative rule relating to examiners and examinations; authorizing Insurance Commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing Insurance Commissioner to promulgate a legislative rule relating to cancellation and nonrenewal of automobile liability policies; authorizing Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing Insurance Commissioner to promulgate a legislative rule relating to valuation of life insurance policies; authorizing Insurance Commissioner to promulgate a legislative rule relating to recognition of 2001 CSO Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits; authorizing Insurance Commissioner to promulgate a legislative rule relating to insurance fraud prevention; authorizing Insurance Commissioner to promulgate a legislative rule relating to small employer eligibility requirements; authorizing Racing Commission to promulgate legislative rule relating to thoroughbred racing; authorizing Tax Department to promulgate a legislative rule relating to consumers sales and service tax and use tax - executive orders and certain declarations and exemptions; authorizing Tax Department to promulgate a legislative rule relating to valuation of active and reserve coal for ad valorem property tax purposes; and authorizing Tax Department to promulgate a legislative rule relating to valuation of producing and reserve oil and gas for ad valorem property tax purposes.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO
PROMULGATE LEGISLATIVE RULES.**

§64-7-1. Alcohol Beverage Control Commissioner.

§64-7-2. Insurance Commissioner.

§64-7-3. Racing Commission.

§64-7-4. Tax Commissioner.

§64-7-1. Alcohol Beverage Control Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, authorized
3 under the authority of section six, article three-a, chapter sixty
4 of this code relating to the Alcohol Beverage Control Commis-
5 sioner (retail liquor operations, 175 CSR 1) is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-seventh day of August, two thousand four, authorized
8 under the authority of section ten, article seven, chapter sixty of
9 this code relating to the Alcohol Beverage Control Commis-
10 sioner (private club licensing, 175 CSR 2) is authorized, with
11 the following amendment:

12 On page six, subdivision 3.1.6.a, the first line, after the
13 word "shall", by striking out the words "establish procedures
14 for conducting" and by inserting in lieu thereof the word
15 "conduct".

16 (c) The legislative rule filed in the State Register on the
17 twenty-seventh day of August, two thousand four, authorized
18 under the authority of section sixteen, article two, chapter sixty
19 of this code relating to the Alcohol Beverage Control Commis-
20 sioner (bailment policies and procedures, 175 CSR 6) is
21 authorized.

§64-7-2. Insurance Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 twenty-sixth day of August, two thousand four, under the
3 authority of section ten, article two, chapter thirty-three of this
4 code relating to the Insurance Commissioner (examiners and
5 examinations, 114 CSR 15) is authorized.

6 (b) The legislative rule filed in the State Register on the
7 twenty-sixth day of August, two thousand four, under the
8 authority of section ten, article two, chapter thirty-three of this
9 code relating to the Insurance Commissioner (surplus lines
10 insurance, 114 CSR 20) is authorized.

11 (c) The legislative rule filed in the State Register on the
12 twenty-sixth day of August, two thousand four, under the
13 authority of section ten, article two, chapter thirty-three of this
14 code relating to the Insurance Commissioner (cancellation and
15 nonrenewal of automobile liability policies, 114 CSR 3) is
16 authorized.

17 (d) The legislative rule filed in the State Register on the
18 twenty-sixth day of August, two thousand four, under the
19 authority of section ten, article two, chapter thirty-three of this
20 code relating to the Insurance Commissioner (continuing
21 education for individual insurance producers, 114 CSR 42) is
22 authorized.

23 (e) The legislative rule filed in the State Register on the
24 twenty-sixth day of August, two thousand four, under the
25 authority of section ten, article two, chapter thirty-three of this
26 code relating to the Insurance Commissioner (valuation of life
27 insurance policies, 114 CSR 68) is authorized.

28 (f) The legislative rule filed in the State Register on the
29 twenty-sixth day of August, two thousand four, under the
30 authority of section ten, article two, chapter thirty-three of this

31 code relating to the Insurance Commissioner (recognition of the
32 2001 CSO Mortality Table for use in determining minimum
33 reserve liabilities and nonforfeiture benefits, 114 CSR 69) is
34 authorized, with the following amendment:

35 On page one, subsection 1.1., by striking out “§§33-9-
36 7(d)(1)(C)(iii)” and by inserting in lieu thereof “§§33-7-
37 9(d)(1)(C)(iii)”;

38 On page two, subsection 3.1, by striking out the words
39 “January 1, 2006”, and by inserting in lieu thereof the words
40 “the effective date of this rule”;

41 On page two, subsection 3.1, by striking out “§§33-9-
42 7(d)(1)(C)(iii)” and by inserting in lieu thereof “§§33-7-
43 9(d)(1)(C)(iii)”;

44 On page two, subsection 3.2, by striking out “§§33-9-
45 7(d)(1)(C)(iii)” and inserting in lieu thereof “§§33-7-
46 9(d)(1)(C)(iii)”;

47 And,

48 On page four, subsection 6.1, by striking out the words
49 “January 1, 2006”, and by inserting in lieu thereof the words
50 “the effective date of this rule”.

51 (g) The legislative rule filed in the State Register on the
52 twenty-sixth day of August, two thousand four, under the
53 authority of section ten, article two, chapter thirty-three of this
54 code modified by the Insurance Commissioner to meet the
55 objections of the Legislative Rule-Making Review Committee
56 and refiled in the State Register on the twentieth day of
57 December, two thousand four, relating to the Insurance Com-
58 missioner (insurance fraud prevention, 114 CSR 71) is autho-
59 rized.

60 (h) The legislative rule filed in the State Register on the
61 twenty-seventh day of August, two thousand four, under the
62 authority of section ten, article two, chapter thirty-three of this
63 code modified by the Insurance Commissioner to meet the
64 objections of the Legislative Rule-Making Review Committee
65 and refiled in the State Register on the twentieth day of
66 December, two thousand four, relating to the Insurance Com-
67 missioner (small employer eligibility requirements, 114 CSR
68 73) is authorized.

§64-7-3. Racing Commission.

1 The legislative rule filed in the State Register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section six, article twenty-three, chapter nineteen
4 of this code modified by the Racing Commission to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on the twentieth day of
7 December, two thousand four, relating to the Racing Commis-
8 sion (thoroughbred racing, 178 CSR 1) is authorized, with the
9 following amendment:

10 On page twenty-eight, paragraph 39.41.3.a., by striking out
11 the word "entry" and inserting in lieu thereof the word "start";

12 And,

13 On page twenty-eight, paragraph 39.41.3.b., by striking out
14 the word "entry" and inserting in lieu thereof the word "start".

§64-7-4. Tax Commissioner.

1 (a) The legislative rule filed in the State Register on the
2 sixteenth day of August, two thousand four, under the authority
3 of section five, article ten, chapter eleven of this code modified
4 by the Tax Department to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State

6 Register on the twenty-ninth day of November, two thousand
7 four, relating to the Tax Department (Consumers Sales and
8 Service Tax and Use Tax - executive orders declaring emer-
9 gency and exempting from tax mobile homes and similar units
10 and building materials used and consumed in repair or replace-
11 ment of residences and businesses damaged in a disaster, 110
12 CSR 15I) is authorized.

13 (b) The legislative rule filed in the State Register on the
14 twenty-twenty-fifth day of August, two thousand four, under
15 the authority of section eleven, article one-a, chapter eleven of
16 this code modified by the Tax Department to meet the objec-
17 tions of the Legislative Rule-making Review Committee and
18 refiled in the State Register on the twenty-first day of Decem-
19 ber, two thousand four, relating to the Tax Department (valua-
20 tion of active and reserve coal for ad valorem property tax
21 purposes, 110 CSR 1I) is authorized.

22 (c) The legislative rule filed in the State Register on the
23 twenty-seventh day of July, two thousand four, under the
24 authority of section eleven, article one-a, chapter eleven of this
25 code and section five-a, article one-c, chapter eleven of this
26 code modified by the Tax Department to meet the objections of
27 the Legislative Rule-making Review Committee and refiled in
28 the State Register on the twenty-ninth day of November, two
29 thousand four, relating to the Tax Department (valuation of
30 producing and reserve oil and gas for ad valorem property tax
31 purposes, 110 CSR 1J) is authorized, with the following
32 amendment:

33 On page ten, subsection 4.14., by striking out the word
34 "July" and inserting in lieu thereof the word "August";

35 And,

36 On page ten, subsection 4.16., by striking out the entire
37 subsection and inserting in lieu thereof the following:

38 **“4.16. Valuation of the Producer’s Personal Property at**
39 **Non-Producing or Shut-In Wells** - The valuation of the
40 producer’s personal property that is part of a non-producing or
41 shut-in well’s appraisal will be assigned to the producer at the
42 same value applied to home use only wells.”.

CHAPTER 154

**(Com. Sub. for S. B. 353 — By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)**

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to

traffic and safety; authorizing Division of Highways to promulgate a legislative rule relating to use of state roads rights-of-way and adjacent areas; authorizing Division of Highways to promulgate a legislative rule relating to transportation of hazardous waste upon roads and highways; authorizing Division of Motor Vehicles to promulgate a legislative rule relating to administrative due process; and authorizing Division of Motor Vehicles to promulgate a legislative rule relating to examination and issuance of driver's licenses.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

§64-8-2. Division of Motor Vehicles.

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on the
2 twelfth day of January, two thousand four, under the authority
3 of section eight, article two-a, chapter seventeen of this code
4 relating to the Division of Highways (traffic and safety, 157
5 CSR 5) is authorized.

6 (b) The legislative rule filed in the State Register on the
7 eighteenth day of August, two thousand four, under the
8 authority of section eight, article two-a, chapter seventeen of
9 this code modified by the Division of Highways to meet the
10 objections of the Legislative Rule-Making Review Committee
11 and refiled in the State Register on the eighteenth day of
12 February, two thousand five, relating to the Division of
13 Highways (use of state roads rights-of-way and adjacent areas,
14 157 CSR 6) is authorized.

15 (c) The legislative rule filed in the State Register on the
16 sixth day of August, two thousand four, under the authority of
17 section seven, article eighteen, chapter twenty-two of this code
18 relating to the Division of Highways (transportation of hazard-
19 ous wastes upon the roads and highways, 157 CSR 7) is
20 authorized.

§64-8-2. Division of Motor Vehicles.

1 (a) The legislative rule filed in the State Register on the
2 twenty-fourth day of August, two thousand four, under the
3 authority of section nine, article two, chapter seventeen-a of
4 this code relating to the Division of Motor Vehicles (adminis-
5 trative due process, 91 CSR 1) is authorized.

6 (b) The legislative rule filed in the State Register on the
7 thirteenth day of August, two thousand four, under the author-
8 ity of section nine, article two, chapter seventeen-a of this code
9 relating to the Division of Motor Vehicles (examination and
10 issuance of driver's licenses, 91 CSR 4) is authorized, with the
11 following amendment:

12 On page twenty-one, subsection 14.4, line three, after the
13 words "10,000 pounds", by striking out the word "buy" and by
14 inserting in lieu thereof the word "but".

CHAPTER 155

**(Com. Sub. for H. B. 2669 — By Delegates Mahan, Palumbo,
Cann, Pino, Armstead and Overington)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; disapproving the promulgation of certain legislative rules; disapproving the promulgation of a legislative rule by the Board of Acupuncture relating to the dispensing of materia medica, formulary and legend drugs; authorizing the Department of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Department of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Department of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to the chiropractic practice; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the West Virginia Contractor Licensing Act; relating to authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees; authorizing the Board of Dental Examiners to

promulgate a legislative rule relating to the formation and approval of dental corporations; authorizing the Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure for correctional institutions; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to domestic violence; disapproving the promulgation of a legislative rule by the Governor's Committee on Crime, Delinquency and Correction relating to motor vehicle stop data collection standards for the study of racial profiling; authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to use of facilities; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to minimum standards for the practice of land surveying in West Virginia; authorizing the Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Public Service Commission to promulgate a legislative rule relating to statewide telephone information and referral 211 service; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Secretary of State to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization

and operation; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees.

Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND
BOARDS TO PROMULGATE LEGISLATIVE RULES.**

- §64-9-1. Board of Acupuncture.
- §64-9-2. Department of Agriculture.
- §64-9-3. Board of Chiropractic Examiners.
- §64-9-4. Contractor Licensing Board.
- §64-9-5. Board of Dental Examiners.
- §64-9-6. Family Protection Services Board.
- §64-9-7. Governor's Committee on Crime, Delinquency and Correction.
- §64-9-8. Hatfield-McCoy Regional Recreation Authority.
- §64-9-9. Board of Examiners of Land Surveyors.
- §64-9-10. Board of Examiners of Licensed Practical Nurses.
- §64-9-11. Public Service Commission.
- §64-9-12. Radiologic Technology Board of Examiners.
- §64-9-13. Board of Examiners for Registered Professional Nurses.
- §64-9-14. Secretary of State.
- §64-9-15. Board of Examiners for Speech-Language Pathology and Audiology.
- §64-9-16. State Treasurer.
- §64-9-17. Board of Veterinary Medicine.

§64-9-1. Board of Acupuncture.

1 The legislative rule filed in the state register on the second
2 day of September, two thousand three, under the authority of
3 section seven, article thirty-six, chapter thirty, of this code,
4 modified by the Board of Acupuncture to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the state register on the fourteenth day of October, two
7 thousand four, relating to the Board of Acupuncture (dispensing

8 of materia medica, formulary and legend drugs, 32 CSR 2), is
9 disapproved and not authorized.

§64-9-2. Department of Agriculture.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section two, article nine, chapter nineteen, of this
4 code, modified by the Department of Agriculture to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the nineteenth day of Novem-
7 ber, two thousand four, relating to the Department of Agricul-
8 ture (animal disease control, 61 CSR 1), is authorized, with the
9 following amendments:

10 On page twelve, paragraph 6.19.b.C., after the words
11 'pullorum/typhoid' by changing the period to a semicolon and
12 inserting the word 'and';

13 And,

14 On page twelve, paragraph 6.19.b.D. by striking out the
15 entire paragraph and inserting in lieu thereof the following: 'a
16 United States Department of Agriculture Form 9-3 stating that
17 a minimum of 20 birds per flock or the entire flock of 20 birds
18 or less had a negative test for avian influenza within 10 days
19 prior to import. The test shall be a NPIP approved procedure.'

20 (b) The legislative rule filed in the state register on the
21 fourth day of August, two thousand four, under the authority of
22 section three, article two-b, chapter nineteen, of this code,
23 relating to the Department of Agriculture (inspection of meat
24 and poultry, 61 CSR 16), is authorized.

25 (c) The legislative rule filed in the state register on the
26 twenty-seventh day of August, two thousand four, under the
27 authority of section three, article fourteen, chapter nineteen, of

28 this code, modified by the Department of Agriculture to meet
29 the objections of the Legislative Rule-Making Review Commit-
30 tee and refiled in the state register on the twenty-fourth day of
31 November, two thousand four, relating to the Department of
32 Agriculture (commercial feed, 61 CSR 5), is authorized.

§64-9-3. Board of Chiropractic Examiners.

1 The legislative rule filed in the state register on the twenty-
2 sixth day of August, two thousand four, under the authority of
3 section five, article sixteen, chapter thirty, of this code, modi-
4 fied by the Board of Chiropractic Examiners to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the first day of February, two
7 thousand five, relating to the Board of Chiropractic Examiners
8 (chiropractic practice, 4 CSR 1), is authorized, with the
9 following amendments:

10 On page two, paragraph 3.1.d.1, after the word “ subdivi-
11 sion”, by striking the reference “ 3.1.c.2” and inserting in lieu
12 thereof the reference “ 3.1.d.3”;

13 On page two, paragraph 3.1.d.3, subparagraph 2, after the
14 words “ set forth in”, by striking the code reference “ W. Va.
15 Code §30-16-6(a)(5)” and inserting in lieu thereof the code
16 reference “ W. Va. Code §30-16-6(b)(5)”;

17 On page seven, subsection 11.2, after the words “The
18 Board”, by striking the word “my” and inserting in lieu thereof
19 the word “ may”;

20 And,

21 On page nine, subsection 15.5., by striking out the words
22 “That upon” and inserting in lieu thereof the word “Upon” ’.

§64-9-4. Contractor Licensing Board.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of August, two thousand four, under the authority
3 of section five, article eleven, chapter twenty-one, of this code,
4 modified by the Contractor Licensing Board to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the twenty-fifth day of
7 January, two thousand five, relating to the Contractor Licensing
8 Board (West Virginia contractor licensing act, 28 CSR 2), is
9 authorized, with the following amendments:

10 On page two, subdivision 3.9.a, after the word “ five” by
11 inserting the word “ hundred”;

12 On page seven, subdivision 3.30., after the word “ repair.”
13 by inserting the words “A residential contractor is considered
14 licensed for all crafts required in the construction, repair or
15 improvement of a residential structure, as that term is defined
16 in subsection 3.33 of this rule, except those crafts for which
17 local ordinance or state law other than W. Va. Code § 21-11-1,
18 *et seq*, require licensure, such as the electrician’s license
19 required by the Office of the State Fire Marshal under the
20 provisions of W. Va. Code §29-3b-1, *et seq.*”;

21 On page fifteen, subdivision 8.1, after the word “ person.”
22 by striking out the word “ The” and inserting in lieu thereof the
23 words “ After an administrative hearing, as provided for in
24 Section 9 of this rule, the”;

25 On page fifteen, subdivision 8.1, after the word “ license.”
26 by striking out the remainder of the subdivision;

27 And,

28 On page fifteen, after subdivision 8.3, by inserting a new
29 subdivision, designated subdivision 8.4, to read as follows:
30 “The Board shall, in accordance with Section 9 of this rule,
31 provide for an administrative hearing before a penalty is
32 assessed.”

§64-9-5. Board of Dental Examiners.

1 (a) The legislative rule filed in the state register on the
2 twenty-fifth day of August, two thousand four, under the
3 authority of section six, article four, chapter thirty, of this code,
4 modified by the Board of Dental Examiners to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the fifteenth day of February,
7 two thousand five, relating to the Board of Dental Examiners
8 (rule for the board of dental examiners, 5 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the
10 twenty-fifth day of August, two thousand four, under the
11 authority of section thirteen hundred four, article thirteen,
12 chapter thirty-one-b, of this code, modified by the Board of
13 Dental Examiners to meet the objections of the Legislative
14 Rule-Making Review Committee and refiled in the state register
15 on the fifteenth day of February, two thousand five, relating to
16 the Board of Dental Examiners (formation and approval of
17 professional limited liability companies, 5 CSR 2), is autho-
18 rized, with the following amendment:

19 On page one, subsection 3.4., line four, after the words
20 “filing fee” by inserting the words “of \$200”, and after the
21 words “renewal fee” by striking out the words “as set forth in
22 the Board’s fee schedule 5 CSR 3” and inserting in lieu thereof
23 the words “of \$150”.

24 (c) The legislative rule filed in the state register on the
25 twenty-fifth day of August, two thousand four, under the
26 authority of section six, article four, chapter thirty, of this code,
27 modified by the Board of Dental Examiners to meet the
28 objections of the Legislative Rule-Making Review Committee
29 and refiled in the state register on the fifteenth day of February,
30 two thousand five, relating to the Board of Dental Examiners

31 (formation and approval of dental corporations, 5 CSR 6), is
32 authorized.

§64-9-6. Family Protection Services Board.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of August, two thousand four, under the authority
3 of section four hundred four, article twenty-six, chapter forty-
4 eight, of this code, modified by the Family Protection Services
5 Board to meet the objections of the Legislative Rule-Making
6 Review Committee and refiled in the state register on the
7 eighteenth day of February, two thousand five, relating to the
8 Family Protection Services Board (perpetrator intervention
9 programs licensure for correctional institutions, 191 CSR 5), is
10 authorized, with the following amendments:

11 On page eight, subsection 4.6., by striking out the word
12 “shall”, and inserting in lieu thereof the word “may” and after
13 the word “subdivision” by striking out the letter “d” and
14 inserting in lieu thereof the letter “c”.

**§64-9-7. Governor’s Committee on Crime, Delinquency and
Correction.**

1 (a) The legislative rule filed in the state register on the
2 fifteenth day of June, two thousand four, under the authority of
3 section three, article twenty-nine, chapter thirty, of this code,
4 modified by the Governor’s Committee on Crime, Delinquency
5 and Correction to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the state register on
7 the twenty-sixth day of July, two thousand four, relating to the
8 Governor’s Committee on Crime, Delinquency and Correction
9 (law enforcement training standards, 149 CSR 2), is authorized.

10 (b) The legislative rule filed in the state register on the
11 ninth day of August, two thousand four, under the authority of
12 section one thousand one hundred two, article twenty-seven,

13 chapter forty-eight, of this code, relating to the Governor's
14 Committee on Crime, Delinquency and Correction (protocol for
15 law enforcement response to domestic violence, 149 CSR 3), is
16 authorized.

17 (c) The legislative emergency rule filed in the state register
18 on the twenty-third day of November, two thousand four, under
19 the authority of section three, article two, chapter seventeen-g,
20 of this code, relating to the Governor's Committee on Crime,
21 Delinquency and Correction (motor vehicle stop data collection
22 standards for the study of racial profiling, 149 CSR 5), is
23 disapproved and not authorized.

§64-9-8. Hatfield-McCoy Regional Recreation Authority.

1 The legislative rule filed in the state register on the eighth
2 day of April, two thousand four, under the authority of section
3 one, article fourteen, chapter twenty, of this code, modified by
4 the Hatfield-McCoy Regional Recreation Authority to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the twenty-fifth of January,
7 two thousand five, relating to the Hatfield-McCoy Regional
8 Recreation Authority (use of facilities, 204 CSR 1), is autho-
9 rized, with the following amendments:

10 On page four, after subsection 3.5, by adding a new
11 subsection, designated subsection 3.6, to read as follows:

12 "3.6. No person may operate an ATV on any road or
13 highway with a center line or more than two lanes within the
14 Hatfield-McCoy enforcement area except for the purpose of
15 crossing the road or highway at an angle of approximately
16 ninety degrees to the direction of the highway and at a place
17 where no obstruction prevents a quick and safe crossing. An
18 ATV operator is permitted to crossing the road or highway if:

19 a. The vehicle is brought to a complete stop before crossing
20 the shoulder or main traveled way of the highway;

21 b. The operator yields his or her right-of-way to all oncom-
22 ing traffic that constitutes an immediate potential hazard; and

23 c. Both the headlight and taillight are illuminated when the
24 crossing is made if the vehicle is so equipped.”;

25 On page four, by redesignating subsection 3.6. as subsec-
26 tion 3.7. and by renumbering the remaining subsections
27 accordingly;

28 On page six, after subsection 4.1., by inserting a new
29 subsection, designated subsection 4.2., to read as follows:

30 “4.2. No person under the age of eighteen may operate an
31 ATV without a written statement, signed by the minor’s parent
32 or guardian certifying that:

33 a. Any machine operated by the minor will be of a model
34 that is recommended by the manufacturer as appropriate to the
35 minor’s age and size;

36 b. All rules governing the use of the Area have been
37 reviewed by the parent or guardian and explained to the minor
38 in sufficient detail to enable the minor to abide by the rules; and

39 c. Any minor under the age of sixteen will remain under the
40 supervision of and within the sight of the parent or guardian at
41 all times.”;

42 On page six, by redesignating subsection 4.2. as subsection
43 4.3.;

44 On page six, by redesignating subsection 4.3. as subsection
45 4.4., and at the end of the subsection, by inserting the follow-
46 ing: “No person may operate an ATV with a passenger under

47 the age of eighteen unless the operator has, at a minimum, a
48 level two intermediate driver's license or its equivalent or is
49 eighteen years of age or older.”;

50 On page six, by redesignating subsection 4.4. as subsection
51 4.6. and by renumbering the remaining subsections accordingly;

52 And,

53 On page seven, subsection 5.2., after the words “When
54 operated from”, by striking out the words “one-half hour after”
55 and after the words “sunset to”, by striking out the words “one-
56 half hour before”.

§64-9-9. Board of Examiners of Land Surveyors.

1 The legislative rule filed in the state register on the seven-
2 teenth day of May, two thousand four, under the authority of
3 section four, article thirteen-a, chapter thirty, of this code,
4 modified by the Board of Examiners of Surveyors to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the fourth day of February,
7 two thousand five, relating to the Board of Examiners of Land
8 Surveyors (minimum standards for the practice of land survey-
9 ing in West Virginia, 23 CSR 1), is authorized, with the
10 following amendments:

11 On page four, by striking out subdivisions 5.3.1. and 5.3.2
12 and by inserting in lieu thereof two new subdivisions to read as
13 follows:

14 “5.3.a. To be eligible for ‘retired’ status, a licensee must
15 have an active or inactive license and certify that he or she is no
16 longer practicing surveying or supervising any employees who
17 perform surveying activities in West Virginia.

18 5.3.a.1. A licensee on retired status may not affix his or her
19 P.S. seal to any surveying documents.

20 5.3.a.2. A licensee on retired status is not required to pay an
21 annual license renewal fee or to complete Professional Devel-
22 opment Hours (PDHs).

23 5.3.a.3. The Board will issue to each licensee on retired
24 status a certificate noting the honorific title of 'Professional
25 Surveyor, Retired.'

26 5.3.a.4. Before returning to the active practice of surveying
27 a licensee on retired status must complete delinquent Profes-
28 sional Development Hours (PDHs) for each year on retired
29 status up to a maximum of 16 PDHs and must pay the current
30 license renewal fee.

31 5.3.b. Any licensee may apply for 'inactive' status.

32 5.3.b.1. A licensee on inactive status may not provide
33 surveying services or receive any compensation for any type of
34 surveying activities conducted in West Virginia.

35 5.3.b.2. A licensee on inactive status is not required to
36 complete the required number of Professional Development
37 Hours (PDHs).

38 5.3.b.3. A licensee on inactive status is required to pay the
39 annual license renewal fee and any required late fees accrued
40 for the license period unless the licensee applies to the Board
41 and is granted an exemption. A licensee may request an
42 exemption from the renewal fee if he or she can demonstrate
43 with supporting documentation that during the license year he
44 or she will be serving on active duty in the Armed Forces of the
45 United States for a period of more than 120 consecutive days or
46 experiencing physical disability, illness or other extenuating
47 circumstances.

48 5.3.b.4. The Board will issue to each licensee who is
49 granted inactive status an annual license card noting 'Inactive
50 Status'.

51 5.3.b.5. A licensee on inactive status who elects to return to
52 the active practice of surveying must complete Professional
53 Development Hours (PDHs) for each year on inactive status up
54 to a maximum of 16 PDHs.”]

§64-9-10. Board of Examiners of Licensed Practical Nurses.

1 The legislative rule filed in the state register on the eigh-
2 teenth day of August, two thousand four, under the authority of
3 section seven-a, article seven-a, chapter thirty, of this code,
4 relating to the Board of Examiners of Licensed Practical Nurses
5 (fees for services rendered by the Board, 10 CSR 4), is autho-
6 rized.

§64-9-11. Public Service Commission.

1 The legislative rule filed in the state register on the fourth
2 day of March, two thousand four, under the authority of section
3 two, article eight, chapter twenty-four, of this code, modified by
4 the Public Service Commission to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 state register on the twenty-first day of January, two thousand
7 five, relating to the Public Service Commission (statewide
8 telephone information and referral 211 service, 150 CSR 29),
9 is authorized.

§64-9-12. Radiologic Technology Board of Examiners.

1 The legislative rule filed in the state register on the tenth
2 day of June, two thousand four, under the authority of section
3 five, article twenty-three, chapter thirty, of this code, modified
4 by the Radiologic Technology Board of Examiners to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the twenty-sixth day of July,
7 two thousand four, relating to the Radiologic Technology Board
8 of Examiners (Board rule, 18 CSR 1), is authorized.

§64-9-13. Board of Examiners for Registered Professional Nurses.

1 The legislative rule filed in the state register on the seven-
2 teenth day of August, two thousand four, under the authority of
3 section eight-a, article seven, chapter thirty, of this code,
4 modified by the Board of Examiners for Registered Profes-
5 sional Nurses to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the state register on
7 the twenty-ninth day of September, two thousand four, relating
8 to the Board of Examiners for Registered Professional Nurses
9 (fees for services rendered by the Board, 19 CSR 12), is
10 authorized, with the following amendments:

11 On page one, subsection 2.9., by striking out the subsection
12 in its entirety and inserting in lieu thereof the following:

13 “2.9. Reinstatement of Lapsed License \$50.00”;

14 And,

15 On page two, by striking out subsections 2.23. and 2.24., in
16 their entirety and inserting in lieu thereof the following:

17 “2.23. Midwife License \$20.00

18 2.24. Midwife License Renewal \$10.00”.

§64-9-14. Secretary of State.

1 The legislative rule filed in the state register on the twenty-
2 seventh day of August, two thousand four, authorized under the
3 authority of section thirteen, article two, chapter three, of this
4 code, relating to the Secretary of State (agencies designated to
5 provide voter registration services, 153 CSR 28), is authorized.

**§64-9-15. Board of Examiners for Speech-Language Pathology
and Audiology.**

1 The legislative rule filed in the state register on the ninth
2 day of August, two thousand four, under the authority of section
3 ten, article thirty-two, chapter thirty, of this code, modified by
4 the Board of Examiners for Speech-Language Pathology and
5 Audiology to meet the objections of the Legislative Rule-
6 Making Review Committee and refiled in the state register on
7 the thirteenth day of December, two thousand four, relating to
8 the Board of Examiners for Speech-Language Pathology and
9 Audiology (speech-language pathology and audiology assis-
10 tants, 29 CSR 2), is authorized, with the following amendment:

11 On page one, subsection 2.5., after the word “licensure”, by
12 inserting the words “and who assumes legal responsibility for
13 services provided by an assistant”.

§64-9-16. State Treasurer.

1 The legislative rule filed in the state register on the eigh-
2 teenth day of August, two thousand four, under the authority of
3 section six, article three-a, chapter twelve, of this code, modi-
4 fied by the State Treasurer to meet the objections of the
5 Legislative Rule-Making Review Committee and refiled in the
6 state register on the seventh day of February, two thousand five,
7 relating to the State Treasurer (procedures for fees in collec-
8 tions by charge, credit or debit card or by electronic payment,
9 112 CSR 12), is authorized.

§64-9-17. Board of Veterinary Medicine.

1 (a) The legislative rule filed in the state register on the
2 eleventh day of August, two thousand three, under the authority
3 of section four, article ten, chapter thirty, of this code, modified
4 by the Board of Veterinary Medicine to meet the objections of
5 the Legislative Rule-Making Review Committee and refiled in
6 the state register on the fourteenth day of June, two thousand
7 four, relating to the Board of Veterinary Medicine (organization
8 and operation, 26 CSR 1), is authorized, with the following
9 amendments:

10 On page two, subsection 3.4., the last line, by striking out
11 the words “or upon the written request of any three (3) mem-
12 bers of the Board”;

13 On page two, subsection 3.6., by striking out “\$150.00”
14 and inserting in lieu thereof “\$100.00”;

15 On page four, subsection 4.7., line four, after the words
16 “not qualified to take the examination, the” by striking out the
17 word “Board” and inserting in lieu thereof the words
18 “Secretary-Treasurer”;

19 On page four, subsection 4.7., after the words “The Board
20 shall refund”, by striking out the words “fifty percent of the”;

21 On page four, subsection 5.4., after the word “The” at the
22 beginning of the subsection, by striking out the word “Board”
23 and inserting in lieu thereof the words “Secretary-Treasurer”;

24 And,

25 On page six, subsection 7.1., after the words “On or”, by
26 striking out the word “about” and inserting in lieu thereof the
27 word “before”.

28 (b) The legislative rule filed in the state register on the
29 eleventh day of August, two thousand three, under the authority
30 of section nine, article ten-a, chapter thirty, of this code,
31 modified by the Board of Veterinary Medicine to meet the
32 objections of the Legislative Rule-Making Review Committee
33 and refiled in the state register on the fourteenth day of June,
34 two thousand four, relating to the Board of Veterinary Medicine
35 (certified animal euthanasia technicians, 26 CSR 5), is autho-
36 rized.

37 (c) The legislative rule filed in the state register on the ninth
38 day of August, two thousand three, under the authority of

39 section four, article ten, chapter thirty, of this code, modified by
 40 the Board of Veterinary Medicine to meet the objections of the
 41 Legislative Rule-Making Review Committee and refiled in the
 42 state register on the twenty-first day of January, two thousand
 43 five, relating to the Board of Veterinary Medicine (schedule of
 44 fees, 26 CSR 6), is authorized, with the following amendments:

45 On page one, by striking out all of subsections 2.1 through
 46 2.8, and inserting in lieu thereof the following:

47 “2.1 Veterinarian application and examination fee . . \$295.00
 48 2.2 Veterinarian license fee \$5.00
 49 2.3 Duplicate license \$15.00
 50 2.4 Annual renewal fee \$225.00
 51 2.5 Temporary permit \$100.00
 52 2.6 Temporary permit renewal fee \$25.00
 53 2.7 Written confirmation of licensure, registration or
 54 certification by West Virginia \$25.00
 55 2.8 North American Veterinary License Exam (NAVLE)
 56 eligibility processing fee \$50.00”.

CHAPTER 156

**(Com. Sub. for H. B. 2718 — By Delegates Mahan, Palumbo,
 Cann, Pino, Armstead and Overington)**

[Passed April 9, 2005; in effect from passage.]
 [Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto;

legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Economic Development Authority to promulgate a legislative rule relating to the high-growth business investment tax credit; authorizing the Bureau of Employment Programs to promulgate a legislative rule relating to implementing the requirement that prohibits agencies from granting, issuing or renewing contracts, licenses, permits, certificates or other authority to conduct a trade, profession or business; authorizing the Division of Labor to promulgate a legislative rule relating to the Elevator Safety Act; authorizing the Division of Labor to promulgate a legislative rule relating to weights and measures calibration fees; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Natural Resources to promulgate a legislative rule relating to commercial whitewater outfitters; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the commercial sale of wildlife; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to the revocation of hunting and fishing licenses.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO
PROMULGATE LEGISLATIVE RULES.**

§64-10-1. Economic Development Authority.

§64-10-2. Bureau of Employment Programs.

§64-10-3. Division of Labor.

§64-10-4. Division of Natural Resources.

§64-10-1. Economic Development Authority.

1 The legislative rule filed in the state register on the twenty-
2 fourth day of August, two thousand four, under the authority of
3 section nine, article thirteen-u, chapter eleven, of this code,
4 modified by the Economic Development Authority to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the first day of February, two
7 thousand five, relating to the Economic Development Authority
8 (high-growth business investment tax credit, 117 CSR 5), is
9 authorized, with the following amendments:

10 On page three, section three, line 4, by striking all of
11 sections 3.2.b., 3.2.c. and 3.2.c.1 and inserting in lieu thereof
12 the following:

13 “3.2.b. The Authority may not allocate more than fifty
14 thousand dollars of this tax credit to an eligible taxpayer in a
15 fiscal year.

16 3.2.c. Any unused portion of the tax credit may be carried
17 forward to succeeding taxable years until the expiration of the
18 fourth taxable year after the taxable year in which the invest-
19 ment was made. The tax credit remaining thereafter is for-
20 feited.”;

21 And,

22 On page three, section three, line 18, following the word
23 “The” by striking the word “Statute” and inserting in lieu
24 thereof the word “tax credit”.

§64-10-2. Bureau of Employment Programs.

1 The legislative rule filed in the state register on the nine-
2 teenth day of March, two thousand four, under the authority of
3 section six, article two, chapter twenty-one-a, of this code,
4 modified by the Bureau of Employment Programs to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the state register on the seventeenth day of June,
7 two thousand four, relating to the Bureau of Employment
8 Programs (implementing the requirement that prohibits
9 agencies from granting, issuing or renewing contracts, licenses,
10 permits, certificates or other authority to conduct a trade,
11 profession or business, 96 CSR 1), is authorized, with the
12 following amendment:

13 On page five, section five, line 1, following the word “The”
14 by striking the word “authorizing” and inserting the word
15 “approval”.

§64-10-3. Division of Labor.

1 (a) The legislative rule filed in the state register on the
2 twelfth day of August, two thousand four, under the authority
3 of section eleven, article three-c, chapter twenty-one, of this
4 code, modified by the Division of Labor to meet the objections
5 of the Legislative Rule-Making Review Committee and refiled
6 in the state register on the sixteenth day of February, two
7 thousand five, relating to the Division of Labor (Elevator Safety
8 Act, 42 CSR 21), is authorized, with the following amend-
9 ments:

10 On page three, subdivision 6.1., after the words “private
11 inspector may not” by striking out the words “provide inspec-
12 tion services to an elevator on which the inspector, his or her
13 employer or employee of his or her employer has made repairs
14 or provided routine maintenance” and inserting in lieu thereof
15 the words “inspect repairs or routine maintenance work

16 performed by the inspector, the inspector's employer or another
17 employee of the inspector's employer";

18 And,

19 On page three, subdivision 6.1., after the words "may enter
20 into any" by inserting the words "state owned".

21 (b) The legislative rule filed in the state register on the
22 twelfth day of August, two thousand four, under the authority
23 of section twenty, article one, chapter forty-seven, of this code,
24 modified by the Division of Labor to meet the objections of the
25 Legislative Rule-Making Review Committee and refiled in the
26 state register on the sixteenth day of February, two thousand
27 five, relating to the Division of Labor (weights and measures
28 calibration fees, 42 CSR 26), is authorized.

29 (c) The legislative rule filed in the state register on the
30 twenty-seventh day of August, two thousand four, under the
31 authority of section four, article nine, chapter twenty-one, of
32 this code, relating to the Division of Labor (West Virginia
33 Manufactured Housing Construction and Safety Standards
34 Board, 42 CSR 19), is authorized.

§64-10-4. Division of Natural Resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section twenty-three-a, article two, chapter twenty,
4 of this code, relating to the Division of Natural Resources
5 (commercial whitewater outfitters, 58 CSR 12), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-third day of August, two thousand four, under the
8 authority of section seven, article one, chapter twenty, and
9 section eleven, article two, chapter twenty, of this code, relating
10 to the Division of Natural Resources (commercial sale of
11 wildlife, 58 CSR 63), is authorized.

12 (c) The legislative rule filed in the state register on the
13 twelfth day of August, two thousand four, under the authority
14 of section seven, article one, chapter twenty, of this code,
15 modified by the Division of Natural Resources to meet the
16 objections of the Legislative Rule-Making Review Committee
17 and refiled in the state register on the seventeenth day of
18 November, two thousand four, relating to the Division of
19 Natural Resources (revocation of hunting and fishing licenses,
20 58 CSR 23), is authorized.

CHAPTER 157

(S. B. 616 — By Senators Bowman, Kessler, McKenzie and Yoder)

[Amended and again passed April 16, 2005, as a result of the
objections of the Governor; in effect from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §4-1-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §4-1A-1, §4-1A-2, §4-1A-3, §4-1A-4, §4-1A-5, §4-1A-6, §4-1A-7, §4-1A-8, §4-1A-9, §4-1A-10, §4-1A-11, §4-1A-12, §4-1A-13, §4-1A-14, §4-1A-15 and §4-1A-16, all relating to legislative priorities and immunities under statute, common law and constitutional law.

Be it enacted by the Legislature of West Virginia:

That §4-1-17 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 §4-1A-1, §4-1A-2, §4-1A-3, §4-1A-4, §4-1A-5, §4-1A-6, §4-1A-7, §4-1A-8, §4-1A-9, §4-1A-10, §4-1A-

11, §4-1A-12, §4-1A-13, §4-1A-14, §4-1A-15, and §4-1A-16 all to read as follows:

Article

1. **Officers, Members and Employees; Appropriations; Investigations; Display of Flags; Records; Use of Capitol Building; Prefiling of Bills and Resolutions; Standing Committees; Interim Meetings; Next Meeting of the Senate.**

- 1A. **Legislative Immunity.**

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-17. Priority of legislative business for members and designated employees.

1 (a) In accordance with the constitutional separation of
 2 powers and principles of comity, it is the purpose of this
 3 section to provide that members of the Legislature and certain
 4 designated legislative employees are not required to attend to
 5 matters pending before tribunals of the executive and judicial
 6 branches of government when the timing of those matters may
 7 present conflicts with the discharge of the public duties and
 8 responsibilities that are incumbent upon members or employ-
 9 ees of the Legislature. During legislative sessions or meetings
 10 and for reasonable time periods before and after, the judicial
 11 and executive branches should refrain from requiring the
 12 personal presence and attention of a legislator or designated
 13 employee who is engaged in conducting the business of the
 14 Legislature.

15 (b) For the purposes of this section, the words or terms
 16 defined in this subsection have the meanings ascribed to them.
 17 These definitions are applicable unless a different meaning
 18 clearly appears from the context.

19 (1) "Applicable time period" means and includes the
20 following:

21 (A) The ten-day time period immediately before any
22 regular or extraordinary session of the Legislature;

23 (B) The time period during any regular or extraordinary
24 session of the Legislature;

25 (C) The thirty-day time period immediately following the
26 adjournment sine die of any regular or extraordinary session of
27 the Legislature;

28 (D) The four-day time period before any interim meetings
29 of any committee of the Legislature or before any party caucus;

30 (E) The time period during any interim meetings of the
31 Legislature or any party caucus; or

32 (F) The four-day time period following the conclusion of
33 any interim meetings of any committee of the Legislature or
34 party caucus.

35 (2) "Designated employee" means any legislative em-
36 ployee designated in writing by the Speaker of the West
37 Virginia House of Delegates to the Clerk of the House of
38 Delegates or by the President of the West Virginia Senate to
39 the Clerk of the West Virginia Senate to be necessary to the
40 operation of the Legislature, such that the legislative employee
41 will be afforded the protections of this section.

42 (3) "Member" means a member of the West Virginia
43 House of Delegates or the West Virginia Senate.

44 (4) "Tribunal" means a judicial or quasijudicial entity of
45 the judicial or executive branch of government, or any legisla-
46 tive, judicial or quasijudicial entity of a political subdivision,

47 created or authorized under the Constitution or laws of this
48 state.

49 (c) A notice filed with a tribunal pursuant to subsection (e)
50 of this section operates as an automatic stay of a judicial or
51 administrative action or proceeding commenced before or after
52 the notice was filed. The automatic stay is in force for the
53 applicable time period or periods described in the notice unless
54 it is otherwise waived in accordance with the provisions of
55 subsection (f) of this section. In the event a session or meeting
56 of the Legislature is extended, the notice may be amended to
57 reflect a longer applicable time period. The filing of the notice
58 and the automatic stay do not prohibit the commencement of an
59 action or proceeding, the issuance or employment of process or
60 other preliminary procedures that do not require the presence
61 or personal attention of the member or designated employee.

62 (d) During any applicable time period, a member or
63 designated employee who does not otherwise consent to a
64 waiver of the stay is not required to do any of the following:

65 (1) Appear in any tribunal, whether as an attorney, party,
66 witness or juror;

67 (2) Respond in any tribunal to any complaint, petition,
68 pleading, notice or motion that would require a personal
69 appearance or the filing of a responsive pleading;

70 (3) File in any tribunal any brief, memorandum or motion;

71 (4) Respond to any motion for depositions upon oral
72 examination or written questions;

73 (5) Respond to any written interrogatories, request for
74 production of documents or things, request for admissions or

75 any other discovery procedure, whether or not denominated as
76 such; or

77 (6) Appear or respond to any other act or thing in the
78 nature of those described in subdivision (1), (2), (3), (4) or (5)
79 of this subsection; or

80 (7) Make any other appearance before a tribunal or attend
81 to any other matter pending in a tribunal that in the discretion
82 of the member or designated employee would inhibit the
83 member or designated employee in the exercise of the legisla-
84 tive duties and responsibilities owed to the public.

85 (e) A member or designated employee who desires to
86 exercise the protections afforded by this section shall not be
87 required to appear in any tribunal to assert the protections. In
88 all cases, it shall be sufficient if the member or designated
89 employee notifies the tribunal in question orally or in writing,
90 stating that he or she is invoking the protections of this section,
91 describing the action, proceeding or act to be stayed, and
92 further identifying the applicable period or periods for which
93 the notice will operate as a stay. An oral communication with
94 the tribunal shall be followed by a written notice or facsimile
95 transmission to the tribunal mailed or transmitted no later than
96 two business days after the oral communication. From the time
97 of the oral communication or the mailing or transmission of the
98 written notice, whichever is earlier, the notice operates as a stay
99 of all proceedings in the pending matter until the applicable
100 time periods have passed and expired.

101 (f) Notwithstanding the filing of a notice that operates as a
102 stay, a member or designated employee may later consent to
103 waive the stay and make an appearance or attend to a matter
104 that would otherwise be stayed. However, a waiver as to a
105 particular appearance or act does not terminate, annul, modify
106 or condition the stay for any other purpose.

107 (g) The deference afforded by this section to members and
108 designated employees who are serving a client in a representa-
109 tive capacity is also fully and completely extended to their
110 clients, so that no person whose representative before a tribunal
111 is a member or designated employee may be required, during
112 any applicable time period, to do anything that his or her
113 representative is not required to do under subsection (d) of this
114 section.

115 (h) Unless the member or designated employee consents
116 thereto, no cocounsel, partner, associate, spouse or employee
117 of the member or designated employee may be required to
118 make any appearance or do any act during any applicable time
119 period in the place and stead of the member or designated
120 employee.

121 (i) Any sentence, judgment, order, decree, finding, deci-
122 sion, recommendation or award made contrary to the provi-
123 sions of this section in any action or proceeding in any tribunal,
124 without the consent of the member or designated employee, is
125 void.

126 (j) Tribunals of the federal government and those of other
127 states are requested to honor the spirit and purpose of this
128 section pursuant to the doctrines of comity and federalism.
129 Further, it is the policy of this state that tribunals of this state
130 shall afford to legislators and staff personnel of the federal
131 government and other states the protections afforded by the
132 provisions of this section if the tribunals of the federal govern-
133 ment and the other jurisdictions afford members or designated
134 employees of the West Virginia Legislature the same
135 protections in their tribunals.

ARTICLE 1A. LEGISLATIVE IMMUNITY.

§4-1A-1. Purpose; legislative findings and declarations.

§4-1A-2. Applicability of definitions.

§4-1A-3. Legislative act defined.

- §4-1A-4. Legislative sphere defined.
- §4-1A-5. Political act defined.
- §4-1A-6. Scope of legislative immunity generally.
- §4-1A-7. Legislative immunity in specific instances.
- §4-1A-8. Actions taken without lawful authority are not immune.
- §4-1A-9. Political acts are not privileged.
- §4-1A-10. Administrative acts are not immune.
- §4-1A-11. Certain offers of proof about legislative activities not prohibited.
- §4-1A-12. Legislative acts of legislative staff, aides or assistants.
- §4-1A-13. Legislative immunity from ultimate relief.
- §4-1A-14. Testimonial immunity.
- §4-1A-15. Right to interlocutory appeal.
- §4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

§4-1A-1. Purpose; legislative findings and declarations.

- 1 (a) The purpose of this article is to describe the scope and
- 2 limitations of legislative immunity provided by:
 - 3 (1) English common law;
 - 4 (2) The Speech or Debate Clause of the United States
 - 5 Constitution, Article I, Section 6;
 - 6 (3) Decisions regarding legislative immunity as developed
 - 7 in federal common law by the federal judiciary in interpreting
 - 8 the Speech or Debate Clause of the United States Constitution,
 - 9 Article I, Section 6;
 - 10 (5) The Speech or Debate Clause of the West Virginia
 - 11 Constitution, Article VI, Section 17;
 - 12 (6) The Separation of Powers Doctrine and the system of
 - 13 checks and balances embodied in the United States Constitu-
 - 14 tion; and
 - 15 (7) The Division of Powers set forth in the West Virginia
 - 16 Constitution, Article V, Section 1.

17 (b) The Legislature finds and declares as follows:

18 (1) That the privilege of Speech or Debate has been
19 recognized as an important protection of the independence and
20 integrity of the Legislature.

21 (2) That the ancestry of this privilege traces back to a
22 clause in the English Bill of Rights of 1689 and the history
23 traces even further back, almost to the beginning of the
24 development of the English Parliament as an independent
25 force.

26 (3) That in the American governmental structure, privileges
27 arising under the Speech or Debate Clause reinforce the
28 Separation of Powers Doctrine and the system of checks and
29 balances that was so deliberately established by the founding
30 fathers and was carried over into the West Virginia Constitu-
31 tion.

32 (4) That the protections provided by the Speech or Debate
33 Clause and the Separation of Powers Doctrine were not written
34 into the national and state Constitutions simply for the personal
35 or private benefit of members of Congress, the state Legisla-
36 tures and local governing bodies, but were intended to protect
37 the integrity of the legislative process by insuring the inde-
38 pendence of individual legislators.

§4-1A-2. Applicability of definitions.

1 For the purposes of this article, the words or terms defined
2 in this article have the meanings ascribed to them. These
3 definitions are applicable unless a different meaning clearly
4 appears from the context.

§4-1A-3. Legislative act defined.

1 “Legislative act” means an act that is generally to be
2 performed by the Legislature in relation to the investigative,
3 deliberative and decision-making business before it. A
4 “legislative act”:

5 (1) Is an integral part of the processes by which members
6 participate in proceedings that come before the Senate or
7 House of Delegates or a committee thereof; and

8 (2) Relates to the consideration and passage or rejection of
9 proposed legislation; or

10 (3) Relates to other matters that constitutional law places
11 within the jurisdiction of either the Senate, the House of
12 Delegates or the legislative branch of state government as a
13 whole.

§4-1A-4. Legislative sphere defined.

1 The “legislative sphere” includes all activities that are an
2 integral part of the deliberative and communicative processes
3 by which members of the Legislature participate in committee
4 and house proceedings with respect to the consideration and
5 passage or rejection of proposed legislation or with respect to
6 other matters which the Constitution places within the jurisdic-
7 tion of either house.

§4-1A-5. Political act defined.

1 “Political act” means an act, nonetheless legitimate, that is
2 political in nature rather than being a legislative act as defined
3 in section three of this article.

§4-1A-6. Scope of legislative immunity generally.

1 (a) Legislative immunity, affording protection under the
2 Separation of Powers Doctrine and the Speech or Debate

3 privilege, extends to all of a legislator's legislative acts, as
4 defined in section three of this article.

5 (b) The Speech or Debate privilege, when it applies, is
6 absolute and has two aspects:

7 (1) A member of the Legislature has immunity extending
8 both to civil suits and criminal prosecutions for all actions
9 within the legislative sphere, even though the conduct, if
10 performed in other than a legislative context, would in itself be
11 unconstitutional or otherwise contrary to criminal or civil
12 statutes; and

13 (2) A member of the Legislature is provided a testimonial
14 privilege that operates to protect those to whom it applies from
15 being compelled to give testimony as to privileged matters and
16 from being compelled to produce privileged documents.

§4-1A-7. Legislative immunity in specific instances.

1 The scope of legislative immunity includes, but is not
2 limited to, the following legislative acts:

3 (1) Introducing and voting for legislation;

4 (2) Failing or refusing to vote or enact legislation;

5 (3) Voting to seat or unseat a member;

6 (4) Voting on the confirmation of an executive appoint-
7 ment;

8 (5) Making speeches;

9 (6) Enforcing the rules of the Senate or House of Delegates
10 or the joint rules of the Legislature;

11 (7) Serving as a member of a committee or subcommittee;

- 12 (8) Conducting hearings and developing legislation;
- 13 (9) Investigating the conduct of executive agencies;
- 14 (10) Publishing and distributing reports;
- 15 (11) Composing and sending letters;
- 16 (12) Drafting memoranda and documents;
- 17 (13) Lobbying other legislators to support or oppose
18 legislation;
- 19 (14) Abolishing personnel positions; and
- 20 (15) Hiring and firing employees.

§4-1A-8. Actions taken without lawful authority are not immune.

- 1 Legislative immunity does not extend to activities by
2 legislators that are without lawful authority under constitu-
3 tional law, statutory law or rules of the legislature, including,
4 but not limited to, the following:
 - 5 (1) Using an unconstitutional procedure to enact legisla-
6 tion;
 - 7 (2) Conducting an illegal investigation or an unlawful
8 search or seizure;
 - 9 (3) Performing another otherwise valid legislative act
10 without proper legislative authority;
 - 11 (4) Filing a false or incomplete report, disclosure or claim
12 regarding an otherwise valid legislative act; or
 - 13 (5) Using legislative office for private gain in violation of
14 the provisions of chapter six-b of this code that define and
15 enforce governmental ethics.

§4-1A-9. Political acts are not privileged.

1 Legislative immunity does not extend to political acts,
2 including, but not limited to, the following:

3 (1) Communications to the press through letters, electronic
4 mail, newsletters or news releases: *Provided*, That the release
5 of pending legislation, committee reports, journals, acts and
6 other official legislative reports and documents is a legitimate
7 legislative activity;

8 (2) Privately releasing a republication of a speech made
9 within the legislative sphere;

10 (3) Holding a press conference;

11 (4) Making speeches or giving interviews outside of the
12 legislative sphere; or

13 (5) Assisting a constituent or supporter through constituent
14 services, including, but not limited to, making appointments
15 with government agencies, attempting to influence discretion-
16 ary acts of a government officer or providing assistance in
17 securing government contracts.

§4-1A-10. Administrative acts are not immune.

1 (a) Legislative immunity does not extend to activities by
2 legislators that are administrative in nature rather than legisla-
3 tive. If the underlying facts on which a decision is based are
4 legislative facts involving establishment of a general policy or
5 state of affairs, then the decision is legislative. If the facts used
6 in the decisionmaking are more specific, such as those that
7 relate to particular individuals or situations, then the decision
8 is administrative.

9 (b) With regard to legislative personnel matters, whether a
10 personnel decision regarding a legislative employee is shielded

11 by legislative immunity depends upon the nature of the duties
12 of the employee about whom the personnel decision is made.
13 Personnel decisions regarding a legislative employee are
14 afforded immunity if the employee's duties are directly related
15 to the functioning of the legislative process and the duties:

16 (1) Involve work that significantly informs or influences
17 the shaping of laws, such as when the employee has an
18 opportunity for meaningful input into the legislative process;
19 or

20 (2) Are peculiar to a legislator's work as a legislator or
21 intimately cognate to the legislative process.

§4-1A-11. Certain offers of proof about legislative activities not prohibited.

1 (a) Proof of a person's status as a member of the Legisla-
2 ture is not prohibited.

3 (b) A member of the Legislature who chooses to offer
4 evidence of legislative acts as a defense to a criminal prosecu-
5 tion has not been "questioned", even though the member
6 thereby subjects himself or herself to cross-examination.

§4-1A-12. Legislative acts of legislative staff, aides or assistants.

1 Legislative immunity extends to legislative staff, aides or
2 assistants working on behalf of a legislator. Inquiry is prohib-
3 ited into things done as a legislator's staff member, aide or
4 assistant which would have been legislative acts if performed
5 by the legislator personally.

§4-1A-13. Legislative immunity from ultimate relief.

1 Legislative immunity may be invoked to shield a legislator
2 from judicially ordered relief, including, but not limited to, the
3 following:

- 4 (1) Criminal prosecution for his or her legislative acts;
- 5 (2) Liability for damages for his or her legislative acts;
- 6 (3) Declaratory judgments with respect to his or her
7 legislative acts;
- 8 (4) Injunctive relief with respect to his or her legislative
9 acts; and
- 10 (5) Extraordinary writs with respect to his or her legislative
11 acts.

§4-1A-14. Testimonial immunity.

- 1 (a) Testimonial immunity is an aspect of legislative
2 immunity that protects a legislator from questioning elsewhere
3 than in the legislative forum.
- 4 (b) When a legislator has been improperly questioned
5 before a grand jury concerning legislative acts, the counts in a
6 criminal indictment that are based on the testimony must be
7 dismissed.
- 8 (c) When a legislator is found to be immune from a civil
9 complaint, the relief to be granted is to have the complaint
10 dismissed or to have a writ of prohibition issued to stop further
11 proceedings.
- 12 (d) In the case of a subpoena that seeks to improperly
13 question a legislator's conduct as to legislative acts, to depose
14 a legislator or to seek disclosure as to any matters pertaining to
15 the memoranda, documents or actions by a legislator which are
16 or were in connection with the legislative process, the subpoe-
17 nas may be quashed or the court may grant a motion for a
18 protective order.

§4-1A-15. Right to interlocutory appeal.

1 Denial of a claim of legislative immunity is immediately
2 appealable under the collateral order doctrine because the
3 Speech or Debate Clause is designed to protect legislators not
4 only from the consequences of litigation's results but also from
5 the burden of defending themselves.

§4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

1 The Legislature of the State of West Virginia, in codifying
2 certain elements and doctrines of the common law regarding
3 legislative immunity through the enactment of this article, does
4 not intend to narrow the common law definition of legislative
5 immunity that is afforded the Legislature under the speech or
6 debate privilege and the separation or division of powers, and
7 does not, with the enactment of this article, otherwise revoke
8 or abrogate any portion of the common law. This article shall
9 not be construed so as to narrow, restrict, revoke or abrogate
10 the common law.

CHAPTER 158

(Com. Sub. for H. B. 2477— By Delegates Hrutkay,
Beane, Craig, Webster and Amores)

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §38-8-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-2-136, all relating to exemptions from execution or other judicial process of certain personal property.

Be it enacted by the Legislature of West Virginia:

That § 38-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46A-2-136 be amended and reenacted, all to read as follows:

Chapter

38. Liens.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-3. Method of claiming exemption on personal property.

1 When a debtor claims personal property as exempt under
 2 the provisions of this article, he or she shall deliver to the
 3 officer holding the execution or other process, a list by separate
 4 items with the fair market value of each item, according to the
 5 belief of the debtor, of all personal property and estate owned
 6 or claimed by the debtor, including money, bonds, bills, notes,
 7 claims and demands, along with the address of the person so
 8 indebted. The list shall also set forth with respect to each item
 9 of personal property and estate the name and address of the
 10 holder of and the current amount owing on each lien thereon
 11 other than judicial liens obtained by legal or equitable proceed-
 12 ings. The debtor shall verify such list, valuation and lien
 13 indebtedness by affidavit, which affidavit shall also show that
 14 the debtor is entitled to the exemption, and shall specify the
 15 character in which he claims to be so entitled, as for example,
 16 that he is a husband. If the value of the property named in the
 17 list exceeds, as stated therein, the maximum allowed amounts
 18 set forth in section one of this article, the debtor shall state at
 19 the foot thereof what part of the property he claims as exempt,
 20 but if such value does not exceed the allowed amount, as so
 21 stated, the claim of exemption shall be held to extend to the
 22 whole thereof without stating more; and if no appraisalment

23 thereof be demanded, as hereinafter provided, the property so
24 claimed shall be set apart to the debtor as exempt. If the
25 husband, wife, parent or other head of a household owning such
26 property be absent, or incapable of acting, or neglect or decline
27 to act, the claim may be made, the list delivered, and the
28 affidavit made by another member of the family, with the same
29 effect as if made by the owner, and the claim may be made, the
30 list delivered, and the affidavit made on behalf of infant
31 children by the guardian thereof or someone standing in loco
32 parentis thereto. The officer shall immediately, upon receipt of
33 the list, exhibit the same to the creditor, his or her agent or
34 attorney.

**CHAPTER 46A. WEST VIRGINIA CONSUMER
CREDIT AND PROTECTION ACT.**

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-136. Personal property exemptions.

1 Any consumer residing in this state may set apart and hold
2 personal property to be exempt from execution or other judicial
3 process resulting from consumer credit transactions or con-
4 sumer leases, except for the purchase money due on such
5 property, in such amounts as follows: Children's books,
6 pictures, toys and other such personal property of children; all
7 medical health equipment used for health purposes by the
8 consumer, his or her spouse and any dependent of such con-
9 sumer; and personal property set apart and held as exempt
10 pursuant to section one, article eight, chapter thirty-eight of this
11 code. When a consumer claims personal property as exempt
12 under the provisions of this section, he or she shall deliver a list
13 containing all the personal property owned or claimed by him
14 or her and all items of such property he or she claims as exempt
15 hereunder, with the value of each separate item listed according
16 to his or her best knowledge, to the officer holding the execu-
17 tion or other such process. Such list shall be sworn to by

18 affidavit. If the value of the property named in such list exceeds
19 the amounts specified in this section, the consumer shall state
20 at the foot thereof what part of such property he or she claims
21 as exempt. If such value does not exceed the amounts specified
22 in this section, the claim of exemption shall be held to extend
23 to the whole thereof without stating more and, if no appraise-
24 ment is demanded, the property so claimed shall be set aside as
25 exempt. Where the consumer owning exempt property is absent
26 or incapable of acting or neglects or declines to act hereunder,
27 the claim of exemption may be made, the list delivered and the
28 affidavit made by his or her spouse or by or on behalf of a
29 dependent of the consumer, with the same effect as if the owner
30 had done so. Upon receipt of such a list, the officer to whom it
31 is given shall immediately exhibit such list to the creditor or his
32 or her agent or attorney. The rights granted and procedures
33 provided in article eight, chapter thirty-eight of this code shall
34 apply to any proceeding under this section, except that the
35 provisions of section three of such article shall not apply.

CHAPTER 159

**(Com. Sub. for S. B. 419 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-23-1, §7-23-2 and §7-23-3, all providing that counties, municipalities and county boards of education be allowed relief from certain policies, rules and regulations.

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 §7-23-1, §7-23-2 and §7-23-3, all to read as follows:

ARTICLE 23. LOCAL GOVERNMENT FLEXIBILITY ACT.

§7-23-1. Short title.

§7-23-2. Legislative intent and findings.

§7-23-3. Flexibility for county commissions, municipalities and county boards of education.

§7-23-1. Short title.

1 This article may be cited as the Local Government Flexibil-
2 ity Act of 2005. No inference, implication or presumption of
3 legislative construction shall be drawn or made by reason of
4 the location or grouping of any particular section, provision or
5 portion of this article. No legal effect shall be given to any
6 descriptive matter or heading relating to any part, section,
7 subdivision or paragraph of this article.

§7-23-2. Legislative intent and findings.

1 (a) *Legislative intent.* — It is the intent of the Legislature
2 in enacting this article to provide a framework within which
3 new ideas can be explored to see if they can or should be
4 implemented on a statewide basis.

5 (b) *Legislative findings.* — The Legislature finds and
6 declares that:

7 (1) County commissions, municipalities and county boards
8 of education today face numerous challenges managing their
9 budgets and other resources and delivering services required by
10 federal or state law or demanded by their constituents.

11 (2) Local units of government are sometimes restricted by
12 policies, rules and regulations that prevent them from carrying
13 out their duties and responsibilities in a cost effective, efficient
14 and timely manner. To address this concern, this pilot program
15 includes a waiver program whereby county commissions,
16 municipalities and county boards of education may apply to the
17 Governor for waiver of a specific policy, rule or regulation.

**§7-23-3. Flexibility for county commissions, municipalities and
county boards of education.**

1 (a) *Application for waiver of policies, rules and regula-*
2 *tions.*

3 (1) The purpose of this section is to provide a procedure by
4 which county commissions, municipalities and county boards
5 of education may apply for waiver of a policy, rule or regula-
6 tion the commission, municipality or board believes is prevent-
7 ing it from carrying out its duties and responsibilities in the
8 most cost efficient, effective and timely manner.

9 (2) The chief executive officer of a county commission,
10 municipality or county board of education may file with the
11 Secretary of Commerce an application for waiver of a policy,
12 rule or regulation he or she believes is preventing the commis-
13 sion, municipality or board from carrying out its duties in the
14 most cost efficient, effective and timely manner.

15 (3) The application shall be made in writing and be in the
16 form prescribed by the Secretary of Commerce for that
17 purpose. The application shall, at a minimum, require the
18 applicant to provide the official citation of the policy, rule or
19 regulation for which waiver is sought. If there is no official
20 citation, a copy of the policy or letter from which a waiver is
21 sought shall be attached to the application. The applicant shall
22 describe in sufficient detail the problem created by the policy,
23 rule or regulation for which waiver is sought and describe in

24 sufficient detail how the waiver will allow the applicant to
25 carry out the applicant's duties in the most cost efficient,
26 effective and timely manner.

27 (b) *Review by Secretary of Commerce.* — Upon receipt of
28 an application as provided in subsection (a) of this section, the
29 Secretary of Commerce may conduct an investigation or
30 inquiry to gather any additional information necessary to
31 evaluate the application. The Secretary of Commerce shall
32 periodically submit to the Governor a written report summariz-
33 ing the applications and any recommendations for applications
34 the Secretary of Commerce determines in his or her discretion
35 to forward to the Governor for disposition in accordance with
36 this section. The Secretary of Commerce is granted no
37 authority under this section to issue any waiver.

38 (c) *Review by Governor.* — Upon receipt of the summary
39 and recommendations of the Secretary of Commerce, the
40 Governor may take any action he or she considers appropriate
41 under the circumstances that is within the authority granted to
42 the Governor by the laws of this state. Whenever the Governor
43 believes a statutory change is needed, the Governor shall bring
44 the matter to the attention of the Speaker of the House of
45 Delegates and the President of the Senate.

CHAPTER 160

**(Com. Sub. for S. B. 191 — By Senators Kessler,
Hunter, Foster, Sharpe, Unger and Sprouse)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-5-11, relating to mental hygiene proceedings generally; authorizing implementation of a modified mental hygiene procedure in limited number of counties relating to persons who are medication-dependent and who have had at least one prior conviction for a crime of violence against the person within the previous twenty-four months related to mental illness or two prior hospitalizations within the previous twenty-four months due to mental illness; directing cooperation of Secretary of Department of Health and Human Resources and Supreme Court of Appeals in developing modified procedures; authorizing use of treatment compliance orders in certain judicial circuits; authorizing hospitalization and treatment for up to forty-eight hours prior to probable cause hearing for medication-dependent individuals who meet requirements; reporting requirements; expiration date; time limits; requirements of petitions; procedures; required findings; hearings; and forms required for procedures.

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 §27-5-11, to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; to institute modified mental hygiene procedures; procedures; forms.

- 1 (a) The Supreme Court of Appeals shall, in consultation
- 2 with the Secretary of the Department of Health and Human
- 3 Resources and local mental health services consumers and
- 4 providers, implement in at least four and no more than six

5 judicial circuits, beginning on the first day of July, two
6 thousand six, modified mental hygiene procedures that are
7 consistent with the requirements set forth in this section. The
8 judicial circuits selected for implementing the modified
9 procedures shall be circuits in which the Supreme Court of
10 Appeals determines, after consultation with the Secretary of the
11 Department of Health and Human Resources and local mental
12 health consumers and service providers, that adequate re-
13 sources will be available to implement the modified proce-
14 dures. The Secretary of the Department of Health and Human
15 Resources, after consultation with the Supreme Court of
16 Appeals and local mental health services consumers and
17 service providers, shall prescribe appropriate forms to imple-
18 ment the modified procedures and shall annually prepare a
19 report on the use of the modified procedures and transmit the
20 report to the Legislature on or before the last day of each
21 calendar year. The Supreme Court of Appeals may, after
22 consultation with the Secretary of the Department of Health
23 and Human Resources and local mental health services
24 consumers and providers during the pilot program period,
25 further modify any specific modified procedures that are
26 implemented: *Provided*, That the modified procedures must be
27 consistent with the requirements of this chapter and this
28 section. If the Secretary of the Department of Health and
29 Human Resources determines that the use of any modified
30 procedure in one or more judicial circuits is placing an unac-
31 ceptable additional burden upon state mental health resources,
32 the Supreme Court of Appeals shall, in consultation with the
33 Secretary, modify the procedures used in such a fashion as will
34 address the concerns of the Secretary, consistent with the
35 requirements of this chapter. The provisions of this section and
36 the modified procedures thereby authorized shall cease to have
37 any force and effect on the thirtieth day of June, two thousand
38 ten, unless extended by an Act of the Legislature prior to that
39 date.

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

43 (A) That an individual, on two or more occasions within a
44 24-month period prior to the filing of the petition, as a result of
45 mental illness, has been hospitalized pursuant to the provisions
46 of this chapter; or that the individual has been convicted of one
47 or more crimes of violence against the person within a 24-
48 month period prior to the filing of the petition and the individ-
49 ual's failure to take prescribed medication or follow another
50 prescribed regimen to treat a mental illness was a significant
51 aggravating or contributing factor in the circumstances
52 surrounding the crime;

53 (B) That the individual's previous hospitalizations due to
54 mental illness or the individual's crime of violence occurred
55 after or as a result of the individual's failure to take medication
56 or other treatment as prescribed by a physician to treat the
57 individual's mental illness; and

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

66 (2) Upon the filing of a petition seeking a treatment
67 compliance order and the petition's review by a circuit judge
68 or mental hygiene commissioner, counsel shall be appointed
69 for the individual if the individual does not already have
70 counsel and a copy of the petition and all supporting evidence
71 shall be furnished to the individual and their counsel. If the

72 circuit judge or mental hygiene commissioner determines on
73 the basis of the petition that it is necessary to protect the
74 individual or to secure their examination, a detention order may
75 be entered ordering that the individual be taken into custody
76 and examined by a psychiatrist or licensed psychologist. A
77 hearing on the allegations in the petition, which may be
78 combined with a hearing on a probable cause petition con-
79 ducted pursuant to the provisions of section two of this article
80 or a final commitment hearing conducted pursuant to the
81 provisions of section four of this article, shall be held before a
82 circuit judge or mental hygiene commissioner. If the individ-
83 ual is taken into custody and remains in custody as a result of
84 a detention order, the hearing shall be held within forty-eight
85 hours of the time that the individual is taken into custody.

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

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

94 (B) That on two or more occasions within a 24-month
95 period prior to the filing of the petition an individual, as a
96 result of mental illness, has been hospitalized pursuant to the
97 provisions of this chapter; or that on at least one occasion
98 within a 24-month period prior to the filing of the petition has
99 been convicted of a crime of violence against any person;

100 (C) That the individual's previous hospitalizations due to
101 mental illness occurred as a result of the individual's failure to
102 take prescribed medication or follow a regimen or course of
103 treatment as prescribed by a physician or psychiatrist to treat

104 the individual's mental illness; or that the individual has been
105 convicted for crimes of violence against any person and the
106 individual's failure to take medication or follow a prescribed
107 regimen or course of treatment of the individual's mental
108 illness was a significant aggravating or contributing factor in
109 the commission of the crime;

110 (D) That a psychiatrist or licensed psychologist who has
111 personally examined the individual within the preceding
112 twenty-four months has issued a written opinion that the
113 individual, without the aid of the medication or other pre-
114 scribed treatment, is likely to cause serious harm to himself or
115 herself or to others;

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

123 (F) That, where necessary, a responsible entity or individ-
124 ual is available to assist and monitor the individual's compli-
125 ance with an order requiring the individual to take the medica-
126 tion or follow other prescribed regimen or course of treatment;

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

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

133 (4) The order may require an individual to take medication
134 and treatment as prescribed and if appropriate to attend

135 scheduled medication and treatment-related appointments:
136 *Provided*, That a treatment compliance order shall be subject
137 to termination or modification by a circuit judge or mental
138 hygiene commissioner if a petition is filed seeking termination
139 or modification of the order and it is shown in a hearing on the
140 petition that there has been a material change in the circum-
141 stances that led to the entry of the original order that justifies
142 the order's modification or termination: *Provided, however*,
143 That a treatment compliance order may be extended by a
144 circuit judge or mental hygiene commissioner for additional
145 periods of time not to exceed six months, upon the filing of a
146 petition seeking an extension and after a hearing on the petition
147 or upon the agreement of the individual.

148 (5)(A) After the entry of a treatment compliance order in
149 accordance with the provisions of subdivisions (3) and (4),
150 subsection (b) of this section, if a verified petition is filed
151 alleging that an individual has not complied with the terms of
152 a medication and treatment compliance order and if a circuit
153 judge or mental hygiene commissioner determines from the
154 petition and any supporting evidence that there is probable
155 cause to believe that the allegations in the petition are true,
156 counsel shall be appointed for the individual and a copy of the
157 petition and all supporting evidence shall be furnished to the
158 individual and his or her counsel. If the circuit judge or mental
159 hygiene commissioner considers it necessary to protect the
160 individual or to secure his or her examination, a detention order
161 may be entered to require that the individual be examined by
162 a psychiatrist or psychologist. A hearing on the allegations in
163 the petition, which may be combined with a hearing on a
164 probable cause petition conducted pursuant to section two of
165 this article or a final commitment hearing conducted pursuant
166 to section four of this article, shall be held before a circuit
167 judge or mental hygiene commissioner. If the individual is
168 taken and remains in custody as a result of a detention order,

169 the hearing shall be held within forty-eight hours of the time
170 that the individual is taken into custody.

171 (B) At a hearing on any petition filed pursuant to the
172 provisions of paragraph (A), subdivision (5), subsection (b) of
173 this section, the circuit judge or mental hygiene commissioner
174 shall determine whether the individual has complied with the
175 terms of the medication and treatment compliance order. If the
176 individual has complied with the order, the petition shall be
177 dismissed: *Provided*, That if the evidence presented to the
178 circuit judge or mental hygiene commissioner shows that the
179 individual has complied with the terms of the existing order,
180 but the individual's prescribed medication, dosage or course of
181 treatment needs to be modified, then the newly modified
182 medication and treatment prescribed by a psychiatrist who
183 personally examined the individual may be properly incorpo-
184 rated into a modified order. If the order has not been complied
185 with, the circuit judge or mental hygiene commissioner, after
186 inquiring into the reasons for noncompliance and whether any
187 aspects of the order should be modified, may continue the
188 individual upon the terms of the original order and direct the
189 individual to comply with the order or may modify the order in
190 light of the evidence presented at the hearing. If the evidence
191 shows that the individual at the time of the hearing is likely to
192 cause serious harm to himself, herself or others as a result of
193 the individual's mental illness, the circuit judge or mental
194 hygiene commissioner may convert the proceeding into a
195 probable cause proceeding and enter a probable cause order
196 directing the involuntary admission of the individual to a
197 mental health facility for examination and treatment: *Provided*,
198 *however*, That all applicable due process and hearing require-
199 ments of contained in sections two and three of this article have
200 been fully satisfied.

201 (c) (1) The modified procedures may authorize that upon
202 the certification of a qualified mental health professional, as

203 described in subdivision (2) of this subsection, that there is
204 probable cause to believe that an individual who has been
205 hospitalized two or more times in the previous twenty-four
206 months because of mental illness is likely to cause serious
207 harm to himself, herself or to others as a result of the mental
208 illness if not immediately restrained and that the best interests
209 of the individual would be served by immediate hospitaliza-
210 tion, a circuit judge, mental hygiene commissioner or desig-
211 nated magistrate may enter a temporary probable cause order
212 directing the involuntary hospitalization of the individual at a
213 mental health facility for immediate examination and treat-
214 ment.

215 (2) The modified procedures may authorize the chief judge
216 of a judicial circuit, or circuit judge if there is no chief judge,
217 to enter orders authorizing specific psychiatrists or licensed
218 psychologists, whose qualifications and training have been
219 reviewed and approved by the Supreme Court of Appeals, to
220 issue certifications that authorize and direct the involuntary
221 admission of an individual subject to the provisions of this
222 section on a temporary probable cause basis to a mental health
223 facility for examination and treatment: *Provided*, That the
224 authorized psychiatrist or licensed psychologist must conclude
225 and certify based on personal observation prior to certification
226 that the individual is mentally ill and, because of such mental
227 illness, is imminently likely to cause serious harm to himself or
228 herself or to others if not immediately restrained and promotion
229 of the best interests of the individual requires immediate
230 hospitalization. Immediately upon certification, the psychia-
231 trist or licensed psychologist shall provide notice of the
232 certification to a circuit judge, mental hygiene commissioner
233 or designated magistrate in the county where the individual
234 resides.

235 (3) No involuntary hospitalization pursuant to a temporary
236 probable cause determination issued pursuant to the provisions

237 of this section shall continue in effect for more than forty-eight
238 hours without the filing of a petition for involuntary hospital-
239 ization and the occurrence of a probable cause hearing before
240 a circuit judge, mental hygiene commissioner or designated
241 magistrate. If at any time the chief medical officer of the
242 mental health facility to which the individual is admitted
243 determines that the individual is not likely to cause serious
244 harm as a result of mental illness, the chief medical officer
245 shall discharge the individual and immediately forward a copy
246 of the individual's discharge to the circuit judge, mental
247 hygiene commissioner or designated magistrate.

CHAPTER 161

**(Com. Sub. for S. B. 147 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-212 of said code; to amend and reenact §60A-3-308 of said code; to amend and reenact §60A-4-401 and §60A-4-409 of said code; to amend and reenact §60A-9-4 and §60A-9-5 of said code; and to amend said code by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all relating to limiting the purchase of substances used in the production of methamphetamine; providing that certain

substances containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers are Schedule V substances; excepting Schedule V penalties from penalties of this act; providing legislative findings; defining terms; limiting access to such substances; providing procedures for purchasing such substances from pharmacists or pharmacy technicians; providing for the registration of every wholesaler, manufacturer or distributor of certain drug products containing such substances; providing for a supplemental list of drug products used in methamphetamine production; authorizing promulgation of rules; adding ephedrine, pseudoephedrine and phenylpropanolamine to controlled substances subject to controlled substances monitoring; requiring certain persons to report methamphetamine-related injuries; criminalizing exposure of children to methamphetamine production; criminalizing exposure and harm to first responders; creating offense of improper storage of anhydrous ammonia; allowing the State Police to leverage grant funds; requiring reporting by the State Police to the Legislative Oversight Commission on Health and Human Resources; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-212 of said code be amended and reenacted; that §60A-3-308 of said code be amended and reenacted; that §60A-4-401 and §60A-4-409 of said code be amended and reenacted; that §60A-9-4 and §60A-9-5 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all to read as follows:

Article

1. **Definitions.**
2. **Standards and Schedules.**
3. **Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.**
4. **Offenses and Penalties.**
9. **Controlled Substances Monitoring.**
10. **Methamphetamine Laboratory Eradication Act.**

ARTICLE 1. DEFINITIONS.**§60A-1-101. Definitions.**

1 As used in this act:

2 (a) "Administer" means the direct application of a con-
3 trolled substance whether by injection, inhalation, ingestion or
4 any other means to the body of a patient or research subject by:

5 (1) A practitioner (or, in his presence, by his authorized
6 agent); or

7 (2) The patient or research subject at the direction and in
8 the presence of the practitioner.

9 (b) "Agent" means an authorized person who acts on behalf
10 of or at the direction of a manufacturer, distributor or dis-
11 penser. It does not include a common or contract carrier,
12 public warehouseman or employee of the carrier or warehouse-
13 man.

14 (c) "Bureau" means the "Bureau of Narcotics and Danger-
15 ous Drugs, United States Department of Justice" or its succes-
16 sor agency.

17 (d) "Controlled substance" means a drug, substance or
18 immediate precursor in Schedules I through V of article two.

19 (e) "Counterfeit substance" means a controlled substance
20 which, or the container or labeling of which, without authoriza-
21 tion, bears the trademark, trade name or other identifying mark,
22 imprint, number or device, or any likeness thereof, of a
23 manufacturer, distributor or dispenser other than the person
24 who in fact manufactured, distributed or dispensed the sub-
25 stance.

26 (f) "Imitation controlled substance" means: (1) A con-
27 trolled substance which is falsely represented to be a different
28 controlled substance; (2) a drug or substance which is not a
29 controlled substance but which is falsely represented to be a
30 controlled substance; or (3) a controlled substance or other
31 drug or substance or a combination thereof which is shaped,
32 sized, colored, marked, imprinted, numbered, labeled, pack-
33 aged, distributed or priced so as to cause a reasonable person
34 to believe that it is a controlled substance.

35 (g) "Deliver" or "delivery" means the actual, constructive
36 or attempted transfer from one person to another of: (1) A
37 controlled substance, whether or not there is an agency
38 relationship; (2) a counterfeit substance; or (3) an imitation
39 controlled substance.

40 (h) "Dispense" means to deliver a controlled substance to
41 an ultimate user or research subject by or pursuant to the lawful
42 order of a practitioner, including the prescribing, administer-
43 ing, packaging, labeling or compounding necessary to prepare
44 the substance for that delivery.

45 (i) "Dispenser" means a practitioner who dispenses.

46 (j) "Distribute" means to deliver, other than by administer-
47 ing or dispensing, a controlled substance, a counterfeit sub-
48 stance or an imitation controlled substance.

49 (k) "Distributor" means a person who distributes.

50 (l) "Drug" means: (1) Substances recognized as drugs in
51 the official "United States Pharmacopoeia, official Homeo-
52 pathic Pharmacopoeia of the United States or official National
53 Formulary", or any supplement to any of them; (2) substances
54 intended for use in the diagnosis, cure, mitigation, treatment or
55 prevention of disease in man or animals; (3) substances (other
56 than food) intended to affect the structure or any function of
57 the body of man or animals; and (4) substances intended for
58 use as a component of any article specified in clause (1), (2) or
59 (3) of this subdivision. It does not include devices or their
60 components, parts or accessories.

61 (m) "Immediate precursor" means a substance which the
62 "West Virginia Board of Pharmacy" (hereinafter in this act
63 referred to as the State Board of Pharmacy) has found to be and
64 by rule designates as being the principal compound commonly
65 used or produced primarily for use and which is an immediate
66 chemical intermediary used or likely to be used in the manufac-
67 ture of a controlled substance, the control of which is necessary
68 to prevent, curtail or limit manufacture.

69 (n) "Manufacture" means the production, preparation,
70 propagation, compounding, conversion or processing of a
71 controlled substance, either directly or indirectly or by extrac-
72 tion from substances of natural origin, or independently by
73 means of chemical synthesis, or by a combination of extraction
74 and chemical synthesis, and includes any packaging or repack-
75 aging of the substance or labeling or relabeling of its container,
76 except that this term does not include the preparation, com-
77 pounding, packaging or labeling of a controlled substance:

78 (1) By a practitioner as an incident to his administering or
79 dispensing of a controlled substance in the course of his
80 professional practice; or

81 (2) By a practitioner, or by his authorized agent under his
82 supervision, for the purpose of, or as an incident to, research,
83 teaching or chemical analysis and not for sale.

84 (o) "Marijuana" means all parts of the plant "Cannabis
85 sativa L.", whether growing or not; the seeds thereof; the resin
86 extracted from any part of the plant; and every compound,
87 manufacture, salt, derivative, mixture or preparation of the
88 plant, its seeds or resin. It does not include the mature stalks of
89 the plant, fiber produced from the stalks, oil or cake made from
90 the seeds of the plant, any other compound, manufacture, salt,
91 derivative, mixture or preparation of the mature stalks (except
92 the resin extracted therefrom), fiber, oil or cake, or the steril-
93 ized seed of the plant which is incapable of germination.

94 (p) "Narcotic drug" means any of the following, whether
95 produced directly or indirectly by extraction from substances
96 of vegetable origin or independently by means of chemical
97 synthesis, or by a combination of extraction and chemical
98 synthesis:

99 (1) Opium and opiate and any salt, compound, derivative
100 or preparation of opium or opiate.

101 (2) Any salt, compound, isomer, derivative or preparation
102 thereof which is chemically equivalent or identical with any of
103 the substances referred to in paragraph (1) of this subdivision,
104 but not including the isoquinoline alkaloids of opium.

105 (3) Opium poppy and poppy straw.

106 (4) Coca leaves and any salt, compound, derivative or
107 preparation of coca leaves and any salt, compound, isomer,
108 derivative or preparation thereof which is chemically equiva-
109 lent or identical with any of these substances, but not including

110 decocainized coca leaves or extractions of coca leaves which
111 do not contain cocaine or ecgonine.

112 (q) "Opiate" means any substance having an addiction-
113 forming or addiction-sustaining liability similar to morphine or
114 being capable of conversion into a drug having addiction-
115 forming or addiction-sustaining liability. It does not include,
116 unless specifically designated as controlled under section two
117 hundred one, article two of this chapter, the dextrorotatory
118 isomer of 3-methoxy-n-methylmorphinan and its salts
119 (dextromethorphan). It does not include its racemic and
120 levorotatory forms.

121 (r) "Opium poppy" means the plant of the species "Papaver
122 somniferum L.", except its seeds.

123 (s) "Person" means individual, corporation, government or
124 governmental subdivision or agency, business trust, estate,
125 trust, partnership or association, or any other legal entity.

126 (t) "Placebo" means an inert medicament or preparation
127 administered or dispensed for its psychological effect, to
128 satisfy a patient or research subject or to act as a control in
129 experimental series.

130 (u) "Poppy straw" means all parts, except the seeds, of the
131 opium poppy after mowing.

132 (v) "Practitioner" means:

133 (1) A physician, dentist, veterinarian, scientific investigator
134 or other person licensed, registered or otherwise permitted to
135 distribute, dispense, conduct research with respect to, or to
136 administer a controlled substance in the course of professional
137 practice or research in this state.

138 (2) A pharmacy, hospital or other institution licensed,
139 registered or otherwise permitted to distribute, dispense,
140 conduct research with respect to, or to administer a controlled
141 substance in the course of professional practice or research in
142 this state.

143 (w) "Production" includes the manufacture, planting,
144 cultivation, growing or harvesting of a controlled substance.

145 (x) "State", when applied to a part of the United States,
146 includes any state, district, commonwealth, territory, insular
147 possession thereof and any area subject to the legal authority of
148 the United States of America.

149 (y) "Ultimate user" means a person who lawfully possesses
150 a controlled substance for his own use or for the use of a
151 member of his household or for administering to an animal
152 owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-212. Schedule V.

1 (a) Schedule V shall consist of the drugs and other sub-
2 stances, by whatever official name, common or usual name,
3 chemical name, or brand name designated, listed in this
4 section.

5 (b) *Narcotic drugs.* — Unless specifically excepted or
6 unless listed in another schedule, any material, compound,
7 mixture or preparation containing any of the following narcotic
8 drugs and their salts, as set forth below:

9 (1) Buprenorphine.

10 (c) Narcotic drugs containing nonnarcotic active medicinal
11 ingredients. Any compound, mixture or preparation containing

12 any of the following narcotic drugs or their salts calculated as
13 the free anhydrous base or alkaloid in limited quantities as set
14 forth below, which shall include one or more nonnarcotic
15 active medicinal ingredients in sufficient proportion to confer
16 upon the compound, mixture or preparation valuable medicinal
17 qualities other than those possessed by the narcotic drug alone:

18 (1) Not more than 200 milligrams of codeine per 100
19 milliliters or per 100 grams;

20 (2) Not more than 100 milligrams of dihydrocodeine per
21 100 milliliters or per 100 grams;

22 (3) Not more than 100 milligrams of ethylmorphine per
23 100 milliliters or per 100 grams;

24 (4) Not more than 2.5 milligrams of diphenoxylate and not
25 less than 25 micrograms of atropine sulfate per dosage unit;

26 (5) Not more than 100 milligrams of opium per 100
27 milliliters or per 100 grams;

28 (6) Not more than 0.5 milligrams of difenoxin and not less
29 than 25 micrograms of atropine sulfate per dosage unit.

30 (d) *Stimulants*. — Unless specifically exempted or ex-
31 cluded or unless listed in another schedule, any material,
32 compound, mixture or preparation which contains any quantity
33 of the following substances having a stimulant effect on the
34 central nervous system, including its salts, isomers and salts of
35 isomers:

36 (1) Pyrovalerone.

37 (e) Any compound, mixture or preparation containing as its
38 single active ingredient ephedrine, pseudoephedrine or
39 phenylpropanolamine, their salts or optical isomers, or salts of

40 optical isomers except products which are for pediatric use
41 primarily intended for administration to children under the age
42 of twelve.

**ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND
DISPENSING OF CONTROLLED SUBSTANCES.**

§60A-3-308. Prescriptions.

1 (a) Except when dispensed directly by a practitioner, other
2 than a pharmacy, to an ultimate user, no controlled substance
3 in Schedule II may be dispensed without the written prescrip-
4 tion of a practitioner.

5 (b) In emergency situations, as defined by rule of the said
6 appropriate department, board or agency, Schedule II drugs
7 may be dispensed upon oral prescription of a practitioner,
8 reduced promptly to writing and filed by the pharmacy.
9 Prescription shall be retained in conformity with the require-
10 ments of section three hundred six of this article. No prescrip-
11 tion for a Schedule II substance may be refilled.

12 (c) Except when dispensed directly by a practitioner, other
13 than a pharmacy, to an ultimate user, a controlled substance
14 included in Schedule III or IV, which is a prescription drug as
15 determined under appropriate state or federal statute, shall not
16 be dispensed without a written or oral prescription of a
17 practitioner. The prescription shall not be filled or refilled
18 more than six months after the date thereof or be refilled more
19 than five times, unless renewed by the practitioner.

20 (d) (1) A controlled substance included in Schedule V shall
21 not be distributed or dispensed other than for a medicinal
22 purpose: *Provided*, That buprenorphine shall be dispensed
23 only by prescription pursuant to subsections (a), (b) and (c) of
24 this section: *Provided, however*, That the controlled substances
25 included in subsection (e), section two hundred twelve, article

26 two of this chapter shall be dispensed, sold or distributed only
27 by a physician, in a pharmacy by a pharmacist or pharmacy
28 technician, or health care professional.

29 (2) If the substance described in subsection (e), section two
30 hundred twelve, article two of this chapter is dispensed, sold or
31 distributed in a pharmacy:

32 (A) The substance shall be dispensed, sold or distributed
33 only by a pharmacist or a pharmacy technician; and

34 (B) Any person purchasing, receiving or otherwise
35 acquiring any such substance shall produce a photographic
36 identification issued by a state or federal governmental entity
37 reflecting his or her date of birth.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

§60A-4-409. Prohibited acts — Transportation of controlled substances into state;
penalties.

§60A-4-401. Prohibited acts A; penalties.

1 (a) Except as authorized by this act, it is unlawful for any
2 person to manufacture, deliver, or possess with intent to
3 manufacture or deliver, a controlled substance.

4 Any person who violates this subsection with respect to:

5 (i) A controlled substance classified in Schedule I or II,
6 which is a narcotic drug, is guilty of a felony and, upon
7 conviction, may be imprisoned in the state correctional facility
8 for not less than one year nor more than fifteen years, or fined
9 not more than twenty-five thousand dollars, or both;

10 (ii) Any other controlled substance classified in Schedule
11 I, II or III is guilty of a felony and, upon conviction, may be

12 imprisoned in the state correctional facility for not less than
13 one year nor more than five years, or fined not more than
14 fifteen thousand dollars, or both;

15 (iii) A substance classified in Schedule IV is guilty of a
16 felony and, upon conviction, may be imprisoned in the state
17 correctional facility for not less than one year nor more than
18 three years, or fined not more than ten thousand dollars, or
19 both;

20 (iv) A substance classified in Schedule V is guilty of a
21 misdemeanor and, upon conviction, may be confined in jail for
22 not less than six months nor more than one year, or fined not
23 more than five thousand dollars, or both: *Provided*, That for
24 offenses relating to any substance classified as Schedule V in
25 article ten of this chapter, the penalties established in said
26 article apply.

27 (b) Except as authorized by this act, it is unlawful for any
28 person to create, deliver, or possess with intent to deliver, a
29 counterfeit substance.

30 Any person who violates this subsection with respect to:

31 (i) A counterfeit substance classified in Schedule I or II,
32 which is a narcotic drug, is guilty of a felony and, upon
33 conviction, may be imprisoned in the state correctional facility
34 for not less than one year nor more than fifteen years, or fined
35 not more than twenty-five thousand dollars, or both;

36 (ii) Any other counterfeit substance classified in Schedule
37 I, II or III is guilty of a felony and, upon conviction, may be
38 imprisoned in the state correctional facility for not less than
39 one year nor more than five years, or fined not more than
40 fifteen thousand dollars, or both;

41 (iii) A counterfeit substance classified in Schedule IV is
42 guilty of a felony and, upon conviction, may be imprisoned in
43 the state correctional facility for not less than one year nor
44 more than three years, or fined not more than ten thousand
45 dollars, or both;

46 (iv) A counterfeit substance classified in Schedule V is
47 guilty of a misdemeanor and, upon conviction, may be con-
48 fined in jail for not less than six months nor more than one
49 year, or fined not more than five thousand dollars, or both:
50 *Provided*, That for offenses relating to any substance classified
51 as Schedule V in article ten of this chapter, the penalties
52 established in said article apply.

53 (c) It is unlawful for any person knowingly or intentionally
54 to possess a controlled substance unless the substance was
55 obtained directly from, or pursuant to, a valid prescription or
56 order of a practitioner while acting in the course of his profes-
57 sional practice, or except as otherwise authorized by this act.
58 Any person who violates this subsection is guilty of a misde-
59 meanor, and disposition may be made under section four
60 hundred seven of this article, subject to the limitations speci-
61 fied in said section, or upon conviction, such person may be
62 confined in jail not less than ninety days nor more than six
63 months, or fined not more than one thousand dollars, or both:
64 *Provided*, That notwithstanding any other provision of this act
65 to the contrary, any first offense for possession of less than 15
66 grams of marijuana shall be disposed of under said section.

67 (d) It is unlawful for any person knowingly or intention-
68 ally:

69 (1) To create, distribute or deliver, or possess with intent to
70 distribute or deliver, an imitation controlled substance; or

71 (2) To create, possess or sell or otherwise transfer any
72 equipment with the intent that such equipment shall be used to

73 apply a trademark, trade name, or other identifying mark,
74 imprint, number or device, or any likeness thereof, upon a
75 counterfeit substance, an imitation controlled substance, or the
76 container or label of a counterfeit substance or an imitation
77 controlled substance.

78 (3) Any person who violates this subsection is guilty of a
79 misdemeanor and, upon conviction, may be imprisoned in jail
80 for not less than six months nor more than one year, or fined
81 not more than five thousand dollars, or both. Any person being
82 eighteen years old or more who violates subdivision (1) of this
83 subsection and, in so doing, distributes or delivers an imitation
84 controlled substance to a minor child who is at least three years
85 younger than such person is guilty of a felony and, upon
86 conviction, may be imprisoned in the state correctional facility
87 for not less than one year nor more than three years, or fined
88 not more than ten thousand dollars, or both.

89 (4) The provisions of subdivision (1) of this subsection
90 shall not apply to a practitioner who administers or dispenses
91 a placebo.

§60A-4-409. Prohibited acts — Transportation of controlled substances into state; penalties.

1 (a) Except as otherwise authorized by the provisions of this
2 code, it shall be unlawful for any person to transport into this
3 state a controlled substance with the intent to deliver the same
4 or with the intent to manufacture a controlled substance.

5 (b) Any person who violates this section with respect to:

6 (1) A controlled substance classified in Schedule I or II,
7 which is a narcotic drug, shall be guilty of a felony and, upon
8 conviction, may be imprisoned in the state correctional facility
9 for not less than one year nor more than fifteen years, or fined
10 not more than twenty-five thousand dollars, or both;

11 (2) Any other controlled substance classified in Schedule
12 I, II or III shall be guilty of a felony and, upon conviction, may
13 be imprisoned in the state correctional facility for not less than
14 one year nor more than five years, or fined not more than
15 fifteen thousand dollars, or both;

16 (3) A substance classified in Schedule IV shall be guilty of
17 a felony and, upon conviction, may be imprisoned in the state
18 correctional facility for not less than one year nor more than
19 three years, or fined not more than ten thousand dollars, or
20 both;

21 (4) A substance classified in Schedule V shall be guilty of
22 a misdemeanor and, upon conviction, may be confined in jail
23 for not less than six months nor more than one year, or fined
24 not more than five thousand dollars, or both: *Provided*, That
25 for offenses relating to any substance classified as Schedule V
26 in article ten of this chapter, the penalties established in said
27 article apply.

28 (c) The offense established by this section shall be in
29 addition to and a separate and distinct offense from any other
30 offense set forth in this code.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in the provisions of section two
3 hundred six, article two of this chapter or whenever a prescrip-
4 tion for the controlled substance is filled by: (i) A pharmacist
5 or pharmacy in this state; (ii) a hospital, or other health care

6 facility, for out-patient use; or (iii) a pharmacy or pharmacist
7 licensed by the Board of Pharmacy, but situated outside this
8 state for delivery to a person residing in this state, the medical
9 services provider, health care facility, pharmacist or pharmacy
10 shall, in a manner prescribed by rules promulgated by the
11 Board of Pharmacy under this article, report the following
12 information, as applicable:

13 (1) The name, address, pharmacy prescription number and
14 Drug Enforcement Administration controlled substance
15 registration number of the dispensing pharmacy;

16 (2) The name, address and birth date of the person for
17 whom the prescription is written;

18 (3) The name, address and Drug Enforcement Administra-
19 tion controlled substances registration number of the practitio-
20 ner writing the prescription;

21 (4) The name and national drug code number of the
22 Schedule II, III and IV controlled substance dispensed;

23 (5) The quantity and dosage of the Schedule II, III and IV
24 controlled substance dispensed;

25 (6) The date the prescription was filled; and

26 (7) The number of refills, if any, authorized by the pre-
27 scription.

28 (b) The Board of Pharmacy may prescribe by rule promul-
29 gated under this article the form to be used in prescribing a
30 Schedule II, III and IV substance if, in the determination of the
31 Board, the administration of the requirements of this section
32 would be facilitated.

33 (c) Products regulated by the provisions of article ten of
34 this chapter shall be subject to reporting pursuant to the
35 provisions of this article to the extent set forth in said article.

36 (d) Reporting required by this section is not required for a
37 drug administered directly to a patient or a drug dispensed by
38 a practitioner at a facility licensed by the state: *Provided*, That
39 the quantity dispensed is limited to an amount adequate to treat
40 the patient for a maximum of seventy-two hours with no
41 greater than two 72-hour cycles in any fifteen-day period of
42 time.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

1 The information required by this article to be kept by the
2 State Board of Pharmacy is confidential and is open to inspec-
3 tion only by inspectors and agents of the State Board of
4 Pharmacy, members of the West Virginia State Police ex-
5 pressly authorized by the Superintendent of the West Virginia
6 State Police to have access to the information, authorized
7 agents of local law-enforcement agencies as a member of a
8 drug task force, authorized agents of the federal Drug Enforce-
9 ment Administration, duly authorized agents of the Bureau for
10 Medical Services and the Workers' Compensation Commis-
11 sion, duly authorized agents of licensing boards of practitioners
12 in this state and other states authorized to prescribe Schedules
13 II, III and IV controlled substances, prescribing practitioners
14 and pharmacists and persons with an enforceable court order or
15 regulatory agency administrative subpoena: *Provided*, That all
16 information released by the State Board of Pharmacy must be
17 related to a specific patient or a specific individual or entity
18 under investigation by any of the above parties except that
19 practitioners who prescribe controlled substances may request
20 specific data related to their Drug Enforcement Administration
21 controlled substance registration number or for the purpose of

22 providing treatment to a patient. The Board shall maintain the
23 information required by this article for a period of not less than
24 five years. Notwithstanding any other provisions of this code
25 to the contrary, data obtained under the provisions of this
26 article may be used for compilation of educational, scholarly or
27 statistical purposes as long as the identities of persons or
28 entities remain confidential. No individual or entity required
29 to report under section four of this article may be subject to a
30 claim for civil damages or other civil relief for the reporting of
31 information to the Board of Pharmacy as required under and in
32 accordance with the provisions of this article.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-1. Short title.

§60A-10-2. Purpose; findings.

§60A-10-3. Definitions.

§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used
as precursor to manufacture of methamphetamine or another
controlled substance; offenses; exceptions; penalties.

§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products;
penalties.

§60A-10-6. Registration to sell, manufacture or distribute products; rule-making
authority.

§60A-10-7. Restricted products; rule-making authority.

§60A-10-8. Reporting requirements; confidentiality.

§60A-10-9. Persons mandated to report suspected injuries related to methamphet-
amine production; failure to report; penalty.

§60A-10-10. Authority of the Superintendent of the State Police to leverage grant
funds.

§60A-10-11. Reporting to the Legislative Oversight Commission on Health and
Human Resources Accountability.

§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

§60A-10-13. Exposure of first responders to manufacture methamphetamine;
penalties.

§60A-10-14. Illegal storage of anhydrous ammonia; exceptions.

§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit required;
offenses; penalties.

§60A-10-1. Short title.

1 The provisions of this article shall be known and referred
2 to as the Methamphetamine Laboratory Eradication Act.

§60A-10-2. Purpose; findings.

1 The Legislature finds:

2 (a) That the illegal production and distribution of metham-
3 phetamine is an increasing problem nationwide and particularly
4 prevalent in rural states such as West Virginia.

5 (b) That methamphetamine is a highly addictive drug that
6 can be manufactured in small and portable laboratories. These
7 laboratories are operated by individuals who manufacture the
8 drug in a clandestine and unsafe manner, often resulting in
9 explosions and fires that can injure not only the individuals
10 involved, but their families, neighbors, law-enforcement
11 officers and firemen.

12 (c) That use of methamphetamine can result in fatal kidney
13 and lung disorders, brain damage, liver damage, blood clots,
14 chronic depression, hallucinations, violent and aggressive
15 behavior, malnutrition, disturbed personality development,
16 deficient immune system and psychosis. Children born to
17 mothers who are abusers of methamphetamine can be born
18 addicted and suffer birth defects, low birth weight, tremors,
19 excessive crying, attention deficit disorder and behavior
20 disorders.

21 (d) That in addition to the physical consequences to an
22 individual who uses methamphetamine, usage of the drug also
23 produces an increase in automobile accidents, explosions and
24 fires, increased criminal activity, increased medical costs due
25 to emergency room visits, increases in domestic violence,
26 increased spread of infectious diseases and a loss in worker
27 productivity.

28 (e) That environmental damage is another consequence of
29 the methamphetamine epidemic. Each pound of methamphet-
30 amine produced leaves behind five to six pounds of toxic
31 waste. Chemicals and byproducts that result from the manu-
32 facture of methamphetamine are often poured into plumbing
33 systems, storm drains or directly onto the ground. Clean up of
34 methamphetamine laboratories is extremely resource-intensive,
35 with an average remediation cost of five thousand dollars.

36 (f) That it is in the best interest of every West Virginian to
37 develop a viable solution to address the growing methamphet-
38 amine problem in the State of West Virginia. The Legislature
39 finds that restricting access to over-the-counter drugs used to
40 facilitate production of methamphetamine is necessary to
41 protect the public safety of all West Virginians.

42 (g) That it is further in the best interests of every West
43 Virginian to create impediments to the manufacture of meth-
44 amphetamine by requiring persons purchasing chemicals
45 necessary to the process to provide identification.

§60A-10-3. Definitions.

1 In this article:

2 (a) "Board of Pharmacy" or "Board" means the West
3 Virginia Board of Pharmacy established by the provisions of
4 article five, chapter thirty of this code.

5 (b) "Designated precursor" means any drug product made
6 subject to the requirements of this article by the provisions of
7 section seven of this article.

8 (c) "Distributor" means any person within this state or
9 another state, other than a manufacturer or wholesaler, who
10 sells, delivers, transfers or in any manner furnishes a drug
11 product to any person who is not the ultimate user or consumer
12 of the product;

13 (d) "Drug product" means a pharmaceutical product that
14 contains as its single active ingredient ephedrine,
15 pseudoephedrine or phenylpropanolamine or a substance
16 identified on the supplemental list provided for in section seven
17 of this article which may be sold without a prescription and
18 which is labeled for use by a consumer in accordance with the
19 requirements of the laws and rules of this state and the federal
20 government.

21 (e) "Ephedrine" means ephedrine, its salts or optical
22 isomers or salts of optical isomers.

23 (f) "Manufacturer" means any person within this state who
24 produces, compounds, packages or in any manner initially
25 prepares for sale or use any drug product or any such person in
26 another state if they cause the products to be compounded,
27 packaged or transported into this state.

28 (g) "Phenylpropanolamine" means phenylpropanolamine,
29 its salts, optical isomers and salts of optical isomers.

30 (h) "Pseudoephedrine" means pseudoephedrine, its salts,
31 optical isomers and salts of optical isomers.

32 (i) "Precursor" means any substance which may be used
33 along with other substances as a component in the production
34 and distribution of illegal methamphetamine.

35 (j) "Pharmacist" means an individual currently licensed by
36 this state to engage in the practice of pharmacy and pharmaceu-
37 tical care as defined in subsection (t), section one-b, article
38 fifty, chapter thirty of this code.

39 (k) "Pharmacy" means any drugstore, apothecary or place
40 within this state where drugs are dispensed and sold at retail or
41 display for sale at retail and pharmaceutical care is provided

42 outside of this state where drugs are dispensed and pharmaceu-
43 tical care is provided to residents of this state.

44 (l) "Pharmacy counter" means an area in the pharmacy
45 restricted to the public where controlled substances are stored
46 and housed and where controlled substances may only be sold,
47 transferred or dispensed by a pharmacist or pharmacy techni-
48 cian.

49 (m) "Pharmacy technician" means a registered technician
50 who meets the requirements for registration as set forth in
51 article five, chapter thirty of this code.

52 (n) "Retail establishment" means any entity or person
53 within this state who sells, transfers or distributes goods,
54 including over-the-counter drug products, to an ultimate
55 consumer.

56 (o) "Schedule V" means the schedule of controlled
57 substances set out in section two hundred twelve, section two
58 of this chapter.

59 (p) "Single active ingredient" means those ingredients
60 listed on a drug product package as the only active ingredient
61 in over-the-counter medication or identified on the Schedule
62 maintained by the Board of Pharmacy as being primarily used
63 in the illegal production and distribution of methamphetamine.

64 (q) "Superintendent of the State Police" or "Superinten-
65 dent" means the Superintendent of the West Virginia State
66 Police as set forth in section five, article two, chapter fifteen of
67 this code.

68 (r) "Wholesaler" means any person within this state or
69 another state, other than a manufacturer, who sells, transfers or
70 in any manner furnishes a drug product to any other person in
71 this state for the purpose of being resold.

§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.

1 (a) Any person who within any thirty-day period know-
2 ingly purchases, receives or otherwise possesses more than
3 three packages of a drug product containing as its single active
4 ingredient ephedrine, pseudoephedrine or
5 phenylpropanolamine or more than nine grams of ephedrine,
6 pseudoephedrine or phenylpropanolamine in any form shall be
7 guilty of a misdemeanor and, upon conviction, shall be
8 confined in a jail for not more than one year, fined not more
9 than one thousand dollars, or both.

10 (b) Notwithstanding the provisions of subsection (a) of this
11 section, any person convicted of a second or subsequent
12 violation of the provisions of said subsection or a statute or
13 ordinance of the United States or another state which contains
14 the same essential elements shall be guilty of a felony and,
15 upon conviction, shall be confined in a state correctional
16 facility for not less than one nor more than five years, fined not
17 more than twenty-five thousand dollars, or both.

18 (c) The provisions of subsection (a) of this section shall not
19 apply to:

20 (1) Drug products which are for pediatric use primarily
21 intended for administration to children under the age of twelve;

22 (2) Drug products which have been determined by the
23 Board of Pharmacy to be in a form which is unamenable to
24 being used for the manufacture of methamphetamine;

25 (3) Persons lawfully possessing drug products in their
26 capacities as distributors, wholesalers, manufacturers, pharma-

27 cists, pharmacy technicians, health care professionals or
28 persons possessing such drug products pursuant to a valid
29 prescription.

30 (d) Notwithstanding any provision of this code to the
31 contrary, any person who knowingly possesses any amount of
32 ephedrine, pseudoephedrine, phenylpropanolamine or other
33 designated precursor with the intent to use it in the manufacture
34 of methamphetamine or who knowingly possesses a substance
35 containing ephedrine, pseudoephedrine or
36 phenylpropanolamine or their salts, optical isomers or salts of
37 optical isomers in a state or form which is, or has been altered
38 or converted from the state or form in which these chemicals
39 are, or were, commercially distributed shall be guilty of a
40 felony and, upon conviction, shall be confined in a state
41 correctional facility for not less than two nor more than ten
42 years, fined not more than twenty-five thousand dollars, or
43 both.

44 (e) (1) Any pharmacy, wholesaler, manufacturer or
45 distributor of drug products containing as their single active
46 ingredient ephedrine, pseudoephedrine, phenylpropanolamine,
47 their salts or optical isomers or salts of optical isomers or other
48 designated precursor shall obtain a registration annually from
49 the State Board of Pharmacy as described in section six of this
50 article. Any such pharmacy, wholesaler, manufacturer or
51 distributor shall keep complete records of all sales and transac-
52 tions as provided in section eight of this article. The records
53 shall be gathered and maintained pursuant to legislative rule
54 promulgated by the Board of Pharmacy.

55 (2) Any drug products possessed without a registration as
56 provided in this section are subject to forfeiture upon convic-
57 tion for a violation of this section.

58 (3) In addition to any administrative penalties provided by
59 law, any violation of this subsection is a misdemeanor,

60 punishable upon conviction by a fine in an amount not more
61 than ten thousand dollars.

§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.

1 (a) No pharmacy or individual may display, offer for sale
2 or place a drug product containing as its single active ingredi-
3 ent ephedrine, pseudoephedrine or phenylpropanolamine or
4 other designated precursor where the public may freely access
5 the drug product. All such drug products or designated
6 precursors shall be placed behind a pharmacy counter where
7 access is restricted to a pharmacist, a pharmacy technician or
8 other pharmacy employee.

9 (b) All storage of drug products regulated by the provisions
10 of this section shall be in a controlled and locked access
11 location that is not accessible by the general public and shall
12 maintain strict inventory control standards and complete
13 records of quantity of the product maintained in bulk form.

14 (c) No pharmacy shall sell, deliver or provide any drug
15 product regulated by the provisions of this section to any
16 person who is under the age of eighteen.

17 (d) If a drug product regulated by the provisions of this
18 section is transferred, sold or delivered, the individual, phar-
19 macy or retail establishment transferring, selling or delivering
20 the drug product shall require the person purchasing, receiving
21 or otherwise acquiring the drug product to:

22 (1) Produce a government-issued photo identification
23 showing his or her date of birth; and

24 (2) Sign a form containing the information set forth in
25 subsection (b), section eight of this article and attesting to the
26 validity of such information. Any person who knowingly

27 makes a false representation or statement pursuant to the
28 requirements of this section shall be guilty of a misdemeanor
29 and, upon conviction, be confined in a jail for not more than
30 six months, fined not more than five thousand dollars, or both.

31 (e) This section does not apply to drug products that are
32 dispensed pursuant to a prescription, are pediatric products
33 primarily intended for administration, according to label
34 instructions, to children under twelve years of age.

35 (f) Any violation of this section is a misdemeanor, punish-
36 able upon conviction by a fine in an amount not more than ten
37 thousand dollars.

§60A-10-6. Registration to sell, manufacture or distribute products; rule-making authority.

1 The State Board of Pharmacy shall propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code to require that every
4 wholesaler, manufacturer or distributor of any drug product
5 containing as their single active ingredient ephedrine or
6 pseudoephedrine or a substance identified on the supplemental
7 list provided for in section seven of this article shall obtain a
8 registration and permit issued by the State Board of Pharmacy
9 to sell, distribute or transfer the product containing as their
10 single active ingredient ephedrine, pseudoephedrine or
11 phenylpropanolamine.

§60A-10-7. Restricted products; rule-making authority.

1 (a) On or before the first day of July, two thousand five, the
2 Board of Pharmacy shall promulgate emergency and legislative
3 rules pursuant to the provision of article three, chapter twenty-
4 nine-a of this code to implement a program wherein the Board
5 of Pharmacy shall consult with the Superintendent of the State

6 Police in identifying drug products which are a designated
7 precursor, in addition to those that contain as their single active
8 ingredient ephedrine, pseudoephedrine or
9 phenylpropanolamine, that are commonly being used in the
10 production and distribution of methamphetamine. Those drug
11 products which the Superintendent of the State Police have
12 demonstrated by empirical evidence are commonly used in the
13 manufacture of methamphetamine shall be added to a supple-
14 mental list of controlled substances listed in subsection (e),
15 section two hundred twelve, article two of this chapter and
16 shall be subject to all of the restrictions of this article. These
17 rules established pursuant to this section shall include:

18 (1) A process whereby pharmacies are made aware of all
19 drug products that contain as their single active ingredient
20 ephedrine, pseudoephedrine and phenylpropanolamine that will
21 be listed as a Schedule V substance and must be sold, trans-
22 ferred or dispensed from behind a pharmacy counter;

23 (2) A process whereby pharmacies and retail establish-
24 ments are made aware additional drug products added to
25 Schedule V that are required to be placed behind the pharmacy
26 counter for sale, transfer or distribution can be periodically
27 reviewed and updated.

28 (b) At any time after the first day of July, two thousand
29 five, the Board of Pharmacy, upon the recommendation of the
30 Superintendent of the State Police, shall promulgate emergency
31 and legislative rules pursuant to the provision of article three,
32 chapter twenty-nine-a of this code to implement an updated
33 supplemental list of products containing the controlled sub-
34 stances ephedrine, pseudoephedrine or phenylpropanolamine
35 as an active ingredient or any other drug used as a precursor in
36 the manufacture of methamphetamine, which the Superinten-
37 dent of the State Police has demonstrated by empirical evi-
38 dence is being used in the manufacture of methamphetamine.

39 This listing process shall comport with the requirements of
40 subsection (a) of this section.

§60A-10-8. Reporting requirements; confidentiality.

1 (a) Whenever there is a sale, retail, transfer or distribution
2 of any drug product referred to in subsection (e), section two
3 hundred twelve, article two of this chapter or another desig-
4 nated precursor, the pharmacist or pharmacy technician making
5 the sale, transfer or distribution shall report the following
6 information for inclusion in the central repository established
7 pursuant to article nine of this chapter:

8 (1) The date of the transaction;

9 (2) The name, address and driver's license or state-issued
10 identification number of the person; and

11 (3) The name, the quantity of packages and total gram
12 weight of the product or products purchased, received or
13 otherwise acquired.

14 (b) The information required by this section shall be the
15 property of the state and a pharmacy shall have no duty to
16 retain a copy of the information in any format once the
17 information has been reported to the Board of Pharmacy as
18 required by this section.

**§60A-10-9. Persons mandated to report suspected injuries re-
lated to methamphetamine production; failure
to report; penalty.**

1 (a) When any medical, dental or mental health profes-
2 sional, Christian Science practitioner, religious healer or
3 emergency medical services personnel has reason to believe
4 that an injury is the direct result of exposure to the production
5 of methamphetamine such person shall immediately, and not

6 more than forty-eight hours after such suspicion arises, report
7 the circumstances or cause a report to be made to a state,
8 county or local law-enforcement agency.

9 (b) Any person required by this section to report a sus-
10 pected methamphetamine-related injury who knowingly and
11 intentionally fails to do so or knowingly and intentionally
12 prevents another person acting reasonably from doing so shall
13 be guilty of a misdemeanor and, upon conviction thereof, shall
14 be fined not more than one hundred dollars or imprisoned in
15 jail not more than ten days, or both fined and imprisoned.

**§60A-10-10. Authority of the Superintendent of the State Police
to leverage grant funds.**

1 The Superintendent of the State Police is encouraged to
2 leverage available grant funds from individuals, foundations,
3 corporations, the federal government, governmental agencies
4 and other organizations or institutions, make and sign any
5 agreement to and perform any act that may be necessary to
6 effectuate these grants. The grant funds shall be dedicated
7 toward a drug court, to provide training programs to state and
8 local prosecutors and law-enforcement agents for the investiga-
9 tion and prosecution of methamphetamine offenses and to
10 enhance funding available to jails.

**§60A-10-11. Reporting to the Legislative Oversight Commission
on Health and Human Resources Accountabil-
ity.**

1 On or before the first day of December, two thousand five,
2 the Superintendent of the West Virginia State Police shall
3 submit a report including findings, conclusions and recommen-
4 dations, together with drafts of any legislation necessary, to
5 improve the effectiveness of a reduction in illegal methamphet-
6 amine production and distribution to the Legislative Oversight

7 Commission on Health and Human Resources Accountability
8 for consideration.

**§60A-10-12. Exposure of children to methamphetamine manu-
facturing; penalties.**

1 (a) Any person eighteen years of age or older who know-
2 ingly causes or permits a minor to be present in a location
3 where methamphetamine is manufactured or attempted to be
4 manufactured is guilty of a felony and, upon conviction, shall
5 be confined in a state correctional facility for not less than one
6 nor more than five years, fined not more than ten thousand
7 dollars, or both.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section, the penalty for a violation of said subsection when the
10 child suffers serious bodily injury as such is defined in the
11 provisions of section one, chapter eight-b of this code shall be
12 confined in a state correctional facility for not less than three
13 nor more than fifteen years, fined not more than twenty-five
14 thousand dollars, or both.

**§60A-10-13. Exposure of first responders to manufacture meth-
amphetamine; penalties.**

1 Any person who, as a result of or in the course of unlaw-
2 fully and intentionally manufacturing methamphetamine,
3 causes a police officer, probation officer, humane officer,
4 emergency medical service personnel, firefighter, state fire
5 marshal or employee, division of forestry employee, county
6 correctional employee or state correctional employee acting in
7 his or her official capacity to ingest, inhale or be dermally
8 exposed to a chemical, product, by-product, residue or sub-
9 stance involved in the manufacture or attempted manufacture
10 of such controlled substance, without prior knowledge of such,
11 and thereby causes bodily injury to such persons, shall be

12 guilty of a felony and, upon conviction thereof, shall be fined
13 not less than five hundred nor more than five thousand dollars
14 and confined in a correctional facility for not less than one year
15 nor more than five years. A violation of this section shall
16 constitute a separate offense from the manufacture or attempt
17 to manufacture methamphetamine.

§60A-10-14. Illegal storage of anhydrous ammonia; exceptions.

1 (a) Any person who stores or conveys anhydrous ammonia
2 in a container that:

3 (1) Is not approved by the United States Department of
4 Transportation to hold anhydrous ammonia; or

5 (2) Was not constructed to meet state and federal industrial
6 health and safety standards for holding anhydrous ammonia is
7 guilty of a felony and, upon conviction, shall be confined in a
8 state correctional facility for a determinate period not to exceed
9 five years, fined not more than ten thousand dollars, or both.

10 (b) The provisions of this section shall not apply to persons
11 authorized by federal or state law, rule or regulation to handle
12 and dispose of hazardous waste or toxic substances while
13 engaged in such conduct.

14 (c) Any damages arising out of the unlawful possession of,
15 storage of or tampering with anhydrous ammonia equipment
16 shall be the sole responsibility of the person or persons
17 unlawfully possessing, storing or tampering with anhydrous
18 ammonia. In no case shall liability for damages arising out of
19 the unlawful possession of, storage of or tampering with
20 anhydrous ammonia or anhydrous ammonia equipment extend
21 to the lawful owner, installer, maintainer, designer, manufac-
22 turer, possessor or seller of the anhydrous ammonia or anhy-
23 drous ammonia equipment, unless such damages arise out of
24 the acts or omissions of the owner, installer, maintainer,

25 designer, manufacturer, possessor or seller that constitute
26 negligent misconduct to abide by the laws regarding anhydrous
27 ammonia possession and storage.

§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit required; offenses; penalties.

1 (a) A person may offer to sell, sell or distribute an iodine
2 matrix only:

3 (1) As a prescription drug, pursuant to a prescription issued
4 by a veterinarian or physician licensed within the state; or

5 (2) To a person who is actively engaged in the legal
6 practice of animal husbandry of livestock, as defined in section
7 eight, article one, chapter four of this code.

8 (b) Prescriptions issued under this section:

9 (1) Shall provide for a specified number of refills;

10 (2) May be issued by any means authorized by the Board
11 of Pharmacy; and

12 (3) May be filled by a person other than the veterinarian or
13 physician issuing the prescription.

14 (c) A person offering iodine matrix for sale:

15 (1) Shall store the iodine matrix so that the public does not
16 have access to the iodine matrix without the direct assistance
17 or intervention of a retail employee;

18 (2) Shall keep a record, which may consist of sales receipts
19 of each person purchasing iodine matrix; and

20 (3) Shall, if necessary to ascertain the identity of the
21 purchaser, ask for proof of identification from the purchaser.

22 (d) A person engaging in a regulated transaction pursuant
23 to the provisions of subsection (a) of this section is guilty of a
24 misdemeanor if he or she offers to sell, sells or distributes an
25 iodine matrix to a person who:

26 (1) Does not present a prescription or is not engaged in
27 animal husbandry, as required under subsection (a) of this
28 section; or

29 (2) Is not excepted under subsection (g) of this section.

30 (e) A person is guilty of a misdemeanor who:

31 (1) Possesses an iodine matrix without proof of obtaining
32 the solution in compliance with subsection (a) of this section;
33 or

34 (2) Offers to sell, sells or distributes an iodine matrix in
35 violation of said subsection.

36 (f) The provisions of subdivision (1), subsection (e) of this
37 section do not apply to:

38 (1) A chemistry or chemistry-related laboratory maintained
39 by:

40 (A) A public or private regularly established secondary
41 school; or

42 (B) A public or private institution of higher education that
43 is accredited by a regional or national accrediting agency
44 recognized by the United States Department of Education;

45 (2) A veterinarian licensed to practice pursuant to the
46 provisions of article ten, chapter thirty of this code;

47 (3) A health care facility; or

48 (4) A veterinarian, physician, pharmacist, retail distributor,
49 wholesaler, manufacturer, warehouseman or common carrier,
50 or an agent of any of these persons who possesses an iodine
51 matrix in the regular course of lawful business activities.

52 (g) As used in this section, "iodine matrix" means iodine
53 at a concentration greater than 1.5 percent, by weight, in a
54 matrix or solution.

CHAPTER 162

(H. B. 2129 — By Delegates Amores, Craig, Pethel and Armstead)

[Passed March 28, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 6, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-58, relating to the unlawful use of an audio-visual recording device in a motion picture theater; defining certain terms; providing immunity for theater owner who detains person violating this section; and providing 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 §61-3-58, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-58. Unlawful operation of a recording device.

1 (a)(1) Any person who knowingly operates the audiovisual
2 recording function of any device in a motion picture theater in
3 order to record the motion picture that is being exhibited,
4 without the written consent of the motion picture theater owner,
5 and with intent to distribute, or cause the distribution of,
6 multiple copies of the motion picture, for pecuniary gain, is
7 guilty of a felony, and upon conviction thereof, shall be fined
8 not less than five hundred dollars nor more than one thousand
9 dollars or imprisoned in a correctional facility for not more than
10 one nor more than ten years, or both fined and imprisoned.

11 (2) Any person who knowingly operates the audiovisual
12 recording function of any device in a motion picture theater in
13 order to record the motion picture that is being exhibited,
14 without the written consent of the motion picture theater owner,
15 and with intent to distribute, or cause the distribution of,
16 multiple copies of the motion picture, but not for pecuniary
17 gain, is guilty of a felony, and upon conviction thereof, shall be
18 fined not less than one hundred dollars nor more than five
19 hundred dollars or imprisoned in a correctional facility for not
20 less than one year nor more than three years, or both fined and
21 imprisoned, or, in the discretion of the court, be confined in a
22 regional jail not more than one year and fined not more than
23 one thousand dollars.

24 (3) Any person who knowingly operates the audiovisual
25 recording function of any device in a motion picture theater in
26 order to record the motion picture that is being exhibited,
27 without the written consent of the motion picture theater owner,
28 and without the intent to distribute, or cause the distribution of,
29 multiple copies of the motion picture, is guilty of a misde-
30 meanor, and upon conviction thereof, shall be fined not more
31 than one hundred dollars.

32 (4) Any person who commits the acts described in subdivi-
33 sion (1) of this subsection is civilly liable for actual damages

34 arising from his or her distribution of copies of the motion
35 picture. A conviction for the offense described in subdivision
36 (1) of this subsection is not a prerequisite to the maintenance of
37 a civil action authorized by this subdivision.

38 (b) The term “audiovisual recording function” means the
39 capability of a device to record or transmit a motion picture or
40 any part thereof by means of any technology now known or
41 later developed.

42 (c) The term “motion picture theater” means a movie
43 theater, screening room, or other venue that is being utilized
44 primarily for the exhibition of a motion picture at the time of
45 the offense.

46 (d) The owner or lessee of a motion picture theater, or the
47 authorized agent or employee of the owner or lessee, who alerts
48 law-enforcement authorities of an alleged violation of this
49 section shall not be liable in any civil action arising out of
50 measures taken by the owner, lessee, agent or employee in the
51 course of subsequently detaining a person that the owner,
52 lessee, agent or employee in good faith believed to have
53 violated this section while awaiting the arrival of law-enforce-
54 ment authorities, unless the plaintiff can show by clear and
55 convincing evidence that such measures were manifestly
56 unreasonable or the period of detention was unreasonably long.

57 (e) This section does not prevent any lawfully authorized
58 investigative, law enforcement protective, or intelligence
59 gathering employee or agent, of the local, state or federal
60 government, from operating any audiovisual recording device
61 in a motion picture theater, as part of lawfully authorized
62 investigative, protective, law enforcement, or intelligence
63 gathering activities.

64 (f) Nothing in this section prevents prosecution, instead,
65 under any other provision of law providing for greater penalty.

CHAPTER 163

(H. B. 3211 — By Delegates Amores, Browning,
Staton, Craig and G. White)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-17-1, relating to providing that a purchaser of motor fuel may by contract delay payment of reimbursement of federal taxes due on the motor fuel purchase to the vendor until one day before the federal taxes are due from the vendor.

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 §47-17-1, to read as follows:

ARTICLE 17. REGULATION OF MOTOR FUEL CONTRACTS.

§47-17-1. Contracts for the payment of manufactures' excise taxes.

- 1 (a) If a contract requires one party to reimburse another
- 2 party for taxes levied under Part III of Subchapter A of Chapter
- 3 32 of the federal Internal Revenue Code, the party making the
- 4 reimbursement, at its option, shall not be required to reimburse
- 5 the other party more than one business day before the other
- 6 party is required to remit the taxes to the Internal Revenue
- 7 Service.

8 (b) If a party chooses to exercise its option under subsection
9 (a) of this section, and provision is not already provided in the
10 contract, the party shall notify the other party in writing of its
11 intention. The option may not be exercised until at least thirty
12 days after the written notification or the beginning of the next
13 federal tax quarter, whichever is later.

14 (c) The party to be reimbursed under subsection (a) of this
15 section may require security from the reimbursing party for the
16 payment of the taxes in proportion to the amount the taxes
17 represent compared to the security required on the contract as
18 a whole. The party to be reimbursed shall not change other
19 payment terms of the contract due to the timing of the tax
20 reimbursement, but may require the taxes to be reimbursed by
21 electronic transfer of funds.

22 (d) This section applies to all continuing contracts now in
23 effect that have no expiration date and all contracts entered into
24 or renewed after the effective date of this section as enacted in
25 two thousand five.

CHAPTER 164

**(S. B. 735 — By Senators Oliverio, White, Edgell, Foster,
Harrison, Hunter, Lanham, Love and Prezioso)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §17A-6A-7 of the Code of West Virginia, 1931, as amended, relating to cancellation of a motor vehicle agreement; notice of cancellation of motor vehicle

agreement; right of motor vehicle dealer to contest cancellation; grounds for contest of cancellation; effect of agreement pending judicial contest; stay of termination proceedings; conditions permitting cancellation; and effect on motor vehicle agreement of transfer of ownership.

Be it enacted by the Legislature of West Virginia:

That §17A-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE-SALERS AND MANUFACTURERS.

§17A-6A-7. Notice provisions.

1 Notwithstanding any agreement, prior to the termination,
2 cancellation, nonrenewal or discontinuance of any dealer
3 agreement, the manufacturer or distributor shall furnish notice
4 of the termination, cancellation, nonrenewal or discontinuance
5 to the new motor vehicle dealer as follows:

6 (a) Except as otherwise provided in this section, notice
7 shall be made not less than one hundred twenty days prior to
8 the effective date of the termination, cancellation, nonrenewal
9 or discontinuance.

10 (b) Notice shall be by certified mail with restrictive
11 delivery to the new motor vehicle dealer principal and shall
12 contain the following:

13 (1) A statement of intention to terminate, cancel, not renew
14 or discontinue the dealer agreement;

15 (2) A detailed written statement of all reasons for the
16 termination, cancellation, nonrenewal or discontinuance. The
17 statement shall include, at a minimum, a complete explanation

18 of each reason upon which the manufacturer or distributor
19 relies to support its proposed action, along with all supporting
20 documentation which is material to the proposed action and
21 available to the manufacturer or distributor at the time of
22 termination, cancellation, nonrenewal or discontinuance; and

23 (3) The date on which the termination, cancellation,
24 nonrenewal or discontinuance takes effect.

25 (c) Notwithstanding subdivision (a) of this subsection,
26 notice shall be made not less than thirty days prior to the
27 effective date of the termination, cancellation, nonrenewal or
28 discontinuance for any of the following reasons:

29 (1) Insolvency of the new motor vehicle dealer or the filing
30 of any petition by or against the new motor vehicle dealer
31 under any bankruptcy or receivership law;

32 (2) Failure of the new motor vehicle dealer to conduct his
33 or her customary sales and service operations during his or her
34 customary business hours for seven consecutive business days;

35 (3) Conviction of the new motor vehicle dealer or its
36 principal owners of a crime, but only if the crime is punishable
37 by imprisonment in excess of one year under the law under
38 which the dealer was convicted or the crime involved theft,
39 dishonesty or false statement regardless of the punishment;

40 (4) Revocation of a motor vehicle dealership license in
41 accordance with section eighteen, article six of this chapter; or

42 (5) A fraudulent misrepresentation by the new motor
43 vehicle dealer to the manufacturer or distributor, which is
44 material to the dealer agreement.

45 (d) Notwithstanding subdivision (a) of this subsection,
46 notice shall be made not less than twelve months prior to the
47 effective date of a termination, cancellation, nonrenewal or
48 discontinuance if a manufacturer or distributor discontinues
49 production of the new motor vehicle dealer's product line or
50 discontinues distribution of the product line in this state.

51 (e) Except as provided in subdivision (c) of this subsection,
52 any motor vehicle dealer who receives a notice of intent to
53 discontinue, cancel or not renew a dealer agreement may,
54 within a one hundred twenty-day notice period, file a petition
55 or complaint for a determination of whether such action is an
56 unfair or prohibited discontinuation, cancellation or
57 nonrenewal. Dealer agreements and certificates of appointment
58 shall continue in effect until a final determination of the issues
59 raised in such petition or complaint by the motor vehicle
60 dealer. A discontinuance, cancellation or nonrenewal is unfair
61 if it is:

62 (1) Not clearly permitted by the dealer agreement;

63 (2) Not undertaken for good cause; or

64 (3) Is based on an alleged breach of the franchise agree-
65 ment which is not in fact a material and substantial breach.

66 (f) No replacement dealer shall be named for this point or
67 location to engage in business and the dealer's agreement shall
68 remain in effect until a final judgement is entered after all
69 appeals are exhausted: *Provided*, That when a motor vehicle
70 dealer appeals a decision upholding a discontinuation, cancella-
71 tion or nonrenewal under subdivisions (f) and (g) of this
72 section, the dealer agreement shall remain in effect pending
73 exhaustion of all appeals only if the motor vehicle dealer
74 establishes a likelihood of success on appeal and that the public

75 interest will not be harmed by keeping the dealer agreement in
76 effect pending entry of final judgement after such appeal.

77 (g) If a transfer of ownership is proposed after a notice to
78 discontinue, cancel or not renew a dealer agreement is received
79 but, prior to the final determination, including exhaustion of all
80 appellate remedies of a motor vehicle dealer's complaint or
81 petition contesting such action, the termination proceedings
82 shall be stayed, without bond, during the period the transfer is
83 being reviewed by the manufacturer or distributor. During the
84 period that the transfer is being reviewed by the manufacturer
85 or distributor, the dealer agreement shall remain in full force
86 and effect, and the motor vehicle dealer shall retain all rights
87 and remedies pursuant to the terms and conditions of the dealer
88 agreement and applicable law. This shall include, but is not
89 limited to, all rights of transfer under subdivision (2), section
90 ten, article six-a, chapter seventeen of this code until such time
91 as the manufacturer or distributor has accepted or rejected the
92 proposed transfer. If the proposed transfer is rejected, the
93 motor vehicle dealer shall retain all of its rights pursuant to
94 section sixteen of said article to a judicial determination as to
95 whether the manufacturer or distributor's rejection is in
96 compliance with the provisions of subdivision (2), section ten
97 of said article and during the pendency of such judicial
98 proceeding, and any related appellate proceedings, the termina-
99 tion proceedings shall remain stayed without bond, the dealer
100 agreement shall remain in full force and effect and the motor
101 vehicle dealer shall retain all rights and remedies pursuant to
102 the terms and conditions of the dealer agreement and applicable
103 law including all rights of transfer. If a transfer is approved by
104 the manufacturer or distributor or mandated by law, the
105 termination proceedings shall be dismissed with prejudice as
106 moot.

CHAPTER 165

(Com. Sub. for H. B. 3089— By Delegates Boggs,
Ron Thompson, Butcher and Tansill)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1A-2 of said code, all relating to the regulation of the commercial transportation of coal; adding representatives to the commercial motor vehicle weight and safety enforcement advisory committee; authorizing the division to provide for special crossing permits by legislative rule; creating the Coal Resource Transportation Designation Committee and authorizing it to make recommendations to the Joint Committee on Government and Finance and to designate roads to the coal resource transportation road system under certain circumstances; and adding routes to the coal resource transportation road system in Braxton, Webster, Nicholas and Ohio counties.

Be it enacted by the Legislature of West Virginia:

That §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1A-2 of said code be amended and reenacted, all to read as follows:

Chapter

17C. Traffic Regulations and Laws of the Road.

24A. Commercial Motor Carriers.

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

Article

17A. Regulation of the Commercial Transportation of Coal.

1A. Commercial Vehicle Regulation.

**ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTA-
TION OF COAL.**

§17C-17A-3. Authority of the division of highways and public service commission generally.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

**§17C-17A-3. Authority of the Division of Highways and Public
Service Commission generally.**

1 (a) The Division of Highways shall establish all legal
2 vehicle weight limits for all public highways including roads
3 within the coal resource transportation road system. Public
4 highways shall be designated as coal resource transportation
5 roads by the Commissioner of the Division of Highways
6 pursuant to this article. Only state-maintained roads and public
7 highways found in the following areas: Boone, Fayette,
8 Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Wayne
9 and Wyoming counties; in Braxton County, Braxton County
10 route 19/29 from Mine 5 haulroad to intersection of county
11 route 36/1, county route 36/1 to intersection of county route 36
12 and county route 36 to the Webster County line (Webster
13 County route 9); in Ohio County, county route 1 from the
14 intersection of county route 7 to intersection of Riley
15 Delaplaine Road; in Greenbrier County, routes west of Sam
16 Black Church and southwest to the Summers County line; in
17 Clay County, routes 4 and 16; in Nicholas County, routes 1/11,
18 16, 19, 19/2, 19/40, 20, 39, 41, 55 and 82; in Webster County,
19 routes 9, 9/1, 9/2, 20, 32 and 82; and all state-maintained roads
20 and public highways found in Washington, Malden, Loudon and
21 Cabin Creek districts, Kanawha County, are eligible to qualify

22 as part of the coal resource transportation road system. The
23 division shall post signs on roads informing the public of the
24 designation and shall also list a toll-free telephone line for
25 public reporting of poor driving or law violations by special
26 permit operators. The division shall provide periodic reports to
27 the commercial motor vehicle weight and safety enforcement
28 advisory committee as established in section two, article one-a,
29 chapter twenty-four-a of this code relating to the study of coal
30 resource transportation roads. The periodic reports shall include
31 the following at a minimum: (1) Citations issued for violations
32 of this chapter; (2) disposition of the violations; (3) road
33 conditions and maintenance; and (4) the amount of undue road
34 damage attributable to coal resource transportation road system
35 permit use.

36 (b) The public service commission shall administer the coal
37 resource transportation road permitting program and otherwise
38 enforce the provisions of this article. The commission shall
39 establish requirements for vehicle operators holding coal
40 resource transportation road permits pursuant to section five of
41 this article consistent with federal statutory and regulatory
42 requirements.

43 (1) The commission may, during normal business hours,
44 conduct inspections of all trucking-related records of shippers,
45 vehicle operators, vehicle owners and receivers engaged in the
46 transportation of coal. Copies of records shall be provided to
47 commission employees upon request. This provision may not
48 be construed to authorize the commission to reveal trade secrets
49 or other confidential financial information of those persons
50 inspected; however the commission may use any weight
51 measurement records as evidence of a violation of this article.

52 (2) The commission shall establish and maintain a toll-free
53 telephone line for public reporting of poor driving or law
54 violations by special permit operators. In addition, the commis-

55 sion shall require all vehicles operating under a permit issued
56 pursuant to the provisions of this article to clearly display on
57 the vehicle the toll-free telephone number.

58 (3) The commission shall implement a study of commercial
59 vehicle safety-related issues, including using higher education
60 institutions and other research organizations. The commission
61 shall provide periodic reports to the commercial motor vehicle
62 weight and safety enforcement advisory committee as estab-
63 lished in section two, article one-a, chapter twenty-four-a of this
64 code relating to the study of motor vehicle weight and safety
65 enforcement.

66 (4) The commission shall establish procedures to use
67 electronic real time reporting of coal vehicle weights on coal
68 resource transportation roads by shippers and receivers. The
69 commission may require daily certified reports from shippers
70 or receivers if electronic reporting methods are not used. The
71 commission may authorize alternative measures of reporting
72 that require same-day reporting of weight measurements by
73 shippers and receivers.

74 (5) The commission shall impose and collect from shippers
75 of coal on the coal resource transportation road system through
76 the use of the special permit, issued pursuant to section five of
77 this article, for the privilege of loading coal in excess of
78 eighty-eight thousand pounds for transport on a coal resource
79 transportation road. The fee shall be assessed in the amount of
80 five cents per ton of coal hauled over the road. Revenue from
81 the fees shall be deposited in the coal resource transportation
82 fund created in said section.

83 (c) Notwithstanding the provisions of section three, article
84 one, chapter twenty-nine-a of this code, the commission and the
85 division shall each propose legislative rules for promulgation in
86 accordance with the provisions of article three of said chapter

87 to carry out their duties and responsibilities pursuant to the
88 provisions of this article.

89 (d) Notwithstanding any provisions of this code to the
90 contrary, the division may propose rules for legislative approval
91 in accordance with the provisions of article three, chapter
92 twenty-nine-a of this code which would provide a process for
93 approval by the commissioner of the division of a special
94 crossing permit and renewals thereof. Special crossing permits
95 authorized by this subsection would authorize the holder of the
96 permit to operate or move a vehicle or combination of vehicles
97 which exceed the maximum weight allowance specified in this
98 chapter or are otherwise not in conformity with the provisions
99 of this chapter on limited sections of public highways under
100 specific circumstances specified in the permit: *Provided*, That
101 no special crossing permit may allow the operation or move-
102 ment of any vehicle or combination of vehicles on a public
103 highway for more than one-half of a mile: *Provided, however*,
104 That no special crossing permit may allow the operation or
105 movement of any vehicle or combination of vehicles on a
106 public highway if the Commissioner of the Division of High-
107 ways determines there is an existing alternate off-road route
108 available. Each special crossing permit shall contain the
109 specific section or mileage of the public highway where
110 operation is authorized. Special crossing permits may not
111 exceed a three-year period and may be renewed upon approval
112 by the Commissioner of the Division of Highways as specified
113 in legislative rule. The Commissioner of the Division may
114 provide for fees for the processing of applications for special
115 crossing permits. As a condition of approval of a special
116 crossing permit, an applicant shall agree to pay for all actual
117 expenditures incurred by the Department of Transportation for
118 the upgrading or repair of the public highway, including traffic
119 control devices, for which the applicant seeks the special
120 crossing permit. In addition, all holders of special crossing
121 permits shall pay for the restoration of the public highway to its

122 original condition after the permit has expired. The initial rule
123 filed by the division pursuant to this subsection shall be filed as
124 an emergency rule.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

1 (a) From those counties and districts described in subsec-
2 tion (a), section three of this article, the Commissioner of the
3 Division of Highways shall identify those public roads,
4 highways and bridges used during the previous twelve-month
5 period for transportation of quantities of coal in excess of fifty
6 thousand tons or projected to be used for transporting quantities
7 of coal in excess of fifty thousand tons during the ensuing year.
8 The identification process shall include the following as to each
9 discretely identifiable section of the public highway:

10 (1) The current condition of the public roads, highways and
11 bridges;

12 (2) The estimated quantities of coal transported;

13 (3) Any planned or necessary maintenance or improvement;

14 (4) The number of truck loads of coal transported in an
15 average day;

16 (5) Any anticipated increase or decrease in the quantity of
17 coal being transported; and

18 (6) Other information determined by the commissioner to
19 be relevant.

20 (b) Upon completion of the identification process, but in no
21 event later than the first day of July, two thousand three, the
22 commissioner shall designate by order an interim coal resource
23 transportation road system consisting of those public roads,
24 highways, bridges or segments thereof which may be used as

25 special coal haulage roads consistent with the authority con-
26 tained in this article. The commissioner shall establish a process
27 for the receipt and evaluation of public comment on the
28 designations contained within the interim coal resource
29 transportation road system, and designate weight limits and
30 other conditions for use of the coal resource transportation road
31 system as public interest so provides. The commissioner shall
32 publish a directory, including supporting maps and other
33 documents, of the interim coal resource transportation road
34 system.

35 (c) By no later than the first day of January, two thousand
36 four, the commissioner shall designate by order the coal
37 resource transportation road system and shall publish a direc-
38 tory, including supporting maps and other documents, of that
39 road system.

40 (d) The commissioner shall establish a process for periodic
41 evaluation of the designations contained in the coal resource
42 transportation road system in order to add to or delete from the
43 road system certain additional sections of public highways:
44 *Provided*, That the evaluations and modifications of the road
45 system shall be completed at a minimum on an annual basis.

46 (e) Effective the first day of July, two thousand five, there
47 is created the coal resource transportation designation commit-
48 tee, the purpose of which is to approve the designation of
49 additional coal resource transportation roads pursuant to the
50 provisions of this section: *Provided*, That the committee may
51 only consider those applications for designation of roads,
52 highways and bridges not located within those whole counties
53 identified in section three of this article.

54 (f) The committee consists of the following members:

55 (1) The Commissioner of Highways, or his or her designee;

56 (2) The Superintendent of the State Police, or his or her
57 designee;

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

60 (4) One citizen member from the largest citizen action
61 group, to be appointed by the Governor; and

62 (5) One member of the largest organization representing
63 coal miners, to be appointed by the Governor.

64 (g) The Governor shall appoint members with the advice
65 and consent of the Senate. Appointed members shall serve for
66 terms of three years. No member may be appointed to serve
67 more than two consecutive terms. The committee shall annually
68 nominate from its members a chair, who shall hold office for
69 one year.

70 (h) The public members of the committee may receive
71 compensation for attendance at official meetings, not to exceed
72 the amount paid to members of the Legislature for their interim
73 duties as recommended by the citizens legislative compensation
74 commission and authorized by law. Committee members may
75 be reimbursed for actual and necessary expenses incurred for
76 each day or portion of a day engaged in the discharge of
77 committee duties in a manner consistent with guidelines of the
78 travel management office of the Department of Administration.

79 (i) The committee shall accept applications from any person
80 for designation or decertification of public roads, highways and
81 bridges, or segments thereof in any county in the state, which
82 may be used as special coal haulage roads consistent with the
83 authority contained in this article. The committee shall establish
84 a process for the receipt and evaluation of public comment on
85 the designations contained in applications: *Provided, That*, prior
86 to any designation the committee shall first have held a public

87 hearing in the county wherein the public road, highway or
88 bridge is located: *Provided, however,* That, where a public road,
89 highway or bridge is located in more than one county, the
90 hearing shall be conducted in the county containing the longest
91 mileage under designation: *Provided further,* That prior to any
92 public hearing the applicant shall cause notice of such public
93 hearing or hearings by Class I legal advertisement.

94 (j) Once an application has been approved by the committee
95 and the public road, highway or bridge has become part of the
96 coal resource transportation road system, such route must be
97 used for coal haulage pursuant to the provisions of this article
98 within one year of its designation. In the event any public road,
99 highway or bridge that is part of the coal resource transportation
100 road system ceases to be used for coal haulage for a period of
101 time exceeding one year, then such route may be decertified by
102 the committee upon application by any person: *Provided,* That
103 prior to any decertification the committee shall first have held
104 a public hearing in the county wherein the public road, high-
105 way, or bridge is located: *Provided, however,* That where a
106 public road, highway or bridge is located in more than one
107 county, the hearing shall be conducted in the county containing
108 the longest mileage under decertification: *Provided further,*
109 That prior to any public hearing the applicant shall cause notice
110 of such public hearing or hearings by Class I legal advertise-
111 ment.

112 (k) Prior to rendering a final decision on any application for
113 designation or decertification of a coal resource transportation
114 road, the committee shall first report its findings and recom-
115 mendations on each pending application to the Joint Committee
116 on Government and Finance. The Joint Committee on Govern-
117 ment and Finance may comment on the application which
118 comments shall be considered by the committee. The commit-
119 tee may not make final any designation or decertification before
120 thirty days after reporting its findings and recommendations on

121 an application to the Joint Committee on Government and
122 Finance.

123 (l) The coal resource transportation designation committee
124 created in this section shall report its activities to the Secretary
125 of Transportation who will provide the necessary staff to assist
126 the committee in the discharge of its functions pursuant to this
127 section.

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 the commercial motor vehicle weight
2 and safety enforcement advisory committee, the purpose of
3 which is to study the implementation of the commercial motor
4 vehicle weight and safety enforcement program set forth in this
5 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 ap-
13 pointed 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 Motor
16 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 industry,
20 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 appointed
24 by the Speaker of the House of Delegates;

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

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

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

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

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

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

39 (f) The public members of the committee may receive
40 compensation for attendance at official meetings, not to exceed
41 the amount paid to members of the Legislature for their interim
42 duties as recommended by the citizens legislative compensation
43 commission and authorized by law.

44 (g) Committee members may be reimbursed for actual and
45 necessary expenses incurred for each day or portion of a day
46 engaged in the discharge of committee duties in a manner
47 consistent with guidelines of the travel management office of
48 the Department of Administration.

49 (h) On or before the first day of January, two thousand four,
50 and each subsequent year thereafter, the committee shall submit
51 to the Governor and to the Legislature a report of its recommen-
52 dations for improving the effectiveness of the commercial
53 vehicle weight and safety enforcement program.

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

CHAPTER 166

(Com. Sub. for H. B. 2417— By Delegates Amores and Kominar)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §17C-17-6a of the Code of West Virginia, 1931, as amended, relating to safe transport of compressed gas containers.

Be it enacted by the Legislature of West Virginia:

That §17C-17-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-6a. Vehicles transporting compressed gas containers.

1 It is unlawful for any person operating a vehicle transport-
2 ing any container of compressed gas as a cargo or part of a
3 cargo upon a highway in an open motor vehicle unless it is
4 securely braced, equipped with an individual shutoff valve that
5 must be tightly closed while in transit and its valves are
6 protected by one of the following methods:

7 (1) By equipping the cylinder with securely attached metal
8 caps of sufficient strength to protect valves from damage during
9 transportation;

10 (2) By boxing or crating the cylinder with securely attached
11 metal caps of sufficient strength so as to protect valves from
12 damage during transportation; or

13 (3) By constructing the cylinder so that the valve is
14 recessed into the cylinder or otherwise protected to the extent
15 that it will not be subjected to a blow when the container is
16 dropped onto a flat surface.

17 The requirements of this section are not applicable to
18 propane gas used for household purposes or to respiratory
19 health care products in use by the person operating the vehicle.

20 The Commissioner of the Division of Highways is hereby
21 authorized and directed to propose a legislative rule governing
22 the transportation of compressed gas containers by vehicles
23 upon the highways for promulgation in accordance with the
24 provisions of chapter twenty-nine-a of this code.

CHAPTER 167

(H. B. 2497 — By Delegates Talbott and Morgan)

[Passed April 5, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §17C-17-9a of the Code of West Virginia, 1931, as amended, relating to the regulation of truck trailer weights; providing for single unit trucks having one steering axle and four axles in quadem and setting a seventy-three thousand pound gross weight limit with a tolerance of ten percent for these trucks; providing that a single unit truck with one steering axle and two axles in tandem operating in combination with a trailer with two axles is limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent; clarifying that registered weight includes the tolerance granted by law; and providing that a single unit truck with one steering axle and three axles in tridem operating in combination with a trailer with two axles is limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent.

Be it enacted by the Legislature of West Virginia:

That §17C-17-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-9a. Gross weight of vehicles and loads.

- 1 (a) It is unlawful for any owner, lessee or borrower of a
- 2 vehicle or combination of vehicles to operate on any highway

3 other than the national system of interstate and defense high-
4 ways that vehicle or combination of vehicles with a gross
5 weight in excess of the gross weight for which such vehicle or
6 combination of vehicles is registered or in excess of any weight
7 limitation set forth in this chapter, whether such limitation be
8 specifically stated in this chapter or set by express authority
9 granted this chapter: *Provided*, That if any vehicle is operated
10 within the tolerances established in this section for the gross
11 weight of that vehicle, then that vehicle shall be deemed for all
12 purposes to be operating at the gross weight for which it is
13 registered and the registered weight is deemed to include the ten
14 percent tolerance associated with it under this section.

15 (b) Subject to the limit upon the weight imposed upon the
16 highway through any one axle as set forth in section eight of
17 this article, the total gross weight on vehicles or combination of
18 vehicles operated on any highway other than the national
19 system of interstate and defense highways shall be as follows:

20 (1) A single unit truck having one steering axle and two
21 axles in tandem shall be limited to a maximum gross weight of
22 sixty thousand pounds with a tolerance of ten percent.

23 (2) A single unit truck having one steering axle and three
24 axles in tridem arrangement shall be limited to a maximum
25 gross weight of seventy thousand pounds with a tolerance of ten
26 percent.

27 (3) A single unit truck having one steering axle and four
28 axles in quadem arrangement shall be limited to a maximum
29 gross weight of seventy-three thousand pounds with a tolerance
30 of ten percent.

31 (4) A tractor-semitrailer combination with five axles, a
32 tractor-semitrailer combination with six or more axles, a single
33 unit truck having one steering axle and two axles in tandem in
34 combination with a trailer with two axles and a single unit truck

35 having one steering axle and three axles in tridem in combina-
36 tion with a trailer with two axles, shall be limited to a maximum
37 gross weight of eighty thousand pounds with a tolerance of ten
38 percent.

CHAPTER 168

**(H. B. 3018 — By Delegates Williams, Stemple, Beach,
Poling, Stevens, Perry and Campbell)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §15-1B-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-2-6 of said code, all relating to cooperation of the State Board of Education with the Mountaineer Challenge Academy; mandating a rule for the approval of alternative education programs; diplomas and certificates of proficiency; designation of Academy as special alternative education program; calculation of graduation rate for student attending an approved alternative education program or the Academy; requiring State Board rule to support the operation of the Academy; providing minimum provisions to be included in the rule; application limited to Academy consent; requiring report to Legislative Oversight Commission on Education Accountability; and technical amendments.

Be it enacted by the Legislature of West Virginia:

That §15-1B-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-2-6 of said code be amended and reenacted, all to read as follows:

Chapter**15. Public Safety.****18. Education.****CHAPTER 15. PUBLIC SAFETY.****ARTICLE 1B. NATIONAL GUARD.****§15-1B-24. Mountaineer Challenge Academy.**

1 The Mountaineer Challenge Academy, operated by the
2 Adjutant General at Camp Dawson, is hereby acknowledged to
3 be a program of great value in meeting the educational needs of
4 at-risk youth throughout the state. Further, the Mountaineer
5 Challenge Academy is hereby designated as a special alterna-
6 tive education program as is further provided pursuant to
7 section six, article two, chapter eighteen of this code. It is,
8 therefore, the intent of the Legislature that the Mountaineer
9 Challenge Academy should enjoy the full cooperation of the
10 executive agencies of state government in carrying out its
11 program.

12 To this end, the State Board of Education shall, notwith-
13 standing any other provision in this code to the contrary:

14 (1) Include the Mountaineer Challenge Academy in the
15 child nutrition program;

16 (2) Provide the names and mailing addresses of all high
17 school dropouts in the state to the director of the Mountaineer
18 Challenge Academy annually; and

19 (3) Provide for Mountaineer Challenge Academy graduates
20 to participate in the adult basic education program.

21 Further cooperation with the Mountaineer Challenge
22 Academy is encouraged by the Legislature for the purpose of
23 assisting the Mountaineer Challenge Academy to achieve its

24 mission and help prepare young people for productive adult-
25 hood.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; certificates of proficiency; establishment of alternative education programs.

1 (a) The State Board shall promulgate rules for the accredita-
2 tion, classification and standardization of all schools in the
3 state, except institutions of higher education, and shall deter-
4 mine the minimum standards for the granting of diplomas and
5 certificates of proficiency by those schools. The certificates of
6 proficiency shall include specific information regarding the
7 graduate's skills, competence and readiness for employment or
8 honors and advanced education and shall be granted, along with
9 the diploma, to every eligible high school graduate. The
10 certificate of proficiency shall include the program of study
11 major completed by the student only for those students who
12 have completed the required major courses, or higher level
13 courses, advanced placement courses, college courses or other
14 more rigorous substitutes related to the major, and the recom-
15 mended electives.

16 (b) An institution of less than collegiate or university status
17 may not grant any diploma or certificate of proficiency on any
18 basis of work or merit below the minimum standards prescribed
19 by the State Board.

20 (c) A charter or other instrument containing the right to
21 issue diplomas or certificates of proficiency may not be granted
22 by the State of West Virginia to any institution or other
23 associations or organizations of less than collegiate or univer-

24 sity status within the state until the condition of granting or
25 issuing such diplomas or other certificates of proficiency has
26 first been approved in writing by the State Board.

27 (d) The State Board shall promulgate a rule for the approval
28 of alternative education programs for disruptive students who
29 are at risk of not succeeding in the traditional school structure.
30 This rule may provide for the waiver of other policies of the
31 State Board, the establishment and delivery of a nontraditional
32 curriculum, the establishment of licensure requirements for
33 alternative education program teachers, and the establishment
34 of performance measures for school accreditation.

35 (e) If a student attends an approved alternative education
36 program or the Mountaineer Challenge Academy, which is
37 designated as a special alternative education program pursuant
38 to section twenty-four, article one-b, chapter fifteen of this
39 code, and the student graduates or passes the General Equiva-
40 lency Development (GED) tests within five years of beginning
41 ninth grade, that student shall be considered graduated for the
42 purposes of calculating the high school graduation rate used for
43 school accreditation and school system approval, subject to the
44 following:

45 (1) The student shall only be considered graduated to the
46 extent that this is not in conflict with any provision of federal
47 law relating to graduation rates;

48 (2) If the State Board determines that this is in conflict with
49 a provision of federal law relating to graduation rates, the State
50 Board shall request a waiver from the United States Department
51 of Education; and

52 (3) If the waiver is granted, notwithstanding the provisions
53 of subdivision (1) of this subsection, the student graduating or

54 passing the General Educational Development (GED) tests
55 within five years shall be considered graduated.

56 (f) The State Board shall promulgate a rule to support the
57 operation of the National Guard Youth Challenge Program
58 operated by the Adjutant General and known as the "Mountaineer
59 Challenge Academy" which is designated as a special
60 alternative education program pursuant to section twenty-four,
61 article one-b, chapter fifteen of this code, for students who are
62 at risk of not succeeding in the traditional school structure. The
63 rule shall set forth policies and procedures applicable only to
64 the Mountaineer Challenge Academy that provide for, but are
65 not limited to, the following:

66 (1) Implementation of provisions set forth in section
67 twenty-four, article one-b, chapter fifteen of this code;

68 (2) Precedence of the policies and procedures designated by
69 the National Guard Bureau for the operation of the Mountaineer
70 Challenge Academy special alternative education program;

71 (3) Consideration of a student participating in the Moun-
72 taineer Challenge Academy special alternative education
73 program at full enrollment status in the referring county for the
74 purposes of funding and calculating attendance and graduation
75 rates, subject to the following:

76 (A) The student shall only be considered at full enrollment
77 status for the purposes of calculating attendance and graduation
78 rates to the extent that this is not in conflict with any provision
79 of federal law relating to attendance or graduation rates;

80 (B) If the State Board determines that this is in conflict with
81 a provision of federal law relating to attendance or graduation
82 rates, the State Board shall request a waiver from the United
83 States Department of Education;

84 (C) If the waiver is granted, notwithstanding the provisions
85 of paragraph (A) of this subdivision, the student shall be
86 considered at full enrollment status in the referring county for
87 the purposes of calculating attendance and graduation rates; and

88 (D) Consideration of the student at full enrollment status in
89 the referring county is for the purposes of funding and calculat-
90 ing attendance and graduation rates only. For any other purpose,
91 a student participating in the Academy is considered withdrawn
92 from the public school system.

93 (4) Articulation of the knowledge, skills and competencies
94 gained through alternative education so that students who return
95 to regular education may proceed toward attainment or attain
96 the standards for graduation without duplication; and

97 (5) Consideration of eligibility to take the General Educa-
98 tional Development (GED) Tests by qualifying within the
99 extraordinary circumstances provisions established by State
100 Board rule of a student participating in the Mountaineer
101 Challenge Academy special alternative education program who
102 does not meet any other criteria for eligibility.

103 (g) Nothing in this section or the rules promulgated
104 hereunder compels the Mountaineer Challenge Academy to be
105 operated as a special alternative education program or to be
106 subject to any other laws governing the public schools except
107 by its consent.

108 (h) The State Board shall report to the Legislative Oversight
109 Commission on Education Accountability on or before the first
110 day of January of each year on its efforts to cooperate with and
111 support the Mountaineer Challenge Academy pursuant to this
112 section and section twenty-four, article one-b, chapter fifteen of
113 this code.

CHAPTER 169

(S. B. 736 — By Senators Bowman, Bailey, Chafin, Harrison, Jenkins, Kessler, Lanham, McCabe, Minard, Plymale, Weeks and White)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to repeal §8-24-86 and §8-24-87 of the code of West Virginia, 1931, as amended, relating to proffers and conditions for final plat approval sections that were superceded.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. PLANNING AND ZONING.

§1. Repeal of superceded sections dealing with proffers and conditions for final plat approval.

- 1 Sections eighty-six and eight-seven, article twenty-four,
- 2 chapter eight, of the code of West Virginia, one thousand nine
- 3 hundred thirty-one, as amended, are hereby repealed.

CHAPTER 170

(H. B. 2866 — By Mr. Speaker, Mr. Kiss, and Delegates Stemple, Varner, DeLong, Staton, Michael and Kominar)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended, relating to tuition and fees for guard members at institutions of higher education; and providing for continuation of tuition and fee payments to members after discharge from military service due to wounds or injuries received in the line of duty.

Be it enacted by the Legislature of West Virginia:

That §15-1B-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

1 (a) Any member of the National Guard who is enrolled in
2 a course of undergraduate study and is attending any accredited
3 college, university, business or trade school located in West
4 Virginia or is attending any aviation school located in West
5 Virginia for the purpose of taking college-credit courses, may
6 be entitled to payment of tuitions and fees at that college,
7 university, business or trade school or aviation school during
8 the period of his or her service in the National Guard: *Provided,*
9 That the Adjutant General may prescribe criteria of eligibility
10 for payment of tuition and fees at the college, university,
11 business or trade school or aviation school: *Provided, however,*
12 That the payment is contingent upon appropriations being made
13 by the Legislature for this express purpose.

14 (b) The amount of the payment for members attending a
15 state-supported school shall be determined by the Adjutant
16 General and may not exceed the actual amount of tuition and
17 fees at the school. The amount of the payment for members
18 attending a private school shall be determined by the Adjutant

19 General, but in no event may it exceed the highest amounts
20 payable at any state-supported school.

21 (c) Any member of the National Guard who is enrolled in
22 a course of postgraduate study and is attending any accredited
23 college or university located in West Virginia, and is receiving
24 payments under the Army continuing education system, may be
25 entitled to payment of tuition and fees at that college or
26 university during his or her period of service in the National
27 Guard: *Provided*, That the sum of payments received under this
28 subsection and the Army continuing education system may not
29 exceed the actual amount of tuition and fees at the school and
30 in no event may exceed the highest amounts payable at any
31 state-supported school. The payments are contingent upon
32 appropriations being made by the Legislature for this express
33 purpose.

34 (d) The Adjutant General may, in lieu of the tuition
35 payment authorized by this section, pay an amount equal to the
36 amount of tuition which otherwise would have been paid,
37 directly to members of the West Virginia National Guard who
38 are participating in the PROMISE scholarship program pro-
39 vided in article seven, chapter eighteen-c of this code.

40 (e) A member of the West Virginia National Guard who is
41 receiving payments for tuition and fees under this section, and
42 is discharged from the military service due to wounds or
43 injuries received in the line of duty, may continue to receive
44 payments for tuition and fees under this section as if he or she
45 were still a member of the West Virginia National Guard.

46 (f) The Adjutant General shall administer the tuition and fee
47 payments authorized under this section and shall propose
48 policies to implement the provisions of this section.

CHAPTER 171

(Com. Sub. for H. B. 3051— By Mr. Speaker, Mr. Kiss, and Delegates
Varner, Stemple, Beach, Michael, Tabb and Pino)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §20-1-2 of the Code of West Virginia, 1931, as amended, relating to adding and modifying definitions of certain terms relative to natural resources.

Be it enacted by the Legislature of West Virginia:

That §20-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires
2 a different meaning:

3 “Agency” means any branch, department or unit of the state
4 government, however designated or constituted.

5 “Alien” means any person not a citizen of the United States.

6 “Bag limit” or “creel limit” means the maximum number of
7 wildlife which may be taken, caught, killed or possessed by any
8 person.

9 “Big game” means elk, deer, black bears, wild boars and
10 wild turkeys.

11 “Bona fide resident, tenant or lessee” means a person who
12 permanently resides on the land.

13 “Citizen” means any native born citizen of the United
14 States and foreign born persons who have procured their final
15 naturalization papers.

16 “Closed season” means the time or period during which it
17 shall be unlawful to take any wildlife as specified and limited
18 by the provisions of this chapter.

19 “Commission” means the Natural Resources Commission.

20 “Commissioner” means a member of the advisory commis-
21 sion of the Natural Resources Commission.

22 “Director” means the Director of the Division of Natural
23 Resources.

24 “Fishing” or “to fish” means the taking, by any means, of
25 fish, minnows, frogs or other amphibians, aquatic turtles and
26 other forms of aquatic life used as fish bait.

27 “Fur-bearing animals” include: (a) The mink; (b) the
28 weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the
29 skunk and civet cat, commonly called polecat; (g) the otter; (h)
30 the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx;
31 (k) the raccoon; and (l) the fisher.

32 “Game” means game animals, game birds and game fish as
33 herein defined.

34 “Game animals” include: (a) The elk; (b) the deer; (c) the
35 cottontail rabbits and hares; (d) the fox squirrels, commonly

36 called red squirrels, and gray squirrels and all their color phases
37 - red, gray, black or albino; (e) the raccoon; (f) the black bear;
38 and (g) the wild boar.

39 “Game birds” include: (a) The anatidae, commonly known
40 as swan, geese, brants and river and sea ducks; (b) the rallidae,
41 commonly known as rails, sora, coots, mudhens and gallinule;
42 (c) the limicolae, commonly known as shorebirds, plover, snipe,
43 woodcock, sandpipers, yellow legs and curlews; (d) the
44 galliformes, commonly known as wild turkey, grouse, pheas-
45 ants, quails and partridges (both native and foreign species); (e)
46 the columbidae, commonly known as doves; (f) the icteridae,
47 commonly known as blackbirds, redwings and grackle; and (g)
48 the corvidae, commonly known as crows.

49 “Game fish” include: (a) Brook trout; (b) brown trout; (c)
50 rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f)
51 smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain
52 pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m)
53 rock bass; (n) white bass; (o) white crappie; (p) black crappie;
54 (q) all sunfish species; (r) channel catfish; (s) flathead catfish;
55 (t) sauger; and (u) all game fish hybrids.

56 “Hunt” means to pursue, chase, catch or take any wild birds
57 or wild animals: *Provided*, That the definition of “hunt” does
58 not include an officially sanctioned and properly licensed field
59 trial, water race or wild hunt as long as that field trial is not a
60 shoot-to-retrieve field trial.

61 “Lands” means land, waters and all other appurtenances
62 connected therewith.

63 “Migratory birds” means any migratory game or nongame
64 birds included in the terms of conventions between the United
65 States and Great Britain and between the United States and
66 United Mexican States, known as the “Migratory Bird Treaty
67 Act” for the protection of migratory birds and game mammals

68 concluded, respectively, the sixteenth day of August, one
69 thousand nine hundred sixteen, and the seventh day of Febru-
70 ary, one thousand nine hundred thirty-six.

71 “Nonresident” means any person who is a citizen of the
72 United States and who has not been a domiciled resident of the
73 State of West Virginia for a period of thirty consecutive days
74 immediately prior to the date of his or her application for a
75 license or permit except any full-time student of any college or
76 university of this state, even though he or she is paying a
77 nonresident tuition.

78 “Open season” means the time during which the various
79 species of wildlife may be legally caught, taken, killed or
80 chased in a specified manner and shall include both the first and
81 the last day of the season or period designated by the Director.

82 “Person,” except as otherwise defined elsewhere in this
83 chapter, means the plural “persons” and shall include individu-
84 als, partnerships, corporations or other legal entities.

85 “Preserve” means all duly licensed private game farmlands,
86 or private plants, ponds or areas, where hunting or fishing is
87 permitted under special licenses or seasons other than the
88 regular public hunting or fishing seasons.

89 “Protected birds” means all wild birds not included within
90 the definition of “game birds” and “unprotected birds”.

91 “Resident” means any person who is a citizen of the United
92 States and who has been a domiciled resident of the State of
93 West Virginia for a period of thirty consecutive days or more
94 immediately prior to the date of his or her application for
95 license or permit: *Provided*, That a member of the Armed
96 Forces of the United States who is stationed beyond the
97 territorial limits of this state, but who was a resident of this
98 state at the time of his or her entry into such service and any

99 full-time student of any college or university of this state, even
100 though he or she is paying a nonresident tuition, shall be
101 considered a resident under the provisions of this chapter.

102 “Roadside menagerie” means any place of business, other
103 than a commercial game farm, commercial fish preserve, place
104 or pond, where any wild bird, game bird, unprotected bird,
105 game animal or fur-bearing animal is kept in confinement for
106 the attraction and amusement of the people for commercial
107 purposes.

108 “Small game” includes all game animals, furbearing
109 animals and game birds except elk, deer, black bears, wild
110 boars and wild turkeys.

111 “Take” means to hunt, shoot, pursue, lure, kill, destroy,
112 catch, capture, keep in captivity, gig, spear, trap, ensnare,
113 wound or injure any wildlife, or attempt to do so: *Provided*,
114 That the definition of “take” does not include an officially
115 sanctioned and properly licensed field trial, water race or wild
116 hunt as long as that field trial is not a shoot-to-retrieve field
117 trial.

118 “Unprotected birds” shall include: (a) The English sparrow;
119 (b) the European starling; and (c) the cowbird.

120 “Wild animals” means all mammals native to the State of
121 West Virginia occurring either in a natural state or in captivity,
122 except house mice or rats.

123 “Wild birds” shall include all birds other than: (a) Domestic
124 poultry - chickens, ducks, geese, guinea fowl, peafowls and
125 turkeys; (b) psittacidae, commonly called parrots and parakeets;
126 and (c) other foreign cage birds such as the common canary,
127 exotic finches and ring dove. All wild birds, either: (a) Those
128 occurring in a natural state in West Virginia; or (b) those
129 imported foreign game birds, such as waterfowl, pheasants,

130 partridges, quail and grouse, regardless of how long raised or
131 held in captivity, shall remain wild birds under the meaning of
132 this chapter.

133 “Wildlife” means wild birds, wild animals, game and
134 fur-bearing animals, fish (including minnows,) reptiles,
135 amphibians, mollusks, crustaceans and all forms of aquatic life
136 used as fish bait, whether dead or alive.

137 “Wildlife refuge” means any land set aside by action of the
138 Director as an inviolate refuge or sanctuary for the protection
139 of designated forms of wildlife.

CHAPTER 172

**(H. B. 2990 — By Mr. Speaker, Mr. Kiss, and Delegates Michael,
Tabb, Pino, Varner, Stemple and Beach)**

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §20-1-17 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Division of Natural Resources to set the time and date of the meeting for the convenience of the public.

Be it enacted by the Legislature of West Virginia:

That §20-1-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-17. Natural Resources Commission — Organization and services.

1 (a) Members of the Natural Resources Commission shall
2 take and subscribe to the public officer's oath prescribed by the
3 Constitution before entering upon the duties of their office. All
4 such executed oaths shall be filed in the office of the Secretary
5 of State. Members of the Commission shall receive no compen-
6 sation as such, but each shall be reimbursed for his or her actual
7 and necessary traveling expenses incurred in the performance
8 of his or her official duties.

9 (b) The Director of the Division shall be ex officio a
10 member of the Commission and its presiding officer. A
11 majority of the Commission shall constitute a quorum for
12 transaction of business. Four regular meetings of the Commis-
13 sion shall be held each year. One meeting shall be held in each
14 quarter of the calender year. The date of the meeting shall be at
15 the discretion of the Director of the Division of Natural
16 Resources. Special meetings may be convened by the Governor,
17 the Director or by a majority of the Commission. The meetings
18 of the Commission shall be regularly held at locations desig-
19 nated by the Director. The time and place of the meeting shall
20 be announced in accordance with section one, article nine-a,
21 chapter six, et seq., of this code. The Director shall furnish all
22 articles and supplies required by the Commission in the
23 performance of its duties and shall provide necessary steno-
24 graphic, secretarial and clerical assistance therefor. All such
25 materials and services shall be paid for from Department funds.

26 The Director, at any regular or special meeting of the
27 Commission, may submit to the Commission any program or
28 policy matters on which he or she wishes to obtain the advice,
29 counsel and opinion of the Commission and may consult with
30 members of the Commission on functions, services, policies

31 and practices of the Department at any time. The Commission
32 shall serve as a body advisory to the Director and shall perform
33 all other duties assigned to it by law. It shall have the following
34 powers and duties:

35 (1) To consider and study the entire field of legislation and
36 administrative methods concerning the forests and their
37 maintenance and development, the protection of fish and game,
38 the beautification of the state and its highways, and the devel-
39 opment of lands, minerals, waters and other natural resources;

40 (2) To advise with the Director concerning the conservation
41 problems of particular localities or districts of the state;

42 (3) To recommend policies and practices to the Director
43 relative to any duties imposed upon him or her by law;

44 (4) To investigate the work of the Director, and for this
45 purpose to have access at reasonable times to all official books,
46 papers, documents and records;

47 (5) To advise or make recommendations to the Governor
48 relative to natural resources of the state;

49 (6) To keep minutes of the transactions of each session,
50 regular or special, which shall be public records and filed with
51 the Director; and

52 (7) To fix by regulation which it is hereby empowered to
53 promulgate, in accordance with the provisions of chapter
54 twenty-nine-a of this code, the open seasons and the bag, creel,
55 size, age, weight and sex limits with respect to wildlife in this
56 state.

CHAPTER 173

**(H. B. 3125 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §11-13J-12 of the Code of West Virginia, 1931, as amended, relating to “The Neighborhood Investment Program Act”; requiring an independent review of the Neighborhood Investment Program every two years; and extending the termination date of the act.

Be it enacted by the Legislature of West Virginia:

That §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

1 Beginning on the fifteenth day of December, two thousand
2 five, and every second year thereafter, the Director shall secure
3 an independent review of the neighborhood investment program
4 created by this article and present the findings to the Joint
5 Committee on Government and Finance. Unless sooner
6 terminated by law, the Neighborhood Investment Program Act
7 shall terminate on the first day of July, two thousand eight. No
8 entitlement to the tax credit under this article shall result from
9 any contribution made to any certified project after the first day

10 of July, two thousand eight, and no credit shall be available to
11 any taxpayer for any contribution made after that date. Taxpay-
12 ers which have gained entitlement to the credit pursuant to
13 eligible contributions made to certified projects prior to the first
14 day of July, two thousand eight, shall retain that entitlement and
15 apply the credit in due course pursuant to the requirements and
16 limitations of this article.

CHAPTER 174

(H. B. 2478 — By Mr. Speaker, Mr. Kiss, and Delegates Craig,
Amores, Kominar and Varner)

[Passed March 21, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §11-16-21 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition against brewers of nonintoxicating beer requiring distributors to submit certain financial documents.

Be it enacted by the Legislature of West Virginia:

That §11-16-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-one, it shall be unlawful for any brewer to
3 transfer or deliver to a distributor any nonintoxicating beer, ale
4 or other malt beverage or malt cooler without first having
5 entered into an equitable franchise agreement with such
6 distributor, which franchise agreement shall be in writing, shall
7 be identical as to terms and conditions with all other franchise
8 agreements between such brewer and its other distributors in
9 this state and which shall contain a provision in substance or
10 effect as follows:

11 (1) The brewer recognizes that the distributor is free to
12 manage his or her business in the manner the distributor deems
13 best and that this prerogative vests in the distributor, subject to
14 the provisions of this article, the exclusive right to establish his
15 or her selling prices, to select the brands of beer he or she
16 wishes to handle and to determine the efforts and resources
17 which the distributor will exert to develop and promote the sale
18 of the brewer's products handled by the distributor. However,
19 since the brewer does not expect that its products handled by
20 the distributor will be sold by others in the territory assigned to
21 the distributor, the brewer is dependent upon the distributor
22 alone for the sale of such products in said territory. Conse-
23 quently, the brewer expects that the distributor will price
24 competitively the products handled by the distributor, devote
25 reasonable effort and resources to the sale of such products and
26 maintain a satisfactory sales level.

27 (2) Whenever the manufacturing, bottling or other produc-
28 tion rights for the sale of nonintoxicating beer at wholesale of
29 any brewer is acquired by another brewer, the franchised
30 distributor of the selling brewer shall be entitled to continue
31 distributing the selling brewer's beer products as authorized in
32 the distributor's existing franchise agreement and the acquiring
33 brewer shall market all the selling brewer's beer products
34 through said franchised distributor as though the acquiring

35 brewer had made the franchise agreement and the acquiring
36 brewer may terminate said franchise agreement only in accor-
37 dance with subdivision (2), subsection (b) of this section:
38 *Provided*, That the acquiring brewer may distribute any of its
39 other beer products through its duly authorized franchises in
40 accordance with all other provisions of this section.

41 (b) It shall also be unlawful:

42 (1) For any brewer or brewpub or distributor, or any officer,
43 agent or representative of any brewer or brewpub or distributor,
44 to coerce or persuade or attempt to coerce or persuade any
45 person licensed to sell, distribute or job nonintoxicating beer,
46 ale or other malt beverage or malt cooler at wholesale or retail,
47 to enter into any contracts or agreements, whether written or
48 oral, or to take any other action which will violate or tend to
49 violate any provision of this article or any of the rules, regula-
50 tions, standards, requirements or orders of the Commissioner
51 promulgated as provided in this section;

52 (2) For any brewer or brewpub or distributor, or any officer,
53 agent or representative of any brewer or brewpub or distributor,
54 to cancel, terminate or rescind without due regard for the
55 equities of such brewer or brewpub or distributor and without
56 just cause, any franchise agreement, whether oral or written,
57 and in the case of an oral franchise agreement, whether the
58 same was entered into on or before the eleventh day of June,
59 one thousand nine hundred seventy-one, and in the case of a
60 franchise agreement in writing, whether the same was entered
61 into on, before or subsequent to the first day of July, one
62 thousand nine hundred seventy-one. The cancellation, termina-
63 tion or rescission of any such franchise agreement shall not
64 become effective for at least ninety days after written notice of
65 such cancellation, termination or rescission has been served on
66 the affected party and the Commissioner by certified mail,
67 return receipt requested: *Provided*, That said ninety-day period

68 and said notice of cancellation, termination or rescission shall
69 not apply if such cancellation, termination or rescission is
70 agreed to in writing by both the brewer and the distributor
71 involved; or

72 (c) In the event a distributor desires to sell or transfer his or
73 her franchise, such distributor shall give to the brewer or
74 brewpub at least sixty days' notice in writing of such impending
75 sale or transfer and the identity of the person, firm or corpora-
76 tion to whom such sale or transfer is to be made and such other
77 information as the brewer may reasonably request. Such notice
78 shall be made upon forms and contain such additional informa-
79 tion as the Commissioner by rule or regulation shall prescribe.
80 A copy of such notice shall be forwarded to the Commissioner.
81 The brewer or brewpub shall be given sixty days to approve or
82 disapprove of such sale or transfer. If the brewer or brewpub
83 neither approves nor disapproves thereof within sixty days of
84 the date of receipt of such notice, the sale or transfer of such
85 franchise shall be deemed to be approved by such brewer. In the
86 event the brewer or brewpub shall disapprove of the sale or
87 transfer to the prospective franchisee, transferee or purchaser,
88 such brewer or brewpub shall give notice to the distributor of
89 that fact in writing, setting forth the reason or reasons for such
90 disapproval. The approval shall not be unreasonably withheld
91 by the brewer or brewpub. The fact that the prospective
92 franchisee, transferee or purchaser has not had prior experience
93 in the nonintoxicating beer business or beer business shall not
94 be deemed sufficient reason in and of itself for a valid disap-
95 proval of the proposed sale or transfer, but may be considered
96 in conjunction with other adverse factors in supporting the
97 position of the brewer or brewpub. Nor may the brewer or
98 brewpub impose requirements upon the prospective franchisee,
99 transferee or purchaser which are more stringent or restrictive
100 than those currently demanded of or imposed upon the brewer's
101 or brewpub's or other distributors in the State of West Virginia.
102 A copy of such notice of disapproval shall likewise be for-

103 warded to the Commissioner and to the prospective franchisee,
104 transferee or purchaser. In the event the issue be not resolved
105 within twenty days from the date of such disapproval, either the
106 brewer, brewpub, distributor or prospective franchisee, trans-
107 feree or purchaser shall notify the other parties of his or her
108 demand for arbitration and shall likewise notify the Commis-
109 sioner thereof. A dispute or disagreement shall thereupon be
110 submitted to arbitration in the county in which the distributor's
111 principal place of business is located by a board of three
112 arbitrators, which request for arbitration shall name one
113 arbitrator. The party receiving such notice shall within ten days
114 thereafter by notice to the party demanding arbitration name the
115 second arbitrator or, failing to do so, the second arbitrator shall
116 be appointed by the chief judge of the circuit court of the
117 county in which the distributor's principal place of business is
118 located on request of the party requesting arbitration in the first
119 instance. The two arbitrators so appointed shall name the third
120 or, failing to do so within ten days after appointment of the
121 second arbitrator, the third arbitrator may be appointed by said
122 chief judge upon request of either party. The arbitrators so
123 appointed shall promptly hear and determine and the questions
124 submitted pursuant to the procedures established by the
125 American Arbitration Association and shall render their
126 decision with all reasonable speed and dispatch but in no event
127 later than twenty days after the conclusion of evidence. Said
128 decision shall include findings of fact and conclusions of law
129 and shall be based upon the justice and equity of the matter.
130 Each party shall be given notice of such decision. If the
131 decision of the arbitrators be in favor of or in approval of the
132 proposed sale or transfer, the brewer or brewpub shall forthwith
133 agree to the same and shall immediately transfer the franchise
134 to the proposed franchisee, transferee or purchaser unless notice
135 of intent to appeal such decision is given the arbitrators and all
136 other parties within ten days of notification of such decision. If
137 any such party deems himself or herself aggrieved thereby, such

138 party shall have a right to bring an appropriate action in circuit
139 court. Any and all notices given pursuant to this subsection
140 shall be given to all parties by certified or registered mail,
141 return receipt requested.

142 (d) The violation of any provision of this section by any
143 brewer or brewpub shall constitute grounds for the forfeiture of
144 the bond furnished by such brewer or brewpub in accordance
145 with the provisions of section twelve of this article. Moreover,
146 any circuit court of the county in which a distributor's principal
147 place of business is located shall have the jurisdiction and
148 power to enjoin the cancellation, termination or rescission of
149 any franchise agreement between a brewer or brewpub and such
150 distributor and, in granting an injunction to a distributor, the
151 court shall provide that the brewer or brewpub so enjoined shall
152 not supply the customers or territory of the distributor while the
153 injunction is in effect.

CHAPTER 175

**(S. B. 240 — By Senators Foster, Sharpe, Prezioso, Fanning, Jenkins,
Unger, Sprouse, Hunter, Minear, Barnes and Yoder)**

[Passed April 7, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-28, relating to granting state employees thirty days of paid leave time for kidney or liver donation and seven days of paid leave time for bone marrow donation.

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 §29-6-28, to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-28. Leave time for organ donation.

1 (a) A full-time state employee shall receive up to one
2 hundred twenty hours of leave with pay during each calendar
3 year to use during those hours when the employee is absent
4 from work because of the employee's donation of any portion
5 of an adult liver or because of the employee's donation of an
6 adult kidney.

7 (b) A full-time state employee shall receive up to fifty-six
8 hours of leave with pay during each calendar year to use during
9 those hours when the employee is absent from work because of
10 the employee's donation of adult bone marrow.

11 (c) An appointing authority shall compensate a full-time
12 state employee who uses leave granted under this section at the
13 employee's regular rate of pay for those regular work hours
14 during which the employee is absent from work.

15 (d) The Director of Personnel shall provide information
16 about this section to full-time employees.

17 (e) The Legislature hereby encourages political subdivi-
18 sions and private employers in this state to grant their full-time
19 employees paid leave similar to the paid leave granted to full-
20 time state employees under this section.

CHAPTER 176

(S. B. 491 — By Senators Love, Facemyer and Bailey)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §28-6-1 and §28-6-2 of the Code of West Virginia, 1931, as amended, relating to the Compact for Out-of-State Parolee Supervision.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article establishing the Compact for Out-of-State Parolee Supervision.

1 Article six, chapter twenty-eight of the Code of West
2 Virginia, one thousand nine hundred thirty-one, as amended, is
3 hereby repealed.

CHAPTER 177

**(Com. Sub. for S. B. 261 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed February 25, 2005; in effect from passage.]
[Approved by the Governor on March 8, 2005.]

AN ACT to submit the Pension Bond Amendment to the Constitution of the State of West Virginia to the voters of the state for

ratification or rejection at a special election to be held throughout the state on the twenty-fifth day of June, two thousand five; calling the special election; directing that the proposed amendment be submitted to the voters of the state at the special election and how such amendment is to be numbered, designated and summarized; providing for publication of the proposed amendment and publication of notice of the special election and the form thereof; providing that no question or issue other than the ratification or rejection of the proposed amendment shall be voted upon at the special election; providing for an official paper ballot; providing for one board of election officials in each precinct and for recounts; providing for the conduct of and procedures for the special election; providing that the costs and expenses of the special election be paid out of the State Treasury; and providing for a proclamation of the result of the special election by the Secretary of State.

Be it enacted by the Legislature of West Virginia:

SPECIAL ELECTION ON PROPOSED CONSTITUTIONAL AMENDMENT:

- §1. Calling a special election; when to be held.
- §2. Proposed amendment to be submitted; how numbered, designated and summarized; publication of proposed amendment.
- §3. Publication of notice of special election; form.
- §4. Conduct of and procedures for the special election; official ballot; application of chapter three of the code; payment of costs.

§1. Calling a special election; when to be held.

1 Pursuant to the authority vested in it by section two, article
2 fourteen of the Constitution of the State of West Virginia, the
3 Legislature hereby calls a special election to be held through-
4 out the state for the purpose of submitting a proposed amend-
5 ment to the Constitution of the state to the voters of the state
6 for ratification or rejection. The special election shall be held
7 on the twenty-fifth day of June, two thousand five.

§2. Proposed amendment to be submitted; how numbered, designated and summarized; publication of proposed amendment.

1 The proposed amendment to the Constitution of the State
2 of West Virginia to be submitted to the voters of the state for
3 ratification or rejection at the special election herein provided
4 shall be, and it shall be numbered, designated and summarized
5 in accordance with the joint resolution adopted by the Legisla-
6 ture as follows:

7 Senate Joint Resolution No. 101, adopted by the Legisla-
8 ture the twenty-ninth day of January, two thousand five,
9 authorizing the submission of a proposed amendment to the
10 Constitution of the state numbered “Amendment No. 1”,
11 designated the “Pension Bond Amendment”, and summarized
12 as follows: “To amend the state Constitution to permit the
13 issuance and sale of additional state general obligation bonds
14 not exceeding five billion five hundred million dollars to help
15 provide for the fiscal soundness of the State Teachers Retire-
16 ment System, the Judges’ Retirement System and the Public
17 Safety Death, Disability and Retirement System. These
18 additional state general obligation bonds will help the state to
19 fund the unfunded actuarial accrued liabilities of these sys-
20 tems.”

21 The Secretary of State shall cause the proposed amendment
22 to be published in full compliance with the provisions of
23 section three, article eleven, chapter three of the Code of West
24 Virginia; one thousand nine hundred, thirty-one, as amended.

§3. Publication of notice of special election; form.

1 The Secretary of State shall cause notice of the special
2 election herein provided to be published as a legal advertise-
3 ment one time at least three months before the special election

4 in some newspaper in every county of the state in which a
5 newspaper is printed. The form of the notice shall be as
6 follows:

7 "NOTICE OF SPECIAL ELECTION FOR RATIFICA-
8 TION OR REJECTION OF PROPOSED AMENDMENT TO
9 THE CONSTITUTION OF THE STATE

10 A special election shall be held on the twenty-fifth day of
11 June, two thousand five, for the ratification or rejection of the
12 proposed amendment to the Constitution of the state.

13 Signed: _____
14 Secretary of State
15 of the State of West Virginia."

§4. Conduct of and procedures for the special election; official ballot; application of chapter three of the code; payment of costs.

1 No question or issue other than the ratification of the
2 proposed amendment shall be voted upon at the special
3 election herein provided for. The proposed official ballots
4 shall be paper ballots. Such official ballot shall have the same
5 form as the ballot on constitutional amendments provided in
6 section four, article eleven, chapter three of the code. There
7 shall be but one board of election officers in each precinct
8 consisting of three commissioners and two poll clerks. Any
9 person voting in the special election may demand a recount of
10 the results thereof in the county wherein he or she voted.
11 Every such person who demands such recount shall be required
12 to furnish bond in a reasonable amount with good and suffi-
13 cient surety to guarantee costs and expenses of such recount in
14 the event the results of the special election be not changed by
15 such recount, but the amount of the bond shall in no case
16 exceed three hundred dollars. If the result of the special

17 election in such county be not changed by such recount, the
18 costs and expenses of such recount shall be paid by the person
19 or persons at whose insistence the same was made. The
20 Secretary of State shall declare by proclamation the result of
21 the special election in the manner provided in section six,
22 article eleven, chapter three of the code. The costs and
23 expenses of the special election throughout the state shall be
24 paid out of the state Treasury from funds appropriated therefor.

25 Except to the extent this act expressly provides otherwise,
26 the special election shall be superintended, conducted and
27 returned and the result thereof ascertained and certified by the
28 same officers and in the same manner as provided in chapter
29 three of the code for a general election. In any matter in which
30 no specific provision of this act applies for the conduct of any
31 phase of the special election, those pertinent provisions of said
32 chapter three which may furnish guidance and may be made
33 controlling shall be applied.

CHAPTER 178

(S. B. 104 — By Senator Love)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §17-15-3 of the Code of West Virginia, 1931, as amended, relating to working prisoners by county commissions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.

§1. Repeal of section relating to working prisoners by county commissions.

1 Section three, article fifteen, chapter seventeen of the Code
2 of West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 179

(Com. Sub. for H. B. 2476 — By Delegates Perry,
Beach, Hartman, Pino and Leach)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §62-12-19 of the Code of West Virginia, 1931, as amended, relating generally to parole and parole proceedings; authorizing the Commissioner of the Division of Corrections to issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee's parole.

Be it enacted by the Legislature of West Virginia:

That §62-12-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-19. Violation of parole.

1 (a) If at any time during the period of parole there is
2 reasonable cause to believe that the parolee has violated any of
3 the conditions of his or her release on parole, the parole officer

4 may arrest him or her with or without an order or warrant, or
5 the Commissioner of Corrections may issue a written order or
6 warrant for his or her arrest, which written order or warrant is
7 sufficient for his or her arrest by any officer charged with the
8 duty of executing an ordinary criminal process. The Commis-
9 sioner's written order or warrant delivered to the sheriff against
10 the paroled prisoner shall be a command to keep custody of the
11 parolee for the jurisdiction of the Division of Corrections and
12 during the period of custody, the parolee may be admitted to
13 bail by the court before which the parolee was sentenced. If the
14 parolee is not released on a bond, the costs of confining the
15 paroled prisoner shall be paid out of the funds appropriated for
16 the Division of Corrections.

17 (b) When a parolee is under arrest for violation of the
18 conditions of his or her parole, he or she shall be given a
19 prompt and summary hearing, at which the parolee and his or
20 her counsel are given an opportunity to attend. If at the hearing
21 it appears to the satisfaction of the Board that the parolee has
22 violated any condition of his or her release on parole, or any
23 rules or conditions of his or her supervision, the Board may
24 revoke his or her parole and may require him or her to serve in
25 prison the remainder or any portion of his or her maximum
26 sentence for which, at the time of his or her release, he or she
27 was subject to imprisonment: *Provided*, That if the violation of
28 the conditions of parole or rules for his or her supervision is not
29 a felony as set out in section eighteen of this article, the Board
30 may, if in its judgment the best interests of justice do not
31 require revocation, reinstate him or her on parole. The Division
32 of Corrections shall effect release from custody upon approval
33 of a home plan. Notwithstanding any provision of this code to
34 the contrary, when reasonable cause has been found to believe
35 that a parolee has violated the conditions of his or her parole but
36 the violation does not constitute felonious conduct, the Com-
37 missioner may, in his or her discretion and with the written
38 consent of the parolee, allow the parolee to remain on parole

39 with additional conditions or restrictions. The additional
40 conditions or restrictions may include, but are not limited to,
41 participation in any program described in subsection (d),
42 section five, article eleven-c of this chapter. Compliance by the
43 parolee with the conditions of parole precludes revocation of
44 parole for the conduct which constituted the violation. Failure
45 of the parolee to comply with the conditions or restrictions and
46 all other conditions of release is an additional violation of
47 parole and the parolee may be proceeded against under the
48 provisions of this section for the original violation as well as
49 any subsequent violations.

50 (c) When a parolee has violated the conditions of his or her
51 release on parole by confession to, or being convicted of, any
52 of the crimes set forth in section eighteen of this article, he or
53 she shall be returned to the custody of the Division of Correc-
54 tions to serve the remainder of his or her maximum sentence,
55 during which remaining part of his or her sentence he or she is
56 ineligible for further parole.

57 (d) Whenever the parole of a paroled prisoner has been
58 revoked, the Commissioner shall upon receipt of the Board's
59 written order of revocation, convey and transport the paroled
60 prisoner to a state correctional institution. A paroled prisoner
61 whose parole has been revoked shall remain in custody of the
62 sheriff until delivery to a corrections officer sent and duly
63 authorized by the Commissioner for the removal of the paroled
64 prisoner to a state penal institution; the cost of confining the
65 paroled prisoner shall be paid out of the funds appropriated for
66 the Division of Corrections.

67 (e) When a paroled prisoner is convicted of, or confesses to,
68 any one of the crimes enumerated in section eighteen of this
69 article, it is the duty of the Board to cause him or her to be
70 returned to this state for a summary hearing as provided by this
71 article. Whenever a parolee has absconded supervision, the

72 Commissioner shall issue a warrant for his or her apprehension
73 and return to this state for the hearing provided for in this
74 article: *Provided*, That the Board may, if it determines the best
75 interests of justice do not require revocation, cause the paroled
76 absconder to be reinstated to parole.

77 (f) A warrant filed by the Commissioner shall stay the
78 running of his or her sentence until the parolee is returned to the
79 custody of the Division of Corrections and physically in West
80 Virginia.

81 (g) Whenever a parolee who has absconded supervision or
82 has been transferred out of this state for supervision pursuant to
83 section one, article six, chapter twenty-eight of this code is
84 returned to West Virginia due to a violation of parole and costs
85 are incurred by the Division of Corrections, the Commissioner
86 may assess reasonable costs from the parolee's inmate funds or
87 the parolee as reimbursement to the Division of Corrections for
88 the costs of returning him or her to West Virginia.

89 (h) Conviction of a felony for conduct occurring during the
90 period of parole is proof of violation of the conditions of parole
91 and the hearing procedures required by the provisions of this
92 section are inapplicable.

93 (i) The Commissioner of the Division of Corrections may
94 issue subpoenas for persons and records necessary to prove a
95 violation of the terms and conditions of a parolee's parole either
96 at a preliminary hearing or at a final hearing before the Parole
97 Board. The subpoenas shall be served in the same manner
98 provided in the Rules of Criminal Procedure. The subpoenas
99 may be enforced by the Commissioner through application or
100 petition of the Commissioner to the circuit court for contempt
101 or other relief.